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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 906

**[Docket No. FV98–906–1 IFR]**

### Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate from $0.125 to $0.11 per 7/10 bushel carton established for the Texas Valley Citrus Committee (Committee) under Marketing Order No. 906 for the 1998–99 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. Authorization to assess orange and grapefruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective July 27, 1998. Comments received by September 22, 1998, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, orange and grapefruit handlers in the Lower Rio Grande Valley in Texas are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable oranges and grapefruit beginning August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule deceases the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.125 to $0.11 per 7/10 bushel carton handled.

The Texas orange and grapefruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Texas oranges and grapefruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 10, 1998, and unanimously recommended 1998–99 expenditures of $1,172,950 and an assessment rate of $0.11 per 7/10 bushel carton of oranges and grapefruit handled. In comparison, last year's budgeted expenditures were $1,100,478. The assessment rate of $0.11 is $0.015 lower than the rate currently in effect. The Committee voted to lower its assessment rate and use more of the

reserve to cover its expenses. The assessment rate decrease is necessary to bring expected assessment income closer to the amount necessary to administer the program for the 1998–99 fiscal period. At the current rate, assessment income would exceed anticipated expenses by about $14,550, and the projected reserve on July 31, 1999, would exceed the level the Committee believes to be adequate to administer the program.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $768,700 for advertising and promotion, and $170,000 for the Mexican Fruit Fly support program. Budgeted expenses for these items in 1997–98 were $712,000 and $170,000, respectively. Budget increases for 1998–99 (with the 1997–98 budgeted amounts in parentheses) include administrative at $68,313, ($64,548), and compliance at $73,369, ($71,112). A new budget item for 1998–99 includes funds totaling $14,000 for promotion program evaluation.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Texas oranges and grapefruit. Texas orange and grapefruit shipments for the year are estimated at 9.5 million cartons which should provide $1,045,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently $270,000) will be kept within the maximum permitted by the order (approximately one fiscal periods' expenses; § 906.35).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 2,000 producers of oranges and grapefruit in the production area and 17 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of orange and grapefruit producers and handlers may be classified as small entities.

Last year, 4 of the handlers each shipped over 833,000 7/10 bushel cartons of oranges and grapefruit, which at an average free-on-board (f.o.b.) price of $6.00, generated approximately $5 million in gross sales. These handlers would be considered large businesses under SBA's definition, and the remaining 13 handlers would be considered small businesses. Of the approximately 2,000 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.125 to $0.11 per 7/10 bushel carton handled. The Committee unanimously recommended 1998–99 expenditures of $1,172,950 and an assessment rate of $0.11 per 7/10 bushel carton. The assessment rate of $0.11 is $0.015 lower than the 1997–98 rate. As mentioned earlier, the quantity of assessable oranges and grapefruit for the 1998–99 season is estimated at 9.5 million cartons. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include $768,700 for advertising and promotion, and $170,000 for the Mexican Fruit Fly support program. Budgeted expenses for these items in 1997–98 were $712,000 and $170,000, respectively. Budget increases for 1998–99 (with the 1997–98 budgeted amounts in parentheses) include administrative at $68,313, ($64,548), and compliance at $73,369, ($71,112). A new budget item for 1998–99 includes funds totaling $14,000 for promotion program evaluation.

Many producers are still recovering from the devastating freezes of 1983 and 1989 that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and profit to the producers is marginal. Also, a general oversupply of citrus from other domestic sources and foreign countries is depressing prices. To allow more of the revenue from sales to be retained by those paying assessments, the Committee recommended that the 1998–99 rate of assessment be reduced to $0.11 per 7/10 bushel carton. A reduction in the assessment rate will, however, cause the Committee to draw approximately $122,950 from reserves to meet the 1998–99 budget. At the end of the 1998–99 fiscal period, the reserve is expected to be $126,428. Interest income totaling $5,000 also will be used to cover program expenses in 1998–99.

The Committee reviewed and unanimously recommended 1998–99 expenditures of $1,172,950, which included increases in administrative costs, compliance, the advertising and promotion program, and the addition of funds to cover promotion program evaluation. Budgeted expenses for the Mexican Fruit Fly program were left the same as last year. In arriving at the budget, the Committee considered information from various sources. A lower assessment rate was considered. The Committee, however, concluded that establishing a lower rate would require it to use to much of its reserve. Based on its estimate of anticipated 1998–99 shipments, the Committee concluded that an assessment rate of $0.11 per 7/10 bushel carton of oranges and grapefruit would generate the income necessary to administer the program with an appropriate reserve level.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1998–99 season could range between $4.50 and $9.00 per 7/10 bushel carton of oranges and grapefruit, depending upon the fruit variety, size, and quality. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of the total pack-out revenue could range between 2.4 and 1.2 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 10, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal period begins on August 1, 1998, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 906**

Marketing agreements, Grapefruit, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 906.235 is revised to read as follows:

**§ 906.235 Assessment rate.**

On and after August 1, 1998, an assessment rate of $0.11 per 7/10 bushel carton is established for oranges and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: July 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–19886 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 989

**[FV98–989–2 IFR]**

## Raisins Produced From Grapes Grown In California; Increase in Desirable Carryout Used to Compute Trade Demand

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule increases the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available for shipment. This rule increases the desirable carryout from 2 to 2½ months of prior year's shipments. This increase allows for a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season.

**DATES:** Effective August 1, 1998. Comments must be received by August 3, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 205–6632.

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

amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. This rule increases the desirable carryout, one factor in this formula, from 2 to 2½ months of prior year's shipments. This increase allows for a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season. This rule was unanimously recommended by the Committee at a meeting on June 11, 1998.

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

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

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

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

At its June 11, 1998, meeting, the Committee evaluated the 2-month desirable carryout level and recommended adjusting the formula back up to 2½ months of prior year's shipments (August, September, and one-half of October). In its deliberations, the Committee considered the impact of the reduction in desirable carryout over the past few years along with a change to one of its export programs operated under the order. Prior to 1995, the Committee administered an industry export program whereby handlers who exported California raisins could purchase, at a reduced rate, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets (prices in export markets are generally lower than the domestic market). One problem that the industry found with this ''raisin-back'' program was that the reserve raisins which handlers received went back into free tonnage outlets creating an excessive supply of raisins. To correct this problem, the industry gradually switched to a program which offered cash, rather than reserve raisins, to exporting handlers. The desirable carryout was reduced down to 2 months to help decrease the supply of raisins available early in a season and, thus, stabilize market conditions.

The Committee now believes that not enough raisins are being made available for growth. Increasing the desirable carryout allows for a higher trade demand figure and, thus, a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

At the meeting, the Committee also compared the average desirable carryout for the past 7 years with the average, actual tonnage that all handlers have in inventory at the end a crop year. Desirable carryout has averaged 66,033 tons at 2½ months, 63,424 tons at 2¼ months, and 63,364 tons at 2 months. For the past 7 years, an average of 101,459 tons has been held in inventory by all handlers at the end of a crop year. Increasing the desirable carryout to 2½ months would allow this factor to move towards what handlers are actually holding in inventory at the end of a crop year.

Much of the discussion at the Committee's meeting concerned the desirable carryout of Natural (sun-dried) Seedless raisins (Naturals). Naturals are the major commercial varietal type of raisin produced in California. Volume regulation has been implemented for Naturals for the past several seasons. However, the Committee also believes that the increase in desirable carryout to 2½ months should apply to the other varietal types of raisins covered under the order.

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

Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule increases the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are available for shipment. This rule increases the desirable carryout specified in § 989.154 from 2 to 2½ months of prior year's shipments.

The 2½ month desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout increases trade demand and the free tonnage percentage which makes more raisins available to handlers early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

The Committee considered a number of alternatives to the one-half month increase in the desirable carryout level. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on April 21 and June 9, 1998, and discussed desirable carryout. The subcommittee considered establishing a set tonnage for desirable carryout (i.e., 75,000 tons for Naturals). However, this alternative would not allow the desirable carryout to fluctuate with changing market conditions from year to year. The subcommittee considered lowering the desirable carryout for Naturals by 15,000 tons to tighten the supply of raisins early in the season even more. However, the majority of subcommittee members believed that the early season supply of raisins needed to be increased rather than decreased.

Another alternative raised at the Committee meeting was to make more raisins available to handlers at the end of a crop year through the industry's ''10 plus 10'' offers. The ''10 plus 10'' offers are two offers of reserve pool raisins which are made available to handlers during each season. Handlers may sell their ''10 plus 10'' raisins as free tonnage to any market. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. The Committee considered offering for sale to handlers as free use an additional quantity of reserve raisins equal to 5 percent of the prior year's shipments. Such an additional offer could generate revenue that could be used to sustain the Committee's ''cash-back'' export program. As previously explained, under this program, handlers who export raisins to certain markets may receive cash from the reserve pool. This effectively blends down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets (prices in export markets are generally lower than the domestic market). However, there is currently no provision in the order for this additional 5 percent offer.

Another alternative that was raised at the Committee's meeting was to include a policy statement concerning reserve pool equity along with the recommendation to increase the desirable carryout. Some industry members are concerned that increasing desirable carryout, thereby increasing the free tonnage percentage, may reduce handler purchases of ''10 plus 10'' raisins and, thus, impact pool revenue. As previously mentioned, net proceeds from sales of reserve raisins are distributed to reserve pool equity holders, primarily small producers. After much discussion, the majority of Committee members agreed that reserve pool equity was a separate issue from desirable carryout and would be addressed by the Committee's Audit Subcommittee.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meetings on April 21 and June 9, 1998, and the Committee meeting on June 11, 1998, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on increasing the desirable carryout level currently specified under the California raisin order. A 10-day comment period is deemed appropriate because the order provides that the Committee meet to compute and announce the trade demand for any varietal type for which volume regulation may be recommended for the 1998–99 crop year on or before August 15, and desirable carryout is a necessary factor in that calculation. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 crop year begins on August 1, 1998, and this rule should be effective promptly because the order provides that the Committee meet on or before August 15 to compute and announce the trade demand, and

the desirable carryout level is a necessary item in that calculation; (2) this action is a relaxation in that increasing the desirable carryout increases the trade demand and free tonnage percentage making more raisins available to handlers for immediate use early in the season; (3) producers and handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) this rule provides a 10-day comment period and any comments received will be considered prior to finalization of this rule.

### List of Subjects in 7 CFR Part 989

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

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

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

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

**Authority:** 7 U.S.C. 601–674.

2. Section 989.154 is revised to read as follows:

**§ 989.154 Desirable carryout levels.**

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the total shipments of free tonnage of the prior crop year during August, September, and one-half of October, for each varietal type, converted to a natural condition basis: *Provided*, That should the prior year's shipments be limited because of crop conditions, the Committee may select the total shipments during the months of August, September, and one-half of October during one of the three crop years preceding the prior crop year.

Dated: July 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–19874 Filed 7–22–98; 10:03 am]

BILLING CODE 3410–02–P

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 934

**[No. 98–32]**

**RIN 3069–AA70**

## Authority to Approve Federal Home Loan Bank Bylaws

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is adopting the interim final rule that added a new provision to its regulation on Federal Home Loan Bank (FHLBank) operations to devolve responsibility for approving FHLBank bylaws or amendments thereto from the Finance Board to the boards of directors of the FHLBanks as a final rule without change. The rule is part of the Finance Board's continuing effort to devolve management and governance responsibilities to the FHLBanks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

**EFFECTIVE DATE:** The final rule will become effective on August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Amy R. Maxwell, Compliance Assistance Division, Office of Policy, 202/408–2882, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408–2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory and Regulatory Background

Subject to the approval of the Finance Board, section 12(a) of the Federal Home Loan Bank Act authorizes the board of directors of each FHLBank to ''prescribe, amend, and repeal by-laws, rules, and regulations governing the manner in which its affairs may be administered.'' 12 U.S.C. 1432(a). In December 1997, the Finance Board published an interim final rule with request for comments that added a new section, designated as § 934.16, to its regulation on FHLBank operations. *See* 62 FR 65197 (Dec. 11, 1997), *codified at* 12 CFR 934.16. The 30-day public comment period closed on January 12, 1998. *See id.* This new provision authorizes the board of directors of each FHLBank to prescribe, amend, or repeal bylaws or bylaws amendments governing the manner in which the FHLBank administers its affairs without the prior approval of the Finance Board provided that the bylaws or bylaws amendments are consistent with applicable statutes, regulations, and Finance Board policies.

### II. Analysis of Public Comments and the Final Rule

The Finance Board received one comment in response to the interim final rule. The commenter supports the rule because it promotes more efficient operations that benefit the FHLBanks, their members, and homebuyers. Accordingly, for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule that devolves responsibility for approving FHLBank bylaws and amendments thereto from the Finance Board to the boards of directors of the FHLBanks without change.

### III. Regulatory Flexibility Act

The Finance Board adopted this amendment to part 934 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

### IV. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

### List of Subjects in 12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

Accordingly, the Federal Housing Finance Board hereby adopts the interim final rule amending 12 CFR part 934 that was published at 62 FR 65197 on December 11, 1997, as a final rule without any change.

Dated: July 8, 1998.

By the Board of Directors of the Federal Housing Finance Board.

**Bruce A. Morrison,**

*Chairperson.*

[FR Doc. 98–19811 Filed 7–23–98; 8:45 am]

BILLING CODE 6725–01–P

## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 937

**[No. 98–28]**

## Financial Disclosure by the Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) hereby amends its regulations to require that the Federal Home Loan Banks (Banks) provide information in such form and within such timeframes as the Finance Board may prescribe so that the Finance Board may prepare combined Bank System financial disclosure in a complete and timely manner; and to require that any financial statements issued by the individual Banks be consistent in both form and content with those presented in the combined quarterly and annual financial reports issued for the Bank System by the Finance Board. This amendment is intended to ensure that the Finance Board can issue accurate and timely financial disclosure to the capital markets and that all information issued to the public concerning the Bank System is consistent and prepared in accordance with uniform standards.

**EFFECTIVE DATE:** August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202/408–2845, or Deborah F. Silberman, General Counsel, Office of General Counsel, 202/408–2570, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 *et seq.*, authorizes the Finance Board to issue consolidated obligations that are the joint and several obligations of the Banks in order to provide funds for the Banks. 12 U.S.C. 1431(b), (c). The Bank Act further authorizes the individual Banks to issue debt securities subject to rules and regulations adopted by the Finance Board, 12 U.S.C. 1431(a). The Finance Board has never adopted regulations concerning the issuance of debt securities by the individual Banks, and the Banks have never issued debt securities under this authority.

Pursuant to section 3(a)(2) of the Securities Act of 1933, 15 U.S.C. 77c(a)(2), (Securities Act), the debt securities issued by the Finance Board to raise funds for the Banks are exempt from the registration requirements of the Securities Act. Section 3(a)(2) exempts from registration and other requirements of the Securities Act, *inter alia*, securities issued or guaranteed by ''any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States.'' 15 U.S.C. 77c(a)(2).

Classes of securities issued by the Finance Board similarly are exempt from the registration and reporting requirements of the Securities Exchange Act of 1934, (15 U.S.C. 78a *et seq.*) (Exchange Act), pursuant to section 3(a)(42) of the Exchange Act. (15 U.S.C. 78c(a)(42)). Section 3(a)(42)(B) designates as securities exempt from registration and reporting under the Exchange Act, ''government securities,'' including ''securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors.'' *Id.* § 78c(a)(42)(B).

The exemptions from registration and reporting under the Securities Act and the Exchange Act discussed above are principally grounded in a presumption that the securities activities of institutions acting as government entities, as designated under the federal securities laws, will be conducted in the public interest and for the protection of investors. While securities issued by the Finance Board are exempt from the registration and reporting requirements of the Securities Act and the Exchange Act, the Finance Board believes it is in the public interest and in the interests of the Bank System for the disclosure documents used in connection with the issuance of its debt to be as state-of-the-art as possible. Indeed, one of the duties of the Finance Board specified in the Bank Act is that it ensures that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B)(iii).

However, the Finance Board heretofore had never formally addressed the scope and content of the financial reports issued by itself on behalf of the Bank System nor by individual Banks to their members. Because the Finance Board has supervisory and examination authority over the Banks, it is the Finance Board's responsibility to regulate the securities activities of those institutions when it finds such regulation to be necessary or appropriate for the protection of investors and the Bank system.

On February 2, 1998, the Finance Board published for notice and comment a proposed rule to amend its regulations to add a requirement that the Banks file with the Finance Board for review and provide to their members annual audited financial statements and quarterly unaudited financial statements prepared in conformance with the rules and other requirements promulgated under the Federal securities laws by the Securities and Exchange Commission (SEC). *See* 63 FR 5315 (Feb. 2, 1998). The SEC's disclosure requirements prescribe that an issuer of securities into the capital markets make full and fair disclosure of all information material to an investment decision in connection with the offer, sale, and other market transactions in those securities. Generally, a securities issuer's compliance with SEC disclosure regulations will reduce risk of and liability for potential fraud. The proposed rule was designed to ensure that a Bank's members would receive timely, accurate, and uniform financial information about their respective Banks, and to codify prevailing practice at the Banks. Nothing in the proposed rule was intended to subject the Banks to the jurisdiction of any other agency, nor to confer any private right of action on any member or on any investor in Bank system securities. The proposed rule invited comment on the scope of the existing and proposed new disclosures and to indicate to the Finance Board any other disclosures that would be appropriate.

Simultaneously with the publication of the proposed rule, the Finance Board also published for notice and comment a proposed policy statement regarding the preparation of the Bank System combined annual and quarterly financial reports by the Finance Board in connection with the issuance of consolidated debt securities pursuant to section 11(c) of the Bank Act, 12 U.S.C. 1431(c), in accordance with the disclosure requirements promulgated by the SEC. *See* Proposed Policy Statement, Finance Board Res. No. 98–01, January 21, 1998, 63 FR 5381 (February 2, 1998).

The Finance Board received a total of six comments on the proposed policy statement and the proposed rule. Commenters included three Banks, one committee of the Banks, one trade association, and one accounting firm.

## II. Analysis of the Final Rule

### *A. In General.*

A number of the commenters expressed concern about the increased legal, accounting, and administrative costs and other burdens adoption of the proposed regulation would impose on the Banks, and about the unintended adverse consequences that would result from incorporating the SEC's disclosure requirements into the regulation. In particular, the commenters urged that future rule changes by the SEC, and SEC interpretations, bulletins, opinions, no-action letters, and analysis about its regulations should be explicitly excluded from incorporation into the

Finance Board's regulation and policy statement. The commenters suggested that, instead of adopting the proposed regulation, the Finance Board should either delay adoption of the regulation until further analysis of the effects of the regulation could be made, or adopt its own disclosure requirements specifically tailored to the business of the Banks.

The Finance Board believes that uniformity, completeness, and accuracy of financial disclosure in the capital markets is a critically important issue and is, therefore, unwilling to delay the adoption of a final rule regarding financial disclosure requirements for the Banks. However, the Finance Board does not wish to impose unnecessary burdens on the Banks, or to require duplicative disclosure. Therefore, the final rule has been revised in a number of ways to address these concerns and other considerations.

*B. Definitions—Section 937.1.*

The proposed rule sets forth certain definitions to be used in the part. The definitions of ''Bank,'' and ''Finance Board'' are adopted as proposed without change. The definitions of ''Member,'' ''SEC,'' ''Form 10–K,'' ''Form 10–Q,'' and ''Regulation S–X'' have been deleted from the final rule, for the reasons discussed below.

*C. Annual and Quarterly Financial Statement Requirements.*

Section 937.2 of the proposed rule would have imposed a requirement that the Banks file with the Finance Board for review, and distribute to their shareholders, annual and quarterly financial statements as provided further in the regulation. Sections 937.3 and 937.4 of the proposed rule set forth the specific SEC regulatory requirements with which the Banks would have had to comply in preparing their annual and quarterly financial statements. These sections also set forth the timeframes in which the reports had to be prepared.

As discussed in the notice of proposed rulemaking, *see* 63 FR 5315, 5317, all of the Banks currently provide annual financial statements to their shareholders, but not all of the Banks currently issue quarterly financial statements. The Finance Board wished to assure that all members of the Banks were receiving timely financial information about the Banks, and proposed to use this regulation as the vehicle for that disclosure.

Since the proposed policy statement and regulation were published, and in connection with this project, the Finance Board has been reevaluating how it provides disclosure about individual Banks in the combined Bank System annual and quarterly reports. The combined Bank System annual report already contains combining schedules for the statement of condition, the statement of income, statements of capital, and statements of cash flows. These combining schedules include a column of information supplied by and about each of the Banks, a column of combining adjustments that eliminate all material interbank transactions, and a column of information for the combined Bank System. While the Finance Board has not provided this information in its combined Bank System quarterly financial reports, it is planning to do so in future quarterly reports.

Because the Finance Board already includes significant financial information about each Bank in the Bank System combined annual report, because it plans to provide similarly significant financial information about each Bank in the Bank System combined quarterly reports, and because the Finance Board intends to distribute the combined annual and quarterly reports to members of the Bank System expeditiously after their publication, the Finance Board no longer believes it is necessary to require the Banks to file for review and distribute to members individually prepared annual and quarterly financial statements. Therefore, all of the requirements of proposed sections 937.2, 937.3, and 937.4 have been deleted from the final rule.

Instead, the final rule requires in section 937.2 only that the Banks provide to the Finance Board, in such form and within such timeframes as the Finance Board shall specify, all such financial and other information as the Finance Board shall need to prepare the combined Bank System annual and quarterly reports.

There is no longer any requirement in the final rule that the Banks prepare or issue individual Bank annual or quarterly financial reports. However, section 937.3 of the final rule provides that if the Banks choose to issue individual annual or quarterly financial reports, any financial statements contained in those reports must be consistent in both form and content with the financial statements presented in the combined Bank System annual or quarterly financial reports. This is to assure that all financial statements relating to the Banks in the public domain will be consistent and accurate.

The requirements of section 937.3 will not preclude a Bank from including abbreviated balance sheets or other abbreviated financial statement information in marketing materials, so long as those materials provide clear disclosure of how and where the reader may obtain a complete set of the financial statements of the Bank or the Bank System.

## III. Regulatory Flexibility Act

The final rule applies only to the Banks, which are not ''small entities'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

## IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

## List of Subjects in 12 CFR Part 937

Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chpate IX, of the Code of Federal Regulations, to add a new part 937, as follows:

## PART 937—FINANCIAL STATEMENTS OF THE BANKS

Sec.
937.1 Definitions.
937.2 Requirement to provide financial and other information to the Finance Board.
937.3 Requirement for voluntary bank disclosure.

**Authority:** 12 U.S.C. 1422a, 1422b, 1426, 1431, and 1440.

### § 937.1 Definitions.

As used in this part:

*Bank* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

*Finance Board* means the agency established as the Federal Housing Finance Board.

### § 937.2 Requirement to provide financial and other information to the Finance Board.

In order to facilitate the preparation by the Finance Board of combined Bank System annual and quarterly reports, each Bank shall provide to the Finance

Board in such form and within such timeframes as the Finance Board shall specify, all financial and other information the Finance Board shall request for that purpose.

**§ 937.3 Requirement for voluntary bank disclosure.**

Any financial statements contained in an annual or quarterly financial report issued by an individual Bank must be consistent in both form and content with the financial statements presented in the combined Bank System annual or quarterly financial reports prepared and issued by the Finance Board.

Dated: June 24, 1998.

By the Board of Directors of the Federal Housing Finance Board.

**Bruce A. Morrison,**

*Chairperson.*

[FR Doc. 98–19810 Filed 7–23–98; 8:45 am]

BILLING CODE 6725–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–27]**

## Establishment of Class E Airspace; Waupun, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Waupun, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 102° helicopter point in space approach, has been developed for Waupun Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a radius of 6.0 miles for the point in space serving Waupun Memorial Hospital Heliport.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Thursday, May 28, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Waupun, WI (63 FR 29161). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

The amendment to 14 CFR part 71 establishes Class E airspace at Waupun, WI to accommodate aircraft executing the proposed GPS SIAP, 102° helicopter point in space approach, at Waupun Memorial Hospital Heliport by creating controlled airspace for the heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Waupun, WI [New]**

Waupun Memorial Hospital Heliport, WI
Point in Space Coordinates
(Lat. 43°38′00″N., long. 88°45′46″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Waupun Memorial Hospital Heliport excluding that airspace within the Oshkosh, WI, Juneau, WI, and Beaver Dam, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19854 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–30]**

## Establishment of Class E Airspace; Richland Center, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Richland Center, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 168° helicopter point in space approach, has been developed for Richland Center Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action

creates controlled airspace with a radius of 6.0 miles for the point in space serving Richland Center Hospital Heliport.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

## History

On Thursday, May 28, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Richland Center, WI (63 FR 29162). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Richland Center, WI, to accommodate aircraft executing the proposed GPS SIAP, 168° helicopter point in space approach, at Richland Center Hospital Heliport by creating controlled airspace for the heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 15, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Richland Center, WI [New]**

Richland Center Hospital Heliport, WI
Point in Space Coordinates
(Lat. 43°21′18″ N., long. 90°23′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Richland Center Hospital Heliport excluding that airspace within the Lone Rock, WI, Class E airspace area.

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Issued in Des Plaines, Illinios on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19853 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–28]**

## Modification of Class E Airspace; New Lisbon, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at New Lisbon, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 179° helicopter point in space approach, has been developed for Mile Bluff Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies controlled airspace for New Lisbon, WI, by adding controlled airspace to the southeast for the point in space approach serving Mile Bluff Medical Center Heliport.

**EFFECTIVE DATES:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

## History

On Thursday, May 28, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at New Lisbon, WI (63 FR 29165). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at New Lisbon, WI to accommodate aircraft executing the proposed GPS SIAP, 179° helicopter point in space approach, at Mile Bluff Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL to needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significantly regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 179); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 72 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 New Lisbon, WI [Revised]**

Mauston-New Lisbon Union Airport, WI
(Lat. 43°50′17″ N., long 90°08′13″ W.)

**Mile Bluff Medical Center Heliport, WI**

Point in Space Coordinates
(lat. 43°48′09″ N., long. 90°04′34″ W.)

That airspace extending upward from 700 feet above the surface within a 8.8-mile radius of Mauston-New Lisbon Union Airport, and within a 6.0-mile radius of the Point in Space serving Mile Bluff Medical Center Heliport excluding that airspace within the Necadah, WI, and Friendship, WI, Class E airspace areas, and excluding that airspace within the Camp Douglas, WI, Class D and Class E airspace areas, during the specific dates and times Class D airspace is effective.

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Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19852 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–29]**

## Establishment of Class E Airspace; Beaver Dam, WI

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Beaver Dam, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 266° helicopter point in space approach, has been developed for Hillside Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a redius of 6.0 miles for the point in space serving Hillside Hospital Heliport.

**EFFECTIVE DATE:** 0901 UTC, October 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AFL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY IMFORMATION:**

## History

On Thursday, May 28, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Beaver Dam, WI (63 FR 29164). The proposal was to add controlled airspace extending upward from 7000 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Beaver Dam, WI, to accommodate aircraft executing the proposed GPS SIAP, 266° helicopter point in space approach, at Hillside Hospital Heliport by creating controlled airspace for the heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body to technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(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) does not warrant preparation of a Regularly Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number or small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows

*Paragraph 6005 Class E airspace areas extending upward from 770 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Beaver Dam, WI [New]**

Hillside Hospital Heliport, WI
Point in Space Coordinates
(Lat. 42° 26′ 45″N., long. 88° 48′ 36″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Hillside Hospital Heliport excluding that airspace within the Juneau, WI, Class E airspace area.

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Issued on Des Plaines, Illinois, on July 15, 1988.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19851 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR Parts 275 and 279

**[Release No. IA–1733, File No. S7–28–97]**

**RIN 3235–AH22**

## Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers With Principal Offices and Places of Business in Colorado or Iowa

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rules.

**SUMMARY:** The Commission is adopting rule amendments under the Investment Advisers Act of 1940 to exempt multi-state investment advisers from the prohibition on Commission registration and to revise the definition of the term ''investment adviser representative.'' The Commission also is adopting amendments to Schedule I to Form ADV to reflect the enactment of investment adviser statutes in Colorado and Iowa. The rule amendments refine rules implementing the Investment Advisers Supervision Coordination Act.

**DATES:** Effective Date: The rule amendments will become effective August 31, 1998.

*Compliance Date:* Supervised persons of Commission-registered investment advisers must comply with amendments to § 275.203A–3(a)(3)(i) no later than December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** Carolyn-Gail Gilheany, Attorney, or Jennifer S. Choi, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Stop 5–6, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting amendments to rule 203A–2 (17 CFR 275.203A–2), rule 203A–3 (17 CFR 275.203A–3), rule 206(4)–3 (17 CFR 275.206(4)–3), Form ADV (17 CFR 279.1), Schedule G to Form ADV (17 CFR 279.1), and Schedule I to Form ADV (17 CFR 279.1) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) (''Advisers Act''). The Commission also is withdrawing rule 203A–5 (17 CFR 275.203A–5) and Form ADV–T (17 CFR 279.3) under the Advisers Act.

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### Executive Summary

Section 203A of the Advisers Act generally prohibits an investment adviser from registering with the Commission unless it has more than $25 million of assets under management or is an adviser to a registered investment company. The Commission is adopting amendments to rule 203A–2 under the Advisers Act to exempt from the prohibition on Commission registration those advisers that are required to register as investment advisers in 30 or more states.

Section 203A preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons except for certain ''investment adviser representatives.'' The Commission is adopting amendments to rule 203A3 under the Advisers Act to revise the definition of investment adviser representative. Under the amended definition, supervised persons of Commission-registered investment advisers are investment adviser representatives (and therefore subject to state qualification requirements) if they have more than five clients who are natural persons and more than ten percent of their clients are natural persons.

Under section 203A, the Commission retains regulatory authority for an investment adviser with a principal office and place of business in a state that does not have an investment adviser statute. The Commission is adopting amendments to Schedule I to Form ADV to reflect that Colorado and Iowa have recently enacted investment adviser statutes.

### I. Background

Two years ago, Congress enacted the National Securities Markets Improvement Act of 1996 (''1996 Act'').[1] Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), amended the Advisers Act to, among other things, reallocate federal and state responsibilities for regulation of investment advisers by limiting federal registration and preempting certain state laws. Under section 203A(a) of the Advisers Act,[2] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless the investment adviser (i) has at least $25 million of assets under management, or (ii) is an investment adviser to an investment

[1] Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] 15 U.S.C. 80b–3a(a).

company registered under the Investment Company Act of 1940 (''Investment Company Act'').[3] Section 203A(b) of the Advisers Act generally preempts state regulatory requirements with respect to Commission-registered investment advisers and their supervised persons, except for certain of their investment adviser representatives.[4]

Last year, the Commission adopted new rules and rule amendments to implement the Coordination Act.[5] These implementing rules included exemptions from the statutory prohibition on Commission registration for four types of investment advisers.[6] The rules also defined certain terms used in the Coordination Act, including the term ''investment adviser representative.'' [7] At the time it adopted these rules, the Commission anticipated that experience with the new regulatory scheme might reveal the need for additional rules or refinement of existing rules.

On November 13, 1997, the Commission issued a release proposing (1) amendments to rule 203A–2 to exempt multi-state investment advisers from the prohibition on Commission registration; (2) two alternative amendments to rule 203A–3 to revise the definition of investment adviser representative; and (3) other amendments to clarify certain implementing rules (''Proposing Release'').[8] The proposed amendments to rule 203A–2 would allow an investment adviser that does not have $25 million of assets under management but has a national or multi-state practice that requires it to register as an investment adviser in 30 or more states to register with the Commission. The proposed amendments to rule 203A–3 would correct an anomaly in the current rule and allow supervised persons who provide services to a small number of institutions to have accommodation clients without being subject to state qualification requirements.

In response to the proposals, the Commission received 12 comment letters from professional and trade organizations, investment advisers, the North American Securities Administrators Association, Inc. (''NASAA''),[9] and two state securities administrators. Most commenters supported the proposals.

## II. Discussion

### *A. Multi-State Investment Adviser Exemption from Prohibition on Registration With the Commission*

As discussed above, section 203A limits registration with the Commission, in most cases, to investment advisers with at least $25 million of assets under management and preempts state adviser regulation of these investment advisers.[10] The $25 million threshold was designed to allocate regulatory responsibility to the Commission for larger investment advisers, whose activities are likely to affect national markets, and to relieve these larger advisers of the burdens associated with multiple state regulations.[11] Congress recognized, however, that some investment advisers with less than $25 million of assets under management may have national businesses for which multiple state registration would be burdensome.[12] To reduce the burden on these advisers, the Commission was given authority in section 203A(c) of the Advisers Act to exempt investment advisers, by rule or order, from the prohibition on Commission registration if the prohibition would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes'' of section 203A.[13]

Using this authority, the Commission adopted rule 203A–2, which permits Commission registration for nationally recognized statistical rating organizations and certain pension consultants, affiliated investment advisers, and newly formed investment advisers. The Commission also, by order, has granted individual exemptive relief to certain investment advisers that do not have $25 million of assets under management but have a national or multi-state practice that requires them to register as investment advisers in 30 or more states.[14] The Commission proposed to amend rule 203A–2 to codify the exemptions provided by the individual orders to investment advisers required to be registered in multiple states.[15]

Under proposed rule 203A–2(e), an investment adviser required to be registered as an investment adviser with 30 or more state securities authorities would register with the Commission even if it has less than $25 million of assets under management. Once registered with the Commission, the investment adviser would remain eligible for the exemption as long as the adviser would, but for the exemption, be obligated to register in at least 25 states, five fewer than when it initially registered under the multi-state exemption (''five-state provision''). The Commission also proposed to permit newly formed advisers to rely on the multi-state exemption in conjunction with the ''start-up adviser'' exemption in paragraph (d) of rule 203A2.[16]

Commenters generally supported the multi-state proposal as being consistent with the language and intent of the Coordination Act. Commenters agreed that the five-state provision should be the minimum cushion to prevent an investment adviser registered with the Commission from having to de-register and then re-register with the Commission frequently as a result of a change in registration obligation in one or a few states. All commenters concurred with the Commission that

[3] 15 U.S.C. 80a. The Commission has authority to deny registration to any applicant that does not meet the criteria for Commission registration and to cancel the registration of any adviser that no longer meets the registration criteria. Sections 203(c) and (h) of the Advisers Act (15 U.S.C. 80b–3(c) and (h)).

[4] 15 U.S.C. 80b–3a(b). In addition, state law is preempted with respect to advisers that are excepted from the definition of investment adviser under section 202(a)(11) of the Advisers Act (15 U.S.C. 80b–2(a)(11)).

[5] Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)) (''Implementing Release'').

[6] *See* rule 203A–2 (17 CFR 275.203A–2). *See infra* section II.A of this Release.

[7] *See* rule 203A–3 (17 CFR 275.203A–3). *See infra* section II.B of this Release.

[8] Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1681 (Nov. 13, 1997) (62 FR 61866 (Nov. 19, 1997)).

[9] NASAA represents the 50 U.S. state securities agencies responsible for the administration of state securities laws, also known as ''blue sky laws.''

[10] Section 203A(a) and (b). Notwithstanding section 203A(b)(1), states retain authority over Commission-registered advisers under state investment adviser statutes to: (1) investigate and bring enforcement actions with respect to fraud or deceit against an investment adviser or a person associated with an investment adviser; (2) require filings, for notice purposes only, of documents filed with the Commission; and (3) require payment of state filing, registration, and licensing fees. *See* section 203A(b)(2) of the Advisers Act (15 U.S.C. 80b–3a(b)(2)). Moreover, section 203A(b) specifically preserves state law with respect to investment adviser representatives of Commission-registered advisers who have a place of business in the state. *See infra* section II.B of this Release.

[11] *See* S. REP. NO. 293, 104th Cong., 2d Sess. 3–5 (1996).

[12] *Id.* at 5.

[13] 15 U.S.C. 80b–3a(c).

[14] *See* Arthur Andersen Financial Advisers, Investment Advisers Act Release Nos. 1637 (June 16, 1997), 62 FR 33689 (Notice of Application), 1642 (July 8, 1997 64 SEC Docket 2417 (Order); Ernst & Young Investment Advisers LLP, Investment Advisers Act Release Nos. 1638 (June 16, 1997), 62 FR 33692 (Notice of Application), and 1641 (July 8, 1997), 64 SEC Docket 2416 (order); KPMG Investment Advisors, Investment Advisers Act Release Nos. 1639 (June 17, 1997), 62 FR 33945 (Notice of Application), and 1643 (July 8, 1997), 64 SEC Docket 2418 (Order); and ProFutures Capital Management, Inc., Investment Advisers Act Release Nos. 1686 (Dec. 11, 1997), 62 FR 66153 (Notice of Application), and 1693 (Jan. 8, 1998), 66 SEC Docket 0835 (Order).

[15] Proposing Release, *supra* note 8, at section II.A.

[16] 17 CFR 275.203A–2(d).

newly formed investment advisers should be permitted to rely on the multi-state exemption in conjunction with the ''start-up'' adviser exemption.

Most commenters supported the 30-state threshold as an appropriate measure of whether an adviser has a national business. Three commenters, however, recommended lowering the threshold because they believed that investment advisers that do business in fewer than 30 states also may have national businesses. NASAA opposed lowering the 30-state threshold, arguing that an adviser that is required to register in less than 30 states does not have a national business. At this time, the Commission believes the 30-state threshold to be an appropriate standard for measuring whether an adviser has a national business and therefore is adopting the threshold and the rule, as proposed.

Rule 203A–2(e), as adopted, requires an investment adviser applying for registration in reliance on the multi-state exemption to submit a representation to the Commission that the adviser is obligated to register in 30 or more states.[17] To continue to rely on the exemption, the adviser annually must provide a representation that it is obligated to register in at least 25 states.[18] The investment adviser also must maintain a record of the states that the adviser believes it would, but for the exemption, be required to register.[19] A newly formed investment adviser not registered in any state could register with the Commission if it reasonably expected that it would be required to register in 30 or more states within 120 days after the date its registration becomes effective.[20]

*B. Definition of Investment Adviser Representative*

Section 203A preempts most state regulatory requirements for Commission-registered investment advisers and their supervised persons,[21] but permits a state to continue to license, register, or otherwise qualify an ''investment adviser representative'' who has a place of business in the state.[22] Under the current definition of investment adviser representative in rule 203A–3, supervised persons of Commission-registered investment advisers are not deemed to be investment adviser representatives and thus not subject to state qualification requirements if no more than ten percent of their clients are natural persons other than ''excepted persons''[23] (''ten percent allowance'').[24]

1. Accommodation Clients

The ''ten percent allowance'' in the definition of investment adviser representative was designed to permit supervised persons who provide advisory services principally to clients other than natural persons to continue to accept ''accommodation clients'' without being subject to state qualification requirements.[25] The ten percent allowance, however, can pose a problem for supervised persons with one or a few institutional clients: for a supervised person to have one accommodation client without being subject to state qualification requirements, the supervised person would need to have at least ten clients that are not retail clients.

To address this concern, the Commission proposed two alternative amendments to the definition of investment adviser representative to allow supervised persons who provide services to a few institutional clients to have accommodation clients without being subject to state qualification requirements.[26] Under the first alternative, the Commission proposed to retain the ten percent allowance and to add a provision to the rule that would permit supervised persons to have, without being subject to state qualification requirements, the greater of five natural person clients or the number of natural person clients permitted under the ten percent allowance (''Alternative I''). Under the second alternative, the Commission proposed to eliminate the ten percent allowance and to permit supervised persons to have, without being subject to state qualification requirements, an unlimited number of accommodation clients who are (1) partners, officers, or directors of the investment adviser for

[17] 17 CFR 275.203A–2(e). In determining the number of states in which an adviser is required to register, the investment adviser would be required to exclude those states in which it is not obligated to register because of the applicable state laws or the national de minimis standard of section 222(d) of the Advisers Act (15 U.S.C. 80b–18a). At the time of its application for registration with the Commission or upon subsequent amendment of its registration to reflect reliance on the multi-state exemption, the investment adviser would include on Schedule E to Form ADV an undertaking to withdraw from registration with the Commission if it would no longer be required to register in at least 25 states at the time of filing Schedule I. Under the rule, as adopted, an investment adviser that indicates that it is no longer obligated to register in at least 25 states would be required to withdraw from Commission registration by filing Form ADV–W within 180 days after the end of the adviser's fiscal year. Rule 203A–2(e)(3)(17 CFR 275.203A–2(e)(3)). The Commission is adopting a slight revision to the grace period for withdrawing from Commission registration. Under the rule as proposed, the period would have run from the date on which the adviser filed its Schedule I to indicate that it was no longer eligible to maintain its registration under the multi-state exemption. Under the rule as adopted, the period begins to run on the date on which the adviser was obligated by rule 204–1(a) to file such amendment. 17 CFR 275.204–1(a).

[18] This representation must be attached to the investment adviser's annual amendment to Form ADV revising Schedule I. Rule 203A–2(e)(2) (17 CFR 275.203A–2(e)(2)). If an adviser that is registered with the Commission in reliance on another exemption (*e.g.*, affiliated adviser exemption) relies on the multi-state exemption because the adviser can no longer rely on the other exemption (*e.g.*, the affiliate has moved its principal office and place of business), the adviser would be required: (1) to attach a representation to Schedule I that, but for the exemption, it would be required to register with at least 25 states; (2) to check box (a)(x) of Part I of Schedule 1; and (3) to include an undertaking on Schedule E that the adviser will withdraw from Commission registration if it would be no longer required to register in at least 25 states. If the adviser is no longer eligible for Commission registration under any criterion and therefore cannot check any box in (a) of Part I of Schedule I, then the adviser must check box (b) of part I of Schedule I to Form ADV and file Form ADV–W within 180 days after the end of the adviser's fiscal year. *See* rule 203A–2(e)(3).

[19] Rule 203A–2(e)(4)(17 CFR 275.203A–2(e)(4)).

[20] After the 120-day period, the investment adviser would be required to file an amendment to Form ADV revising Schedule I and attach a representation that, but for the multi-state exemption, the investment adviser would be required to register in at least 25 states. *See* rules 203A–2(d) and 203A–2(e)

[21] The term supervised person is defined in the Advisers Act as ''any partner, officer, director * * * or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.'' Section 202(a)(25) of the Advisers Act (15 U.S.C. 80b–2(a)(25)).

[22] Section 203A(b).

[23] Rule 203A–3(a)(3)(i) defines ''excepted persons'' as natural persons who have $500,000 or more under management with the representative's investment advisory firm immediately after entering into the advisory contract with the firm, or whom the advisory firm reasonably believes immediately prior to entering into the advisory contract have a net worth in excess of $1 million. 17 CFR 275.203A–3(a)(3)(i). (The Commission is adopting changes to the criteria for determining excepted persons. *See infra* section II.B.2 of this Release.) The Commission also excluded from the term ''investment adviser representative'' those supervised persons who do not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser or who provide only impersonal investment advice. Rule 203A–3(a)(2)(17 CFR 275.203A–3(a)(2)).

[24] 17 CFR 275.203A–3(a).

[25] Implementing Release, *supra* note 5, at nn.113–117 and accompanying text.

[26] Proposing Release, *supra* note 8, at section II.B.1.

whom the supervised person works or of a business or institutional client of the investment adviser for whom the supervised person works; (2) relatives, spouses, or relatives of spouses of such partners, officers, or directors; or (3) relatives, spouses, or relatives of spouses of the supervised person (''Alternative II'').

Three commenters supported Alternative I, none favored Alternative II, and three recommended combining Alternatives I and II. The commenters favoring Alternative I praised it as a simple and straightforward method of permitting supervised persons with a few institutional clients to accept a small number of accommodation clients without being subject to state registration or qualification requirements. NASAA supported Alternative I because it believes that the benefits of a bright line test outweigh the concern that the five natural person clients may not necessarily be limited to those clients who the supervised person advises on an accommodation basis.[27] Several commenters acknowledged that Alternative II would more closely tie the accommodation client provision to the purpose for which it was adopted, but believe it is too complicated. These commenters were concerned with the problems that advisory firms may have in monitoring the relationships of the accommodation clients and in adopting costly and complex compliance systems. The Commission agrees that Alternative I has many advantages over Alternative II and is adopting it, as proposed.[28]

Three commenters recommended combining aspects of Alternative I and Alternative II in ways that would expand the accommodation client provision to allow supervised persons to have a defined group of accommodation clients *in addition* to a group of natural persons (up to ten percent of the supervised person's clients) who have no relationship to the supervised persons. In the Proposing Release, the Commission, in response to a similar proposal, explained that it wanted to limit the provision to clients who are or may reasonably be presumed to be accommodation clients.[29] The Commission believes that combining the two alternatives would expand the accommodation client provision beyond the purpose for which it was adopted.

2. High Net Worth Clients and Other Excepted Persons

Under the current rule, certain ''high net worth'' individuals are not treated as retail clients; they are considered ''excepted persons'' for purposes of the definition of investment adviser representative and thus are not counted towards the ten percent allowance.[30] The criteria for determining which clients are excepted persons are based on the criteria in rule 205–3 under the Advisers Act, which permits advisers to enter into performance fee contracts with certain clients.[31] The Commission has revised the criteria to reflect the effects of inflation since the rule was adopted in 1985 and to include qualified purchasers and certain knowledgeable employees of the investment adviser. [32]

The Commission is adopting, as proposed, an amendment to the definition of investment adviser representative to treat ''qualified clients'' under rule 205–3 as excepted persons.[33] As a result, the following clients would not be counted towards the ten percent allowance: (1) Clients who immediately after entering into the investment advisory contract have at least $750,000 under management with the investment adviser; [34] (2) clients whom the investment adviser reasonably believes, immediately prior to entering into the investment advisory contract, either have a net worth of more than $1,500,000 at the time the contract is entered into [35] or are qualified purchasers as defined in section 2(a)(51)(A) of the Investment Company Act [36] at the time the contract is entered into; and (3) executive officers, directors, trustees, general partners, or persons serving in a similar capacity, of the investment adviser, as well as certain other employees of the adviser who participate in investment activities and have performed such functions for at least 12 months.[37]

As several commenters pointed out, increasing the threshold levels for determining high net worth clients may result in some supervised persons being subject to state licensing requirements to which they were not previously subject. The Commission has decided not to require compliance with the amendments to rule 203A–3(a)(3)(i) until December 31, 1998, to provide supervised persons who are affected by this change with sufficient time to prepare for and pass state qualification examinations.[38]

*C. Other Amendments*

The Commission is adopting, in addition to the rule amendments discussed above, several technical and clarifying amendments to the rules implementing the Coordination Act. Amended rule 203A–2(b)(3) permits investment advisers relying on the pension consultant exemption from the prohibition on Commission registration to determine the aggregate value of plan assets during a 12-month period ending 90 days before the investment adviser files Schedule I to Form ADV.[39] The Commission is amending rule 206(4)–3(a)(1)(ii)(D) [40] to cross-reference to section 203(e)(4),[41] and amending Instructions 5 and 7 to Schedule I for

[27] NASAA recommended a slight modification to Alternative I. In the Proposing Release, the Commission acknowledged that the disadvantage to Alternative I was that the five natural person minimum could include natural persons who have no relationship to the investment adviser or its institutional or business clients. Proposing Release, *supra* note 8, at section II.B.1. NASAA, addressing this concern, suggested that a supervised person be permitted to claim the five client exemption only if he has at least one client who is either an excepted person or non-natural person and cannot otherwise claim the ten percent allowance. The Commission is not adopting this proposal because it is concerned that this formula would make the provision too complicated.

[28] *See* Appendix C for examples that illustrate the application of rule 203A–3. The Commission believes that amending the definition of investment adviser representative to allow for five natural person clients would not affect many supervised persons. As the Commission noted in the Proposing Release, many states do not require supervised persons to register in the state until they have more than five clients in the respective state. Proposing Release, *supra* note 8, at n.27.

[29] *Id.* at n.28.

[30] Rule 203A–3(a)(3)(i).

[31] 17 CFR 275.205–3.

[32] *See* Exemption to Allow Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) (''Performance Fee Release'').

[33] Amended rule 203A–3(a)(3)(i) (17 CFR 275.203A–3(a)(3)(i)).

[34] This amount represents an increase from $500,000 under management.

[35] This amount represents an increase from $1,000,000 net worth.

[36] 15 U.S.C. 80a–2(a)(51)(A).

[37] The term ''qualified client'' does not include employees performing solely clerical, secretarial or administrative functions on behalf of the investment adviser.

[38] Amendments to rule 203A–3(a)(3)(i) would immediately change the state licensing obligations of only those supervised persons, a sufficient number of whose clients would no longer be considered ''high net worth'' clients under the new threshold levels. The other amendments to the rule (*i.e.*, acceptance of qualified purchasers and knowledgeable employees as clients) would not subject supervised persons to new state licensing obligations. Therefore, the Commission will not require compliance with amendments to rule 203A–3(a)(3)(i) to the extent that the increase in the threshold levels would obligate a supervised person to register with a state until December 31, 1998; supervised persons, however, may choose to comply with the other amendments upon the effective date of the amendments.

[39] 17 CFR 275.203A–2(b)(3). Under the current rule, investment advisers relying on the pension consultant exemption are required to value plan assets as of the date during the investment adviser's most recent *fiscal year* that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.

[40] 17 CFR 275.206(4)–3(a)(1)(ii)(D).

[41] 15 U.S.C. 80b–3(e)(4).

clarification.[42] Rule 203A–5,[43] Form ADV–T,[44] and Instruction 8 to Schedule I to Form ADV are withdrawn. The Commission is amending Items 18 and 19 to Part I of Form ADV to eliminate an erroneous instruction. Finally, the Commission is revising the introductory language to Schedule G to Form ADV to remove an unnecessary reference to Form ADV–S, which has been eliminated.[45]

*D. Investment Advisers With Principal Offices and Places of Business in Colorado or Iowa*

Under section 203A(a)(1) of the Advisers Act, the Commission retains regulatory responsibility for an adviser with a principal office and place of business in a state that has not enacted an investment adviser statute.[46] Since the implementing rules were adopted and the publication of the Proposing Release, Colorado and Iowa have enacted investment adviser statutes, which become effective on January 1, 1999. As a result, an adviser that has its principal office and place of business in Colorado or Iowa will be prohibited from registering with the Commission after January 1, 1999, unless it has $25 million of assets under management, is an adviser to a registered investment company, or qualifies for one of the exemptions in rule 203A–2. The Commission is revising Schedule I and Instructions to Schedule I to accommodate and explain these changes.[47]

Commission-registered advisers that have their principal offices and places of business in Colorado or Iowa and are no longer eligible for Commission registration after January 1, 1999, must indicate on their annual amendment to Form ADV revising Schedule I that they are no longer eligible for Commission registration.[48] Advisers withdrawing their Commission registration must register, if required, with their appropriate state securities authorities.

## III. Cost-Benefit Analysis

The multi-state investment adviser exemption will permit investment advisers required to register with 30 or more states to register with the Commission even though they do not otherwise meet the criteria for Commission registration.[49] The Commission has limited data on the number of investment advisers that will qualify for the multi-state investment adviser exemption.[50] Generally, most advisers that have clients in as many as 30 states have assets under management of more than $25 million. Thus, the Commission estimates that as few as ten investment advisers will qualify for the multi-state exemption each year.[51] The Commission requested comment on the number of investment advisers that would qualify for this exemption but received none. The Commission believes that the multi-state exemption generally will not impose significant additional costs on investment advisers but will result in a net savings for certain advisers when compared with the costs of complying with multiple state registration requirements.

The multi-state exemption will benefit investment advisers who register with the Commission relying on the exemption by saving those advisers the costs of complying with the regulations of 30 different states. For the purposes of this analysis, the Commission estimates that it costs each adviser $30,000 to comply with state registration requirements.[52] Therefore, the cost savings for the ten advisers expected to be eligible for the multi-state exemption may be as much as $300,000 annually. The Commission requested comment on the reasonableness of the savings estimates but did not receive any comments.

The benefits of the multi-state exemption will include savings for investment advisers of the costs associated with being examined by 30 different state regulators. State regulators also would save the expense of examining these investment advisers. In response to the Commission's request for comment on the costs of examining investment advisers and the frequency of adviser examinations, the Department of Banking and Finance of Nebraska stated that it would save between $200 and $1,000 per examination depending on the size of the advisory firm.[53] In addition, the multi-state exemption will provide unquantifiable regulatory benefits to advisers that will be regulated by one entity instead of 30 separate entities.

The multi-state investment adviser exemption will impose certain costs on advisers relying on the exemption. Investment advisers relying on the exemption will be required to attach a representation to Schedule I initially when registering, and annually when amending Form ADV, about the number of states in which the adviser would be required to register. The investment adviser also will be required to maintain a record of the states in which it believes, but for the exemption, it would be required to register. The Commission estimates that the cost per year to each adviser will be approximately $24,000 for a total of $240,000 for the ten investment advisers expected to be eligible for the exemption.[54] The

[42] The Commission also is deleting the unnecessary reference to the date of the valuation of the assets under management in Part II of Schedule I.

[43] 17 CFR 275.203A–5.

[44] 17 CFR 279.3.

[45] *See* Implementing Release, *supra* note 5, at section I.1.

[46] 15 U.S.C. 80b–3a(a)(1).

[47] The Commission also is revising Schedule I to reflect that the U.S. Virgin Islands does not have an investment adviser statute.

[48] Advisers that are no longer eligible for Commission registration must check box (b) of Part I of Schedule I to Form ADV and withdraw their registration using Form ADV–W within the 90-day grace period provided by rule 203A–1(c) (17 CFR 275.203A–1(c)). Advisers that are no longer eligible for Commission registration and do not voluntarily withdraw their registration will be subject to a cancellation proceeding under section 203(h). *See generally* Implementing Release, *supra* note 5. An adviser in Colorado or Iowa that is no longer eligible for Commission registration may withdraw from Commission registration as early as January 1, 1999, or as late as 180 days after the end of the adviser's fiscal year.

[49] *See supra* section II.A of this Release.

[50] Every investment adviser applying for registration with the Commission is required to file Form ADV with the Commission and to file an amended Form ADV when information on the form has changed. Form ADV requires information about the states in which an investment adviser is registered, but does not distinguish between states in which the registration is mandatory and in which registration is voluntary. Moreover, the Commission no longer receives Form ADV information for state-registered advisers.

[51] According to information provided to the Commission on Form ADV–T, approximately 21 advisers are registered with 30 or more states but no longer are registered with the Commission as a result of the enactment of the Coordination Act. Although approximately 21 investment advisers are registered in more than 30 states, the Commission estimates that only about half of these advisers are required to register in 30 or more states. Therefore, the Commission estimates that there may be ten investment advisers that will qualify for the multi-state exemption each year.

[52] In the Cost-Benefit Analysis of Rules Implementing Amendments to the Investment Advisers Act of 1940, the Commission estimated that the cost for a mid-size adviser to comply with state-law registration requirements could be as much as $20,000. *See* Cost-Benefit Memorandum (available in File No. S7–31–96) (''Implementing Amendments Cost-Benefit Analysis''). The Commission believes that, because advisers eligible for the multi-state exemption would typically be required to register in more states (*i.e.*, in at least 30 states) than the average adviser registered with the Commission, the cost would be at least $30,000 per adviser. These dollar estimates were based on discussions with law firms that provide these kinds of services to investment advisers.

[53] Nebraska commented that, although it has not begun routine examinations of investment advisory firms, it estimates the examination of a small firm to cost between $200 and $400 and the examination of a larger firm to cost between $800 and $1,000.

[54] The Commission estimated this figure by multiplying the aggregate burden hours that are required in making a representation, which is attached to Schedule I to Form ADV (240 hours), by an average hourly compensation rate of $100. The estimation of the aggregate burden hours for complying with the requirements of the multi-state exemption is based on the Commission's Paperwork

Commission requested comment on the costs associated with the requirements of the multi-state exemption, but did not receive any empirical data concerning the costs.

As discussed above, the Commission is amending the definition of investment adviser representative to allow supervised persons who provide advice to a few institutional or business clients to have at least five natural persons as accommodation clients without being subject to state registration requirements even if they are not able to take advantage of the ten percent allowance.[55] The revised definition provides a bright-line test that should enable firms and representatives alike to determine easily whether a supervised person would be subject to state qualification requirements. The Commission also is amending the definitions of high net worth clients and other ''excepted persons,'' who are not counted towards the ten percent allowance.[56] As discussed above, the amendments raise the threshold levels for determining high net worth clients and include qualified purchasers and certain knowledgeable employees as excepted persons.

The Commission estimates that Commission-registered advisers together employ approximately 153,000 investment adviser representatives.[57] The Commission, however, has no data on the number of representatives who may be affected by the amendments. Although the Commission requested comment on the number of investment adviser representatives who would be affected by the revision of the definition, commenters did not provide any data. The Commission, therefore, is unable to quantify the total benefits and costs that may result from these amendments.

The amendments to the definitions of investment adviser representative and excepted persons who are excluded from the ten percent allowance may increase the number of supervised persons of Commission-registered advisers who are not subject to state qualification requirements. Under the amended definition of investment adviser representative, all supervised persons of Commission-registered investment advisers may provide services to five natural person clients without being subject to state qualification requirements. Moreover, the amendments to the definition of excepted persons permit supervised persons to accept qualified purchasers and certain knowledgeable employees of the investment adviser as clients without being subject to state qualification requirements. On the other hand, the number of supervised persons who are not subject to state qualification requirements may not increase substantially because many states already do not require investment adviser representatives to register with the state until they have more than five clients in the state.[58] Moreover, supervised persons must count clients who no longer qualify as high net worth under the amended criteria towards the ten percent allowance.

Although the Commission is unable to quantify the total benefits and costs relating to the adoption of the amendments, the Commission believes that the amendments generally will not impose significant costs on investment advisers and their supervised persons. Supervised persons who are no longer subject to state qualification requirements because of the revised definitions may benefit by saving the expense associated with state qualification examinations (i.e., monitoring state registration requirements and registering for state exams).[59] Moreover, because the Coordination Act preserved the authority of the states to require the payment of state filing, registration, and licensing fees, there will be no loss to the states of fees collected.

The costs associated with revising the definitions, which may result in certain supervised persons no longer being subject to state qualification requirements, include the fees for state examinations of investment advisers that will not be collected by the National Association of Securities Dealers Regulation, Inc. (''NASDR'') and NASAA.[60] The Commission requested comment on the costs incurred by investment advisers and their supervised persons and on the examination fees collected by the NASDR and NASAA but did not receive any comments on these issues.

The clarifying amendments that the Commission is adopting, which are described above, will eliminate any confusion created by the language of the rules and instructions.[61] The Commission believes that these amendments will not impose any additional costs on investment advisers.

Finally, the Commission believes that the amendments to Schedule I to Form ADV to reflect the enactment of investment adviser statutes in Colorado and Iowa will not impose significant costs on investment advisers. The Commission estimates that approximately 650 advisers that have their principal offices and places of business in Colorado or Iowa will no longer be eligible for Commission registration after January 1, 1999.[62]

The benefits of amending Schedule I to Form ADV to reflect the enactment of investment adviser statutes include: (1) Implementing the Coordination Act by prohibiting Commission registration of advisers that have their principal offices and places of business in a state that regulates investment advisers; and (2) preventing the preemption of state law in Colorado and Iowa for those advisers that should be regulated by the states. These benefits are substantial, but are not quantifiable.

Advisers that are no longer eligible for Commission registration will incur some additional costs in complying with state registration requirements once they are no longer registered with the Commission and state law is not preempted.[63] These advisers may be required to register and to comply with requirements of other states in which they transact business if they have a place of business in the state or have six or more clients who are residents of that state.

## IV. Paperwork Reduction Act

As set forth in the Proposing Release, certain provisions of the rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[64] Therefore, the collection of information requirements, titled ''Form ADV'' and ''Schedule I to Form ADV'' contained in the rule

Reduction Act Submission. *See* Proposing Release, *supra* note 8, at section IV.

[55] *See supra* section II.B.1 of this Release.

[56] *See supra* section II.B.2 of this Release.

[57] This estimate of the number of investment adviser representatives was made for the purposes of the Implementing Amendments Cost-Benefit Analysis. *See* Cost-Benefit Memorandum, *supra* note 52.

[58] *See*, e.g., Unif. Sec. Act section 201(c) (1997); Burns Ind. Code Ann. section 23–2–1–8(c)(3) (1997); Md. Code Ann., Corps. & Ass'ns section 11–401(b)(3)(ii) (1997); Utah Code Ann. section 61–1–3(3)(c) (1997).

[59] The Commission estimated the following costs: $96 to take an exam, $850 for examination preparation, and $150 annually per investment adviser representative to monitor state registration requirements. *See* Cost-Benefit Memorandum, *supra* note 52.

[60] The Commission estimated that the revenue from examination fees would be $32 per examination. *Id*.

[61] *See supra* section II.C of this Release.

[62] This number is based on information provided to the Commission on Form ADV–T.

[63] Because the Coordination Act preserved the authority of the states to require the payment of state filing, registration, and licensing fees, advisers in Colorado or Iowa will be required to pay fees regardless of whether they are registered with the Commission or with the state in which they have their principal offices and places of business.

[64] 44 U.S.C. 3501–3520.

amendments were submitted to the Office of Management and Budget (''OMB'') for review pursuant to section 3507(d) of the PRA and 5 CFR 1320.11. The Commission did not receive any comments from the public in response to its request for comments in the Paperwork Reduction Act section of the Proposing Release. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number. OMB approved the PRA request and assigned control numbers 3235–0049 to Form ADV and 3235–0490 to Schedule I to Form ADV, each with an expiration date of February 28, 2001.

Form ADV is required by rule 203–1 (17 CFR 275.203–1) to be filed by every adviser applying for registration with the Commission as an investment adviser. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission is not amending rule 203–1, but is amending Schedule I to Form ADV, which is referenced in rule 279.1 (discussed below as a related, though separate, collection of information).

Rule 204–1 (17 CFR 275.204–1) describes the circumstances requiring the filing of an amended Form ADV. Registrants must file an amended Form ADV when information on the initial Form ADV has changed, either at the end of the fiscal year or promptly for certain material changes. In addition, rule 204–1 requires an investment adviser to file the cover page of Form ADV (along with a Schedule I to Form ADV) annually within 90 days after the end of the investment adviser's fiscal year regardless of whether other changes have taken place during the year. The Commission is not amending rule 204–1. The collection of information required by Form ADV is mandatory, and responses are not kept confidential.

The Commission has revised its estimate of the burden hours required by Form ADV as a result of a change in the number of estimated respondents. The total burden hours imposed by Form ADV are estimated to be 19,448.42.

Schedule I to Form ADV requires an investment adviser to declare whether it is eligible for Commission registration. Schedule I, as part of Form ADV, is required to be filed with an investment adviser's initial application on Form ADV. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. The Commission is not amending rule 203–1, but is amending Schedule I to Form ADV, which is referenced in rule 279.1. The collection of the information required by Schedule I to Form ADV is mandatory, and responses are not kept confidential.

Schedule I to Form ADV permits the Commission to determine whether investment advisers meet the eligibility criteria for Commission registration set out in section 203A and the rules under the section, both at the time of initial registration and annually thereafter. Schedule I to Form ADV also will be used to determine the eligibility of investment advisers that rely on the multi-state exemption under rule 203A–2(e) and to implement that exemption.

The Commission has revised its estimate of the burden hours required by Schedule I to Form ADV as a result of a change in the number of estimated respondents and a program change (*i.e.*, requirements for advisers relying on the new multi-state exemption). The total burden hours imposed by Schedule I to Form ADV are estimated to be 9,480. The rule amendments, as adopted, do not impose a greater paperwork burden upon respondents than that estimated and described in the Proposing Release.

## V. Summary of Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis (''IRFA'') was published in the Proposing Release. No comments were received on the IRFA. The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 relating to amendments to rules 203A–2, 203A–3, and 206(4)–3, Form ADV, Schedule G to Form ADV, and Schedule I to Form ADV, and the withdrawal of rule 203A–5 and Form ADV–T under the Advisers Act. The following summarizes the FRFA.

The FRFA discusses the need for, and objectives of, the rule amendments. The amendments, as adopted, refine rules implementing the Coordination Act. The amendments (1) exempt multi-state investment advisers from the prohibition on Commission registration; (2) revise the definition of investment adviser representative; (3) clarify other implementing rules; and (4) amend Schedule I to Form ADV to reflect that Colorado and Iowa have recently enacted investment adviser statutes. In addition, the Commission is withdrawing rule 203A–5 and Form ADV–T to eliminate the transition rule and form that are no longer necessary.

The FRFA also provides a description of and an estimate of the number of small entities to which the rule amendments will apply. For purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity (i) if it manages assets of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year or (ii) if it renders other advisory services, has $50,000 or less in assets related to its advisory business.[65] The Commission estimates that up to 17,650 advisers are small entities and that approximately 850 investment advisers that are registered with the Commission are small entities.[66]

The rule amendments will have some effect on small entities. The multi-state rule should affect only a few small entities because the Commission estimates that only ten investment advisers can avail themselves of the multi-state exemption annually. The Commission believes that the effect on small entities from the amended definition of investment adviser representative may be significant; the Commission estimates that the number of supervised persons who are not investment adviser representatives and are thus not subject to state qualification requirements will increase slightly. The clarifying amendments should not have a significant effect on small entities because the amendments eliminate any confusion the language of the rules or the instructions to forms may have created and do not impose any additional burden on investment advisers. The withdrawal of rule 203A–5 and Form ADV–T should not affect any small entities because there should not be any advisers currently filing Form ADV–T. Finally, the enactment of investment adviser statutes by Colorado or Iowa (and the resulting amendments to Schedule I to Form ADV to reflect these changes) may have a significant effect on small entities. The Commission estimates that approximately 650 investment advisers that have their principal offices and places of business in Colorado or Iowa will no longer be eligible for Commission registration after January 1, 1999.

[65] Rule 275.0–7 (17 CFR 275.0–7) The Commission has revised the definition of ''small entity,'' effective July 30, 1998. *See* Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisors Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933, Release No. 33–7548, 34–40122, IC–23272, and IA–1727 (June 24, 1998) (63 FR 35508 (June 30, 1998)). Because the IRFA concerning the proposed amendments was prepared under the old definition, that definition applies to the Commission's preparation of the FRFA concerning these amendments *Id.* at n. 32.

[66] These estimates of the number of small entities were made for purposes of the Final Regulatory Flexibility Analysis for the rules implementing the Coordination Act. *See* Implementing Release, *supra* note 5, at nn. 189–190 and accompanying text.

Finally, the FRFA states that, in adopting the amendments, the Commission considered (a) the establishment of differing compliance requirements that take into account the resources available to small entities; (b) simplification of the rule's requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rules for small entities. The FRFA states that the Commission concluded that different standards for small entities are not necessary or appropriate.

The FRFA is available for public inspection in File No. S7–28–97, and a copy may be obtained by contacting Carolyn-Gail Gilheany, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 5–6, Washington, D.C. 20549.

## VI. Statutory Authority

The Commission is adopting amendments to rule 203A–2 under the authority set out in section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(c)).

The Commission is adopting amendments to rule 203A–3 under the authority set out in sections 202(a)(17) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17), 80b–11(a)).

The Commission is adopting amendments to rule 206(4)–3 under the authority set out in sections 204, 206, and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–6, 80b–11).

The Commission is withdrawing rule 203A–5 under the authority set out in sections 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–11(a)).

The Commission is adopting amendments to Form ADV, Schedule G to Form ADV, and Schedule I to Form ADV under the authority set out in sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4).

The Commission is removing and reserving rule 279.3 and removing Form ADV–T under the authority set out in sections 204 and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b11(a)).

## List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

## Text of Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

**Authority:** 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.203A–2 is amended by revising the introductory texts of § 275.203A–2 and paragraph (b), revising paragraphs (b)(1) and (b)(3) and adding paragraph (e) to read as follows:

### § 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) does not apply to:

* * * * *

(b) *Pension Consultants.* (1) An investment adviser that is a ''pension consultant,'' as defined in this section, with respect to assets of plans having an aggregate value of at least $50,000,000.

* * * * *

(3) In determining the aggregate value of assets of plans, include only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during a 12-month period ended within 90 days of filing Schedule I to Form ADV (17 CFR 279.1).

* * * * *

(e) *Multi-state investment advisers.* An investment adviser that:

(1) Upon submission of its application for registration with the Commission, is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and thereafter would, but for this section, be required by the laws of at least 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States;

(2) Attaches a representation to Schedule I to Form ADV (17 CFR 279.1) that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States or, in the case of an amendment to Form ADV revising Schedule I to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, within 90 days prior to the date of filing Schedule I;

(3) Includes on Schedule E to Form ADV (17 CFR 279.1) an undertaking to withdraw from registration with the Commission if an amendment to Form ADV revising Schedule I to Form ADV indicates that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and, if an amendment to Form ADV revising Schedule I indicates that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) from registering with the Commission, files a completed Form ADV–W (17 CFR 279.2) within 90 days from the date the investment adviser was required by § 275.204–1(a) to file the amendment to Form ADV revising Schedule I, whereby the investment adviser withdraws from registration with the Commission; and

(4) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Schedule I to Form ADV that includes a representation that is based on such record.

3. In § 275.203A–3 the introductory text and paragraph (a) are revised to read as follows:

### § 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3a) and the rules thereunder:

(a)(1) *Investment adviser representative.* ''Investment adviser representative'' of an investment adviser means a supervised person of the investment adviser:

(i) Who has more than five clients who are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section); and

(ii) More than ten percent of whose clients are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section).

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) ''Excepted person'' means a natural person who is a qualified client as described in § 275.205–3(d)(1).

(ii) ''Impersonal investment advice'' means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of ''client'' in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

* * * * *

4. Section 275.203A–5 is removed and reserved.

5. In § 275.206(4)–3 paragraph (a)(1)(ii)(D) is amended by revising the cite ''203(e)(3)'' to read ''203(e)(4)''.

**§ 275.203A–1 and 275.203A–2 [Amended]**

6. In 17 CFR part 275 remove ''(15 U.S.C. 80b–3A(a))'' and add, in its place, ''(15 U.S.C. 80b–3a(a))'' in the following places:

a. Section 275.203A–1(b)(2), (c), and (d); and

b. Section 275.203A–2(d)(2) and (d)(3).

## PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

8. By removing the last sentence in Items 18 and 19 to Part I of Form ADV (referenced in § 279.1).

**Note:** The text of Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations.

9. By revising Schedule G to Form ADV (referenced in § 279.1) to read as follows:

**Note:** The text of Schedule G to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations. Schedule G is attached as Appendix B.

10. By revising Schedule I to Form ADV (referenced in § 279.1) to read as follows:

**Note:** The text of Schedule I to Form ADV (§ 279.1) does not and the amendments will not appear in the Code of Federal Regulations. Schedule I is attached as Appendix A.

11. Section 279.3 is removed and reserved.

12. Form ADV–T is removed.

**Note:** Form ADV–T does not appear in the Code of Federal Regulations.

By the Commission.

Dated: July 17, 1998.

**Jonathan G. Katz,**

*Secretary.*

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**APPENDIX A [NOTE: The text of Schedule I does not appear in the Code of Federal Regulations.]**

## SCHEDULE I

**OMB APPROVAL**
OMB Number: 3235-0490
Expires: February 28, 2001
Estimated average burden
hours per response: 1.1618 hours

## Schedule for Declaring Eligibility for SEC Registration

| Applicant: | SEC File No. 801- | Date: MM/DD/YY |
|---|---|---|

### Part I Eligibility for SEC Registration

Section 203(h) of the Investment Advisers Act of 1940 ("Advisers Act") authorizes the Commission to cancel or deny the registration of any investment adviser that does not meet the criteria for SEC registration set forth in section 203A of the Advisers Act. This Part I requires applicant to declare whether it is eligible, or continues to be eligible, for Commission registration.

**Check either (a) or (b):**

(a) ☐ Applicant is eligible (or will remain eligible) for SEC registration.

For an applicant to be eligible (or remain eligible) for SEC registration, applicant must respond affirmatively (by checking the appropriate box or boxes) to at least one of the items (i) through (x) below:

Applicant:

(i) ☐ has assets under management of $25 million (in U.S. dollars) or more;

*Report assets under management in Part II if "assets under management" is the sole basis of applicant's eligibility for SEC registration (i.e., this item (i) is checked, and none of items (ii) through (x) below is checked).*

(ii) ☐ has its principal office and place of business in Colorado,* Iowa,* Ohio, U.S. Virgin Islands, or Wyoming (*See Instruction 3*);

(iii) ☐ has its principal office and place of business outside the United States (*See Instruction 3*);

(iv) ☐ is an investment adviser to an investment company registered under the Investment Company Act of 1940 (*See Instruction 4*);

(v) ☐ is a nationally recognized statistical rating organization;

(vi) ☐ is a pension consultant that qualifies for the exemption in rule 203A-2(b) (*See Instruction 5(a)*);

(vii) ☐ is an investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to maintain its registration with the Commission, and whose principal office and place of business is the same as the eligible investment adviser (*See Instruction 5(b)*);

(viii) ☐ is a newly formed investment adviser relying on rule 203A-2(d) (*See Instruction 5(c)*);

(ix) ☐ has received an order of the Commission exempting applicant from the prohibition on registration with the Commission;
Application number: 803- _____
Date of Commission's order: _____

(x) ☐ is a multi-state investment adviser relying on rule 203A-2(e) (*See Instruction 5(d)*).

(b) ☐ Registrant is no longer eligible for SEC registration. (*See Instruction 6*)

| Applicant: | SEC File No. 801- | Date: MM/DD/YY |
|---|---|---|

**Part II Assets Under Management**

**Report assets under management if required by Part I (*i.e.*, if item I(a)(i) is checked yes "(x)" and is the sole basis for applicant's eligibility for SEC registration).**

State the amount of applicant's assets under management (in U.S. dollars): (*See Instruction 7*)

$_____.00 (in U.S. dollars)

**Applicants are reminded that it is a violation of section 207 of the Advisers Act to make any untrue statement of a material fact in any report filed with the Commission, or willfully to omit to state in any such report any material fact that is required to be stated therein.**

## SCHEDULE I INSTRUCTIONS

**Instruction 1.** ***General Instructions***

(a) ***SEC's Collection of Information***. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 203(c)(1) and 204 of the Advisers Act authorize the Commission to collect the information on this Schedule from applicants. *See* 15 U.S.C. §§ 80b-3(c)(1) and 80b-4. Filing of this Schedule is mandatory. The principal purpose of this collection of information is to enable the Commission to determine which investment advisers are eligible to maintain their registration with the Commission. The Commission will maintain files of the information on this Schedule and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of this Schedule, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 FR 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

(b) ***For Further Information***. Additional information about the rules referred to in this Schedule is found in the Commission's adopting release, *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Rel. No. 1633 (May 15, 1997).

**Instruction 2.** ***Principal Place of Business***

Applicant's principal place of business reported in Form ADV, Part I, Item 2.A. is the applicant's principal office and place of business, *i.e.*, the executive office from which the officers, partners, or managers of the applicant direct, control, and coordinate applicant's activities. *See* rule 203A-3(c).

**Instruction 3.** ***Advisers in Colorado,* Iowa,* Ohio, U.S. Virgin Islands, or Wyoming; Foreign Advisers***

Under the Advisers Act, an applicant whose principal office and place of business (*see* Instruction 2) is in a State that does not register investment advisers is required to register with the Commission, even if none of the criteria for SEC registration (*e.g.*, $25 million of assets under management) is met. Currently, these States are Colorado,* Iowa,* Ohio, U.S. Virgin Islands, and Wyoming. Applicants that have their principal offices and places of business in one of these States should check the box in item (a)(ii) of Part I.

* Colorado and Iowa have enacted investment adviser statutes, which become effective on January 1, 1999. After that date, advisers that have their principal offices and places of business in Colorado or Iowa will be prohibited from registering with the Commission, unless they have $25 million or more of assets under management, are advisers to a registered investment company, qualify for one of the exemptions in rule 203A-2, or has received an order of the Commission exempting them from the prohibition on registration. **After January 1, 1999, advisers that have their principal offices and places of business in Colorado or Iowa cannot check box (a)(ii) of Part I and must check box (b) of Part I, unless they are eligible for Commission registration under another criterion. Advisers that check box (b) are no longer eligible for Commission registration and must withdraw from Commission registration using Form ADV-W.**

An applicant whose principal office and place of business is located in a country other than the United States (*i.e.*, not in the United States, the District of Columbia, Puerto Rico, or any other possession of the United States) also is required to register with the Commission. Such an applicant should check the box in item (a)(iii) of Part I.

**Instruction 4.** ***Advisers to Investment Companies***

An applicant should not check item (a)(iv) of Part I unless applicant currently provides advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940. The investment company must be operational, *i.e.*, have assets and shareholders (other than just the organizing shareholders).

**Instruction 5.** ***Exemptions***

(a) ***Pension Consultants***. An applicant that provides investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of $50 million or more during the 12-month period ended within 90 days of filing this Schedule may register with the Commission. An investment adviser seeking to rely on this pension consultant exemption must aggregate: (i) the value of assets for which it provided advisory services at the end of the 12-month period, and (ii) the value of any other assets for which it provided advisory services at the end of its employment or contract (if terminated before the end of the 12-month period). *See* rule 203A-2(b).

(b) ***Affiliated Advisers***. An applicant that controls, is controlled by, or is under common control with, an investment adviser that is eligible to maintain its registration with the Commission ("eligible adviser") is itself eligible to register with the Commission if the principal office and place of business of the applicant is the same as that of the eligible adviser. *See* rule 203A-2(c).

(c) ***Newly Formed Advisers***. A newly formed investment adviser may register with the Commission at the time of its formation if the adviser has a reasonable expectation that within 120 days of registration it will become eligible for Commission registration. At the end of the 120-day period, the adviser is required to file an amended Schedule I. If the investment adviser indicates on the amended Schedule I that it has not become eligible to register with the Commission, the adviser is required to file a Form ADV-W concurrently with the Schedule I, thereby withdrawing from registration with the Commission. An applicant registering with the Commission in reliance on this exemption must include on Schedule E of Form ADV an undertaking to withdraw from registration if, at the end of the 120-day period, the investment adviser would be prohibited from Commission registration. *See* rule 203A-2(d).

(d) ***Multi-State Advisers***. An investment adviser may register with the Commission if it is required to register as an investment adviser with the securities authorities of 30 or more States. To rely on this exemption, an applicant must (i) attach to this Schedule a representation that it has reviewed the applicable State and federal laws and has concluded that it must register as an investment adviser with the securities authorities of at least 30 States within 90 days prior to the date of filing this Schedule, and (ii) include on Schedule E to Form ADV an undertaking to withdraw from Commission registration if it would no longer be required to register in at least 25 States when it files its annual amendment to Form ADV revising this Schedule. Each year (and for so long as the investment adviser continues to rely on the multi-state investment adviser exemption), when the adviser updates its Schedule I, it must attach a new representation that it has concluded that, but for the exemption, it would be required to register with the securities authorities of at least 25 States within 90 days prior to the date of filing Schedule I. In addition, each time the adviser makes such a representation, the adviser must create and maintain a list of the States in which, but for the exemption, it would be required to register. This list must be maintained in an easily accessible place for a period of not less than five years from the date each representation is filed as an attachment to this Schedule. *See* rule 203A-2(e).

**Instruction 6.** ***Part I, Item (b)***

If item (b) of Part I is checked, registrant's investment adviser registration with the SEC must be withdrawn within 90 days after the date this Schedule I was required by rule 204-1(a) to have been filed with the Commission. Thus, registrant's registration must be withdrawn no later than 180 days after the end of its fiscal year. If registrant's registration is not withdrawn within this time period, registrant will be subject to having its registration cancelled pursuant to section 203(h) of the Advisers Act. *See* rule 203A-1(c).

**Instruction 7.** ***Determining Assets Under Management***

Not all applicants are required to provide the amount of their assets under management. An applicant must report its assets under management in Part II only if item I(a)(i) is checked yes "(x)" and the amount of assets applicant has under management is the sole basis for applicant's eligibility for SEC registration (*i.e*, applicant has not checked any of items I(a)(ii) through (x)).

In determining the applicant's assets under management, include the **"securities portfolios"** (or portions of those portfolios) for which applicant provides **"continuous and regular supervisory or management services"** as of the date of filing this Schedule.

(a) ***Securities Portfolios.*** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purpose of this 50% test, applicant may treat cash and cash equivalents (*i.e.*, bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities.

Applicants may include securities portfolios that are: (i) family or proprietary accounts of the applicant (unless applicant is a sole proprietor, in which case the personal assets of the sole proprietor must be excluded); (ii) accounts for which applicant receives no compensation for its services; and (iii) accounts of clients who are not U.S. residents.

(b) ***Value of Portfolio.*** Include the entire value of each securities portfolio (or portion of the portfolio) for which applicant provides "continuous and regular supervisory or management services." If applicant provides continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only the portion of the securities portfolio that receives such services. Exclude, for example, a portion of an account:

(1) under management by another person; or

(2) that consists of real estate or businesses the operations of which are "managed" on behalf of a client but not as an investment.

No deduction is required for securities purchased on margin.

(c) ***Continuous and Regular Supervisory or Management Services.***

***General Criteria.*** An applicant provides continuous and regular supervisory or management services with respect to a securities portfolio if the applicant either --

(1) has discretionary authority over and provides ongoing supervisory or management services with respect to the account; or

(2) does not have discretionary authority over the account, but has an ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, is responsible for arranging or effecting the purchase or sale.

***Factors.*** Applicants should consider the following factors in evaluating whether continuous and regular supervisory or management services are being provided.

(1) ***Terms of the advisory contract.*** A provision in an advisory contract by which the applicant agrees to provide ongoing management services suggests that the account receives such services. Other provisions in the contract, or the actual management by the applicant, however, may rebut such a suggestion.

(2) ***Form of compensation.*** A form of compensation based on the average value of assets under management over a specified period of time would suggest that the applicant provides continuous and regular supervisory or management services. On the other hand, a form of compensation based upon time the applicant spends with a client during a client visit would suggest otherwise. A retainer based upon a percentage of assets covered by a financial plan would not suggest that the applicant provides continuous and regular supervisory or management services.

(3) ***The management practice of the applicant.*** The extent to which the applicant is actively managing the assets or providing advice bears on whether the services are continuous and regular supervisory or management services. However, infrequent trades (*e.g.*, based on a "buy and hold" strategy) should not alone form the basis for a determination that the services are not provided on a continuous and regular basis.

***Examples.*** To assist applicants, the Commission is providing examples of accounts that may receive continuous and regular supervisory or management services, based upon the criteria and factors discussed above. These examples are not exclusive.

***Accounts that may receive continuous and regular supervisory or management services:***

(1) Accounts for which the applicant allocates assets of a client among mutual funds (even if it does so without a grant of discretionary authority, but only if the general criteria for non-discretionary accounts is satisfied and the factors suggest that the account receives continuous and regular supervisory or management services); and

(2) Accounts for which the applicant allocates assets among other managers -- but only under a grant of discretionary authority by which it may hire and fire managers and reallocate assets among them.

***Accounts that do not receive continuous and regular supervisory or management services:***

(1) Accounts for which the applicant provides market timing recommendations (to buy or sell) but has no ongoing management responsibilities;

(2) Accounts for which the applicant provides only impersonal advice, *e.g.*, market newsletters;

(3) Accounts for which the applicant provides an initial asset allocation, without continuous and regular monitoring and reallocation; and

(4) Accounts for which the applicant provides advice only on an intermittent or periodic basis, upon the request of the client, or in response to some market event, *e.g.*, an account that is reviewed and adjusted on a quarterly basis.

(d) ***Value of Assets Under Management.*** Calculate the total amount of applicant's assets under management by including the value, as determined within 90 days prior to the date of filing this Schedule, of securities portfolios (or portions of those portfolios) for which applicant provides continuous and regular supervisory or management services as of the date of filing this Schedule. Current market value should be determined using the same method as that used to determine the account value reported to clients or fees for investment advisory services.

(e) ***Example.*** To assist applicants, the Commission is providing an example of the method of determining whether a client account may be included as "assets under management."

*Example:*

A client's portfolio consists of the following:

| | |
|---|---|
| $ 6,000,000 | stocks and bonds |
| $ 1,000,000 | cash and cash equivalents |
| $ 3,000,000 | non-securities (collectibles, commodities, real estate, etc.) |
| $10,000,000 | Total Assets |

***First, is the account a "securities portfolio?"*** The account is a securities portfolio because securities as well as cash and cash equivalents (which the applicant has chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). *(See Instruction 7(a))*

***Second, does the account receive "continuous and regular supervisory or management services?"*** The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. *(See Instruction 7(c))*

***Third, what is the entire value of the account?*** The entire value of the account ($10,000,000) is included in the calculation of the investment adviser's total assets under management.

**APPENDIX B [NOTE: The text of Schedule G does not appear in the Code of Federal Regulations.]**

| **Schedule G of Form ADV Balance Sheet** | Applicant: | SEC File Number: 801- | Date: |
|---|---|---|---|

(Answers in Response to Form ADV Part II Item 14.)

| 1. Full name of applicant exactly as stated in Item 1A of Part I of Form ADV: | IRS Empl. Ident. No.: |
|---|---|

Instructions

1. The balance sheet must be:

   A. Prepared in accordance with generally accepted accounting principles

   B. Audited by an independent public accountant

   C. Accompanied by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

2. Securities included at cost should show their market or fair value parenthetically.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of Regulation S-X (17 CFR 210.2-01 et. seq.).

4. Sole proprietor investment advisers:

   A. Must show investment advisory business assets and liabilities separate from other business and personal assets and liabilities

   B. May aggregate other business and personal assets and liabilities unless there is an asset deficiency in the total financial position.

Complete amended pages in full, circle amended items and file with execution page (page 1).

**[NOTE: This appendix to the preamble will not appear in the Code of Federal Regulations]**

## Appendix C - Examples Illustrating the Application of Rule 203A-3(a)(1)

A supervised person is not considered an investment adviser representative under the rule (and thus not subject to state qualification requirements) if he or she has the greater of:

(1) five natural person clients[1] ("***Five Client Minimum***") or
(2) the number of natural person clients permitted under the ten percent allowance ("***Ten Percent Allowance***")

How many natural persons can a supervised person accept as accommodation clients without being subject to state qualification requirements in Examples 1 and 2?

**EXAMPLE 1**:

| | |
|---|---|
| 3 | business or institutional clients |
| 1 | high net worth or knowledgeable employee clients |
| 4 | total clients of the supervised person |

The supervised person may have the greater of:

***Five Client Minimum***: 5

or

***Ten Percent Allowance***: $0 \cong (4 \times 10\%)$

**ANSWER**: The supervised person can accept five natural persons as accommodation clients without being subject to state qualification requirements.

[1] For the purposes of determining whether a supervised person is an investment adviser representative, a client would be considered a client of the supervised person if the supervised person has substantial responsibilities with respect to the client's account or communicates advice to the client. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)].

**EXAMPLE 2**:

| | |
|---|---|
| 65 | business or institutional clients |
| 5 | high net worth or knowledgeable employee clients |
| 70 | total clients of the supervised person |

The supervised person may have the greater of:

***Five Client Minimum***: 5

or

***Ten Percent Allowance***: 7 = (70 x 10%)

**ANSWER**: The supervised person can accept seven natural persons as accommodation clients without being subject to state qualification requirements.

How many natural persons can the supervised person in Examples 3, 4, and 5 have as accommodation clients without being subject to state qualification requirements? Is the supervised person an investment adviser representative?

**EXAMPLE 3**:

| | |
|---|---|
| 16 | business or institutional clients |
| 5 | high net worth or knowledgeable employee clients |
| 9 | natural person clients |
| 30 | total clients of the supervised person |

The supervised person may have the greater of:

***Five Client Minimum***: 5

or

***Ten Percent Allowance***: 3 = (30 x 10%)

**ANSWER**: This supervised person can have five natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person already has 9 natural person clients, he or she is an investment adviser representative.

**EXAMPLE 4**:

| | |
|---|---|
| 28 | business or institutional clients |
| 38 | high net worth or knowledgeable employee clients |
| 2 | natural person clients |
| 68 | total clients of the supervised person |

The supervised person may have the greater of:

***Five Client Minimum***: 5

or

***Ten Percent Allowance***: 6 ≅ (68 x 10%)*

**ANSWER**: This supervised person can have six natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person currently has only 2 natural person clients, he or she is not an investment adviser representative.

* The supervised person must round down the number permitted under the ten percent allowance.

**EXAMPLE 5**:

| | |
|---|---|
| 4 | business or institutional clients |
| 3 | high net worth clients or knowledgeable employee clients |
| 63 | natural person clients |
| 70 | total clients of the supervised person |

The supervised person may have the greater of:

***Five Client Minimum***: 5

or

***Ten Percent Allowance***: 7 = (70 x 10%)

**ANSWER**: This supervised person can have seven natural persons as accommodation clients without being subject to state qualification requirements. Because the supervised person already has 63 natural person clients, he or she is an investment adviser representative.

[FR Doc. 98–19750 Filed 7–23–98; 8:45 am]

BILLING CODE 8010–01–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Suspension

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for oral use pyrantel pamoate suspension as an anthelmintic to treat horses and ponies.

**EFFECTIVE DATE:** July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

**SUPPLEMENTARY INFORMATION:** Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–246 that provides for oral use of 50 milligrams per milliliter (mg/mL) pyrantel pamoate suspension in horses and ponies for removal and control of mature infections of large strongyles (*Strongylus vulgaris, S. edentatus, S. equinus*), pinworms (*Oxyuris equi*), large roundworms (*Parascaris equorum*), and small strongyles.

Approval of ANADA 200–246 for Phoenix Scientific, Inc.'s pyrantel pamoate suspension is as a generic copy of NADA 91–739 for Pfizer, Inc.'s Strongid® T (pyrantel pamoate) suspension. The ANADA is approved as of June 18, 1998, and the regulations are amended in 21 CFR 520.2043(a)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a) 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.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. Section 520.2043 is amended by revising paragraph (a)(2) to read as follows:

**§ 520.2043 Pyrantel pamoate suspension.**

(a) * * *

(2) *Sponsors.* See Nos. 000069 and 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: July 15, 1998.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 98–19713 Filed 7–23–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

**[SPATS No. IN–130–FOR; State Program Amendment No. 95–8]**

### Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving an amendment to the Indiana regulatory program (hereinafter referred to as the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposed revisions to its rules pertaining to permit application requirements for reclamation plans, public availability of information, and stream buffer zones. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317) 226–6700. Internet: agilmore@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

### II. Submission of the Proposed Amendment

By letter dated March 6, 1998 (Administrative Record No. IND–1596), Indiana submitted a proposed amendment to its program pursuant to SMCRA. Indiana submitted the amendment at its own initiative.

OSM announced receipt of the amendment in the April 6, 1998 **Federal Register** (63 FR 16723), and in the same document opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on May 6, 1998. Because no one requested a public hearing or meeting, none was held.

During its review of the amendment, OSM identified concerns relating to technical errors at 310 IAC 12–3–80(a), reclamation plan requirements; 310 IAC 12–5–32(a)(1), water quality standards; and 310 IAC 12–5–32(a)(2), requirements for stream channel diversions. OSM notified Indiana of these concerns by letter dated April 20, 1998 (Administrative Record No. IND–1603).

By electronic mail dated May 15, 1998 (Administrative Record No. IND–1608), Indiana responded to OSM's concerns by stating that the editorial errors at 310 IAC 12–3–80(a), 12–5–32(a)(1), and 12–5–32(a)(2) would be corrected. Because no substantive revisions were made to the amendment, OSM did not reopen the public comment period.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

The proposed State rules discussed below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State rules and the Federal regulations are nonsubstantive.

| Topic | State rules | Federal counterpart regulation |
|---|---|---|
| Reclamation plans—surface mining | 310 IAC 12–3–46(a) | 30 CFR 780.18(a). |
| Estimate of reclamation cost—surface mining | 310 IAC 12–3–46(b)(2) | 30 CFR 780.18(b)(2). |
| Final surface configuration plan—surface mining | 310 IAC 12–3–46(b)(3) | 30 CFR 780.18(b)(3). |
| Soil removal/replacement plan—surface mining | 310 IAC 12–3–46(b)(4) | 30 CFR 780.18(b)(4). |
| Revegetation plan—surface mining | 310 IAC 12–3–46(b)(5) | 30 CFR 780.18(b)(5). |
| Soil testing plan—surface mining | 310 IAC 12–3–46(b)(5)(g) | 30 CFR 780.18(b)(5)(vii). |
| Reclamation plan—underground mining | 310 IAC 12–3–80(a) | 30 CFR 784.13(a). |
| Estimate of reclamation cost—underground mining | 310 IAC 12–3–80(b)(2) | 30 CFR 784.13(b)(2). |
| Final surface configuration plan—underground mining | 310 IAC 12–3–80(b)(3) | 30 CFR 784.13(b)(3). |
| Soil removal/replacement plan—underground mining | 310 IAC 12–3–80(b)(4) | 30 CFR 784.13(b)(4). |
| Revegetation plan—underground mining | 310 IAC 12–3–80(b)(5) | 30 CFR 784.13(b)(5). |
| Public availability of information | 310 IAC 12–3–110(f) | 30 CFR 773.13(d)(3)(iii). |
| Information disclosure procedures | 310 IAC 12–3–110(g) | 30 CFR 773.13(d)(3). |
| Stream buffer zones—surface mining | 310 IAC 12–5–32(a) | 30 CFR 816.57(a). |
| Marking of stream buffer zones—surface mining | 310 IAC 12–5–32(b) | 30 CFR 816.57(b). |
| Stream buffer zones—underground mining | 310 IAC 12–5–97(a) | 30 CFR 817.57(a). |
| Marking of stream buffer zones—underground mining | 310 IAC 12–5–97(b) | 30 CFR 817.57(b). |

Because the above revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's rules are no less effective than the Federal regulations.

## IV. Summary and Disposition of Comments

*Public Comments*

OSM solicited public comments on the amendment, but none were received.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the amendment from various Federal agencies with an actual or potential interest in the Indiana program (Administrative Record No. IND–1600). On April 17, 1998, the U.S. Fish and Wildlife Service (FWS) responded to OSM's request (Administrative Record No. IND–1604). The FWS commented that 310 IAC 12–5–32(a)(1) and (a)(2) referred to underground mining activities when they should in fact be referring to surface mining activities. OSM notified Indiana of these concerns by letter dated April 20, 1998 (Administrative Record No. IND–1603). Indiana responded to OSM's concerns by electronic mail dated May 15, 1998 (Administrative Record No. IND–1608), stating that the editorial errors at 12–5–32(a)(1) and (a)(2) would be corrected. The FWS also commented that the addition of intermittent streams to the 100-foot disturbance buffer constraint at 310 IAC 12–5–32(a) and 310 IAC 12–5–97(a) is a ''major improvement for protection of water quality and aquatic resources.'' Finally, the FWS commented that compliance with State or Federal water quality standards as required by 310 IAC 12–5–32(a)(1) and 310 IAC 12–5–97(a)(1) should be consistent with the methodology used by the Indiana Department of Environmental Management in its reviews under Section 401 of the Clean Water Act. Indiana's regulations at 310 IAC 12–5–32(a)(1) and 310 12–5–97(a)(1) are substantially identical to the Federal regulations at 30 CFR 816.57(a)(1) and 30 CFR 817.57(a)(1), and therefore are not inconsistent with the Federal requirements. The methodology used to ensure compliance is not at issue in this rulemaking. However, a copy of the FWS comments were given to Indiana for its consideration.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Indiana proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request the EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the amendment from the EPA (Administrative Record No. IND–1600). The EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the amendment from the SHPO and ACHP (Administrative Record No. IND–1600). Neither the SHPO nor ACHP responded to OSM's request.

## V. Director's Decision

Based on the above findings, the Director approves the amendment as submitted by Indiana on March 6, 1998.

The Director approves the rules as proposed by Indiana with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 914, codifying decisions concerning the Indiana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into

conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

## List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1998.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, 30 CFR part 914 is amended as set forth below:

## PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

**§ 914.15 Approval of Indiana regulatory program amendments.**

* * * * *

| Original amendment submission date | Date of final publication | Citation/description |
|---|---|---|
| * | * | * |
| March 6, 1998 ..... | July 24, 1998 ..... | 310 IAC 12–3–46(a), (b)(2) through (b)(5); 12–3–80(a), (b)(2) through (b)(5); 12–3–110 (f), (g); 12–5–32(a), (b); 12–5–97(a), (b). |

[FR Doc. 98–19791 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF THE TREASURY

## Federal Law Enforcement Training Center

## 31 CFR Part 700

## Regulations Governing Conduct in Federal Law Enforcement Training Center (FLECT) Buildings and on the Grounds in Glynco, Georgia, Artesia, New Mexico, the FLETC Washington Office, and Any Other Temporary Site the FLETC May Occupy

**AGENCY:** Federal Law Enforcement Training Center (FLETC).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the regulations governing conduct in Federal Law Enforcement Training Center (FLETC) buildings and grounds. The existing regulations apply only to the FLETC buildings and grounds in Glynco, Georgia. This final rule modifies the existing regulations to include the FLETC Artesia facility in New Mexico, the FLETC Washington Office, and any other temporary site the FLETC may occupy.

**EFFECTIVE DATES:** July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Bodolay, 912–267–2441.

**SUPPLEMENTARY INFORMATION:** The Federal Law Enforcement Training Center (FLETC) facility in Artesia, New Mexico, the FLETC Washington Office, and any other temporary site the FLETC may occupy are included in 31 CFR 700. Section 301 of Title 5, United States Code, and Treasury Order 140–01 (September 20, 1994) authorize the Director, FLETC, to make all needful rules and regulations governing conduct in FLETC's buildings and on its grounds. This final rule prohibits discrimination or harassment of other persons on the property, requires compliance with instructions of uniformed security officers, prohibits the taking of photographs of students without their consent, restricts the smoking of cigarettes, cigars and pipes, and requires that bicycles be equipped with appropriate safety devices.

**Executive Order 12866**

Because this rule relates to agency organization and management, it is not subject to Executive Order 12866.

**Adminstrative Procedure Act**

Because this Treasury decision relates to agency organization and management and is procedural in nature, notice and public procedure and a delayed effective date are inapplicable pursuant to Section 553(a)(2) of Title 5, United States Code.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act do not apply.

**Drafting Information**

The principal author of this document is Stephen M. Bodolay, Office of Legal Counsel, Federal Law Enforcement Training Center.

**List of Subjects in 31 CFR Part 700**

Federal buildings and facilities.

31 CFR part 700 is revised to read as follows:

## PART 700—REGULATIONS GOVERNING CONDUCT IN OR ON THE FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC) BUILDINGS AND GROUNDS

Sec.

700.2 Applicability.
700.3 Recording presence.
700.4 Preservation of property.
700.5 Compliance with signs and directions.
700.6 Nuisances.
700.7 Alcoholic beverages, narcotics, and drugs.
700.8 Soliciting, vending, debt collection, and distribution of handbills.
700.9 Photographs for news, advertising, or commercial purposes.
700.10 Vehicular and pedestrian traffic.
700.11 Weapons and explosives.
700.12 Authority to search persons and vehicles.
700.13 Nondiscrimination.
700.14 Smoking.

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321; Treasury Department Order No. 140–01, dated September 20, 1994; 41 FR 5869, dated Feb. 10, 1996.

### § 700.2 Applicability.

The regulations in this part apply to the buildings and surrounding property of the FLETC, Glynco, Georgia; Artesia, New Mexico; FLECT's Washington Office; any other temporary site FLETC may occupy; and to all persons entering such buildings or property.

### § 700.3 Recording presence.

Except as otherwise ordered, the property shall be closed to the general public. Admission to the property will be limited to authorized individuals who will be required to obtain a visitor's pass and/or display identification documents, in accordance with FLETC policy.

### § 700.4 Preservation of property.

It shall be unlawful for any person without proper authority to willfully destroy, damage, deface, or remove property (including Federal records) or any part thereof or any furnishing therein.

### § 700.5 Compliance with signs and directions.

Persons in and on the property shall comply with the instructions of uniformed FLETC security officers, other authorized officials, official signs of a prohibitory or directory nature, and all applicable statutes and regulations.

### § 700.6 Nuisances.

The use of loud, abusive, or profane language, except as part of an authorized practical training exercise, unwarranted loitering, unauthorized assembly, the creation of any hazard to persons or things, improper disposal of rubbish, or the commission of any disorderly conduct on the property is prohibited. Prohibited actions in the preceding sentence are limited to those actions which impede, obstruct, or otherwise interfere with the Government's business which includes, among other things, the maintenance of the facility, protection of persons and property, and the smooth administration of academic activities and supporting services. The entry, without specific permission, upon any part of the property to which authorized visitors do not customarily have access, is prohibited.

### § 700.7 Alcoholic beverages, narcotics, and drugs.

Entering or being on the property, or operating a motor vehicle thereon, by a person under the influence of alcoholic beverages, narcotics, hallucinogenic or dangerous drugs, or marijuana is prohibited. The possession or use of any unlawful drug or substance contrary to the provisions of Federal, State, or local law in or on the property is prohibited.

### § 700.8 Soliciting, vending, debt collection and distribution of handbills.

The unauthorized soliciting for charity and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, other than legal service of process, in or on the property, is prohibited. This prohibition does not apply to Federal Law Enforcement Training Center concessions or notices posted by authorized employees on the bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval of the Director.

### § 700.9 Photographs for news, advertising, or commercial purposes.

Photographs for news, advertising, or commercial purposes may be taken on the property only with the prior permission of the Director. Taking photographs of a student is prohibited without the consent of the student.

### § 700.10 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles on the property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security officers and all posted traffic signs. All persons on the property must comply with all applicable Federal, State, and local laws. All drivers operating a vehicle on property roadways must possess a valid driver's license.

(b) The blocking of entrances, driveways, walks, loading platforms, or fire-hydrants in or on the property is prohibited.

(c) Parking is permitted only in authorized locations.

(d) This section may be supplemented from time to time by the Director by the issuance and posting of traffic directives. When so issued and posted, such directives shall have the same force and effect as if made a part hereof.

### § 700.11 Weapons and explosives.

No person, while on the property, shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for authorized training or official purposes, in accordance with FLETC regulations.

### § 700.12 Authority to search persons and vehicles.

Persons and vehicles entering upon FLETC facilities are subject to search by authorized security officers.

### § 700.13 Nondiscrimination.

(a) No one entering upon FLETC property shall discriminate against or harass any other person on such property, on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability, Sexual harassment is a form of sex discrimination and is expressly prohibited.

(b) Appropriate action will be taken against any person who violates any discrimination prohibition contained in paragraph (a) of this section. However, this section does not create any legal rights enforceable against the Department of the Treasury, its officers, or employees, or any other person. Although this section does not create any enforceable rights, actions in violation of the section may still result in civil or criminal action in accordance with applicable laws.

**§ 700.14 Smoking.**

Smoking of cigarettes, cigars and pipes is prohibited in all FLETC buildings and vehicles.

**Ralph W. Basham,**

*Director.*

[FR Doc. 98–19493 Filed 7–23–98; 8:45 am]

BILLING CODE 4810–32–M

## DEPARTMENT OF COMMERCE

## Patent and Trademark Office

## 37 CFR Part 1

**[Docket No. 980713170–8170–01]**

**RIN 0651–AA96**

## Revision of Patent Fees for Fiscal Year 1999

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Patent and Trademark Office (PTO) is amending the rules of practice in patent cases, Part 1 of title 37, Code of Federal Regulations, to adjust patent statutory fee amounts to reflect the expiration of the surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the Consumer Price Index (CPI). Also, a few fees that track statutory fees are being correspondingly adjusted, and a non-statutory fee is being reduced to recover cost.

Patent statutory fees consist of a fee amount pursuant to title 35, United States Code; annual adjustments to reflect fluctuations in the CPI; and a surcharge, established by the Omnibus Budget Reconciliation Act of 1990, as amended. The intent of the surcharge was to finance the cost of operating the PTO from user fees, rather than from taxes paid to the general fund of the United States Treasury. In fiscal year 1998, the surcharge will raise $119,000,000. The surcharge will expire at the end of fiscal year 1998. To replace the surcharge and to ensure continued user-fee funding of PTO's operations, legislation has been introduced in the Congress, namely, H.R. 3989 and H.R. 3723. Should either legislation or an alternative be enacted, the PTO will publish a document in the **Federal Register** to ensure that this final rule and the fees established herein will not take effect.

This final rule assumes that no legislative change to patent fees will take place before October 1, 1998. This final rule adjusts patent fees to reflect the expiration of the surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and to reflect fluctuations in the CPI over the previous twelve months.

**EFFECTIVE DATE:** October 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lee by telephone at (703) 305–8051, fax at (703) 305–8007, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Office of Finance, Crystal Park 1, Suite 802, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** This final rule adjusts PTO fees in accordance with the applicable provisions of title 35, United States Code, and the Patent and Trademark Office Authorization Act of 1991 (Public Law 102–204).

Legislation has been introduced in the Congress, namely H.R. 3989 and H.R. 3723, to replace the surcharge and to ensure continued user-fee funding of PTO's operations. H.R. 3989 would re-establish patent statutory fees at the fiscal year 1998 fee levels. For patent customers, H.R. 3989 would not change fee levels; it would simply include the current surcharge and previous years' annual inflation adjustments within the statutory fees, in accordance with the President's budget. The President's budget further proposes to rescind $66,342,000 of PTO's fiscal year 1998 budget authority, and an additional $50,000,000 in fees collected in fiscal year 1999, for a total rescission of $116,342,000.

H.R. 3723 would re-establish patent statutory fees below the levels proposed in H.R. 3989. The total amount collected under H.R. 3723 is expected to be $50,000,000 less than would be collected under H.R. 3989. H.R. 3723 does not assume rescission of PTO budget authority from fees collected in fiscal year 1999. (A comparison of fee amounts for fiscal year 1998, this final rule for fiscal year 1999, H.R. 3723, and H.R. 3989 is included as an Appendix to this final rule.)

In the absence of the enactment of these bills, or any other positive action by the Congress before October 1, 1998, certain patent fees will revert to their statutory levels, as adjusted for previous years' annual fluctuations in the CPI. Should this occur, and PTO not increase fees by CPI for fiscal year 1999, PTO fee collections in fiscal year 1999 would be $182,000,000 less than would be collected under H.R. 3989 and the President's budget proposal, and $132,000,000 less than would be collected under H.R. 3723.

This final rule assumes that these bills—and any other statutory change to patent fees—will not be enacted before October 1, 1998. This final rule adjusts patent fees to reflect the expiration of the surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and to reflect fluctuations in the CPI over the previous twelve months. Fees collected under this final rule in fiscal year 1999 would be $171,000,000 less than would be collected under H.R. 3989 and the President's budget proposal, and $121,000,000 less than would be collected under H.R. 3723.

Patent customers should be aware that legislative changes to patent fees superseding this final rule may occur. If such changes occur the PTO will publish a document in the **Federal Register** to ensure that this final rule and the fees established herein will not take effect. Patent customers may wish to refer to the official PTO website (www.uspto.gov) for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the Official Gazette of the Patent and Trademark Office.

### Background

*Statutory Provisions*

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A fifty percent reduction in the fees paid under 35 U.S.C. 41(a) and (b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is required by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous twelve months.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and

white copy of a patent, and for library services.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty (PCT).

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the Official Gazette of the Patent and Trademark Office.

*Fee Adjustment Level*

The patent fees established by 35 U.S.C. 41 (a) and (b) will be adjusted on October 1, 1998, to reflect fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U), and CPI–U adjustments, where applicable, from fiscal years 1992 through 1997. In calculating these fluctuations, the Office of Managements and Budget (OMB) has determined that the PTO should use CPI–U data as determined by the Secretary of Labor. However, the Department of Labor does not make public the CPI–U until approximately twenty-one days after the end of the month being calculated. Therefore, the latest CPI–U information available is for the month of May 1998. In accordance with previous rulemaking methodology, the PTO will use the Administration's projected CPI–U for the twelve-month period ending September 30, 1998, which is 2.2 percent. Based on this projection, patent statutory fees will be adjusted by 2.2 percent.

Four patent service fees that are set by statute will not be adjusted. The four fees that are not being adjusted are the assignment recording fee, printed patent copy fee, photocopy charge fee, and library service fee.

The final fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees were rounded to an even number so that any comparable small entity fee would be a whole number.

*General Procedures*

Any fee amount paid on or after the effective date of the final fee adjustment will be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing or Transmission, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A Certificate of Mailing or Transmission under 37 CFR 1.8(a)(1) is not proper for items that are specifically excluded under 37 CFR 1.8(a)(2). 37 CFR 1.8(a)(2) should be consulted to determine those items for which a Certificate of Mailing or Transmission is not proper. Such items include, among other things, the filing of national and international applications for patents and the filing of trademark applications. In addition, the provisions of 37 CFR 1.10 relating to filing papers and fees using the ''Express Mail'' service of the United States Postal Service (USPS) do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by ''Express Mail'' with a date of deposit with the USPS (shown by the ''date in'' on the ''Express Mail'' mailing label) which is based on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

**Discussion of Specific Rules**

*37 CFR 1.16 National Application Filing Fees*

Section 1.16, paragraphs (a) through (d), and (f) through (j), is revised to adjust fees established therein to reflect the expiration of the patent fee surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the CPI.

*37 CFR 1.17 Patent Application Processing Fees*

Section 1.17, paragraphs (a) through (d), (l), (m), (r), and (s), is revised to adjust fees established therein to reflect the expiration of the patent fee surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the CPI.

*37 CFR 1.18 Patent Issue Fees*

Section 1.18, paragraphs (a) through (c), is revised to adjust fees established therein to reflect the expiration of the patent fee surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the CPI.

*37 CFR 1.20 Post-issuance Fees*

Section 1.20, paragraphs (d) through (g), is revised to adjust fees established therein to reflect the expiration of the patent fee surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the CPI.

*37 CFR 1.21 Miscellaneous Fees and Charges*

Section 1.21, paragraph (a)(6)(ii), is revised to adjust fees established therein to recover costs.

*37 CFR 1.492 National Stage Fees*

Section 1.492, paragraphs (a) through (d), is revised to adjust fees established therein to reflect the expiration of the patent fee surcharge established by the Omnibus Budget Reconciliation Act of 1990, as amended, and fluctuations in the CPI.

**Other Considerations**

This final rule contain no information collection within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and opportunity for public comment for patent fee changes is not required by the patent statutes or the Administrative Procedure Act. While the patent statutes specifically require that changes to patent fees shall not take effect ''until at least 30 days after notice of the fee has been published in the **Federal Register** and in the Official Gazette of the Patent and Trademark Office,'' 35 U.S.C. 41(g), they do not require any additional publication of proposed fee changes. In addition, changes in patent fees are exempted from the notice of proposed rulemaking requirements of the Administrative Procedure Act under 5 U.S.C. 553(a)(2) as the establishment of fee amounts is a matter related to agency management.

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

A comparison of fee amounts for fiscal year 1998, this final rule for fiscal year 1999, H.R. 3723, and H.R. 3989 are included as an Appendix to this final rule.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

**Authority:** 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a) through (d), and (f) through (j) to read as follows:

**§ 1.16 National application filing fees.**

(a) Basic fee for filing each application for an original patent, except provisional, design or plant applications:
By a small entity (§ 1.9(f) .... $305.00
By other than a small entity $610.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f)) ... $32.00
By other than a small entity $64.00

(c) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each claim in excess of 20:
By a small entity (§ 1.9(f)) ... $7.00
By other than a small entity $14.00

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
By a small entity (§ 1.9(f)) ... $105.00
By other than a small entity $210.00

* * * * *

(f) Basic fee for filing each design application:
By a small entity (§ 1.9(f)) ... $130.00
By other than a small entity $260.00

(g) Basic fee for filing each plant application, except provisional applications:
By a small entity (§ 1.9(f)) ... $195.00
By other than a small entity $390.00

(h) Basic fee for filing each reissue application:
By a small entity (§ 1.9(f)) ... $305.00
By other than a small entity $610.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity (§ 1.9(f)) ... $32.00
By other than a small entity $64.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim in excess of 20 and also in excess of the number of claims in the original patent:
By a small entity (§ 1.9(f)) ... $7.00
By other than a small entity $14.00

* * * * *

3. Section 1.17 is amended by revising paragraphs (a) (1) through (5), (b) through (d), (1), (m), (r), and (s) to read as follows:

**§ 1.17 Patent application processing fees.**

(a) * * *

(1) For reply within first month:
By a small entity (§ 1.9(f)) $45.00
By other than a small entity ..... 90.00

(2) For reply within second month:
By a small entity (§ 1.9(f)) $155.00
By other than a small entity ..... $310.00

(3) For reply within third month:
By a small entity (§ 1.9(f)) $355.00
By other than a small entity ..... $710.00

(4) For reply within fourth month:
By a small entity (§ 1.9(f)) $550.00
By other than a small entity ..... $1,100.00

(5) For reply within fifth month:
By a small entity (§ 1.9(f)) $750.00
By other than a small entity ..... $1,500.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:
By a small entity (§ 1.9(f)) $125.00
By other than a small entity ..... $250.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:
By a small entity (§ 1.9(f)) $125.00
By other than a small entity ..... $250.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:
By a small entity (§ 1.9(f)) $105.00
By other than a small entity ..... $210.00

* * * * *

(l) For filing a petition:

(1) For the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, or

(2) For delayed payment of the issue fee under 35 U.S.C. 151:
By a small entity (§ 1.9(f)) $45.00
By other than a small entity ..... $90.00

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:
By a small entity (§ 1.9(f)) $490.00
By other than a small entity ..... $980.00

* * * * *

(r) For entry of a submission after final rejection under $1.129(a):
By a small entity (§ 1.9(f)) $305.00
By other than a small entity ..... $610.00

(s) For each additional invention requested to be examined under § 1.129(b):
By a small entity (§ 1.9(f)) $305.00
By other than a small entity ..... $610.00

4. Section 1.18 is revised to read as follows:

**§ 1.18 Patent issue fees.**

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity (§ 1.9(f)) ... $490.00
By other than a small entity $980.00

(b) Issue fee for issuing a design patent:
By a small entity (§ 1.9(f)) ... $175.00
By other than a small entity $350.00

(c) Issue fee for issuing a plant patent:
By a small entity (§ 1.9(f)) ... $235.00
By other than a small entity $470.00

5. Section 1.20 is amended by revising paragraphs (d) through (g) to read as follows:

**§ 1.20 Post issuance fees.**

* * * * *

(d) For filing each statutory disclaimer (§ 1.321):
By a small entity (§ 1.9(f)) ... $45.00
By other than a small entity $90.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:
By a small entity (§ 1.9(f)) ... $385.00
By other than a small entity $770.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grants:
By a small entity (§ 1.9(f)) ... $770.00
By other than a small entity $1,540.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:
By a small entity (§ 1.9(f)) ... $1,180.00
By other than a small entity $2,360.00

* * * * *

6. Section 1.21 is amended by revising paragraph (a)(6)(ii) to read as follows:

**§ 1.21 Miscellaneous fees and charges.**

* * * * *

(a) * * *
(6) * * *
(ii) Regrading of afternoon section (Claim Drafting) $230.00

* * * * *

7. Section 1.492 is amended by revising paragraphs (a) through (d) to read as follows:

**§ 1.492 National stage fees.**

* * * * *

(a) The basic national fee:
(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:
By a small entity (§ 1.9(f)) $270.00
By other than a small entity ..... $540.00
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:
By a small entity (§ 1.9(f)) $305.00
By other than a small entity ..... $610.00
(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office.
By a small entity (§ 1.9(f)) $395.00
By other than a small entity ..... $790.00
(4) Where an international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):
By a small entity (§ 1.9(f)) $39.00
By other than a small entity ..... $78.00
(5) Where a search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:
By a small entity (§ 1.9(f)) $395.00
By other than a small entity ..... $790.00
(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:
By a small entity (§ 1.9(f)) $32.00
By other than a small entity ..... $64.00
(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20.
(Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):
By a small entity (§ 1.9(f)) $7.00
By other than a small entity ..... $14.00
(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
By a small entity (§ 1.9(f)) $105.00
By other than a small entity ..... $210.00

* * * * *

July 17, 1998.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*

**Note**—The following Appendix is provided as a courtesy to the public, and is not a substitute for the rules. It will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

| 37 CFR | Description | Pre-Oct 1998 | Final rule Oct 1998 | H.R. 3723 | H.R. 3989 |
|---|---|---|---|---|---|
| 1.16(a) | Basic Filing Fee | $790 | $610 | $760 | — |
| 1.16(a) | Basic Filing Fee (Small Entity) | 395 | 305 | 380 | — |
| 1.16(b) | Indepdent Claims | 82 | 64 | 78 | — |
| 1.16(b) | Indepdent Claims (Small Entity) | 41 | 32 | 39 | — |
| 1.16(c) | Claims in Excess of 20 | 22 | 14 | 18 | — |
| 1.16(c) | Claims in Excess of 20 (Small Entity) | 11 | 7 | 9 | |
| 1.16(d) | Multiple Dependent Claims | 270 | 210 | 260 | — |
| 1.16(d) | Multiple Dependent Claims (Small Entity) | 135 | 105 | 130 | — |
| 1.16(e) | Surcharge—Late Filing Fee | 130 | — | — | — |
| 1.16(e) | Surcharge—Late Filing Fee (Small Entity) | 65 | — | — | — |
| 1.16(f) | Design Filing Fee | 330 | 260 | 310 | — |
| 1.16(f) | Design Filing Fee (Small Entity) | 165 | 130 | 155 | — |
| 1.16(g) | Plant Filing Fee | 540 | 390 | 480 | — |
| 1.16(g) | Plant Filing Fee (Small Entity) | 270 | 195 | 240 | — |
| 1.16(h) | Reissue Filing Fee | 790 | 610 | 760 | — |
| 1.16(h) | Reissue Filing Fee (Small Entity) | 395 | 305 | 380 | — |
| 1.16(i) | Reissue Independent Claims | 82 | 64 | 78 | — |
| 1.16(i) | Reissue Independent Claims (Small Entity) | 41 | 32 | 39 | — |
| 1.16(j) | Reissue Claims in Excess of 20 | 22 | 14 | 18 | — |

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

| 37 CFR | Description | Pre-Oct 1998 | Final rule Oct 1998 | H.R. 3723 | H.R. 3989 |
|---|---|---|---|---|---|
| 1.16(j) | Reissue Claims in Excess of 20 (Small Entity) | 11 | 7 | 9 | — |
| 1.16(k) | Provisional Application Filing Fee | 150 | — | — | — |
| 1.16(k) | Provisional Application Filing Fee (Small Entity) | 75 | — | — | — |
| 1.16(l) | Surcharge—Incomplete Provisional App. Filed | 50 | — | — | — |
| 1.16(l) | Surcharge—Incomplete Provisional App. Filed (Small Entity) | 25 | — | — | — |
| 1.17(a)(1) | Extension—First Month | 110 | 90 | — | — |
| 1.17(a)(1) | Extension—First Month (Small Entity) | 55 | 45 | — | — |
| 1.17(a)(2) | Extension—Second Month | 400 | 310 | 380 | — |
| 1.17(a)(2) | Extension—First Month (Small Entity) | 200 | 155 | 190 | — |
| 1.17(a)(3) | Extension—Third Month | 950 | 710 | 870 | — |
| 1.17(a)(3) | Extension—Third Month (Small Entity) | 475 | 355 | 435 | — |
| 1.17(a)(4) | Extension—Fourth Month | 1,510 | 1,100 | 1,360 | — |
| 1.17(a)(4) | Extension—Fourth Month (Small Entity) | 755 | 550 | 680 | — |
| 1.17(a)(5) | Extension—Fifth Month | 2,060 | 1,500 | 1,850 | — |
| 1.17(a)(5) | Extension—Fifth Month (Small Entity) | 1,030 | 750 | 925 | — |
| 1.17(b) | Notice of Appeal | 310 | 250 | 300 | — |
| 1.17(b) | Notice of Appeal (Small Entity) | 155 | 125 | 150 | — |
| 1.17(c) | Filing a Brief | 310 | 250 | 300 | — |
| 1.17(c) | Filing a Brief (Small Entity) | 155 | 125 | 150 | — |
| 1.17(d) | Request for Oral Hearing | 270 | 210 | 260 | — |
| 1.17(d) | Request for Oral Hearing (Small Entity) | 135 | 105 | 130 | — |
| 1.17(h) | Petition—Not All Inventors | 130 | — | — | — |
| 1.17(h) | Petition—Correction of Inventorship | 130 | — | — | — |
| 1.17(h) | Petition—Decision on Questions | 130 | — | — | — |
| 1.17(h) | Petition—Suspend Rules | 130 | — | — | — |
| 1.17(h) | Petition—Expedited License | 130 | — | — | — |
| 1.17(h) | Petition—Scope of License | 130 | — | — | — |
| 1.17(h) | Petition—Retroactive License | 130 | — | — | — |
| 1.17(h) | Petition—Refusing Maintenance Fee | 130 | — | — | — |
| 1.17(h) | Petition—Refusing Maintenance Fee—Expired Patent | 130 | — | — | — |
| 1.17(h) | Petition—Interference | 130 | — | — | — |
| 1.17(h) | Petition—Reconsider Interference | 130 | — | — | — |
| 1.17(h) | Petition—Late Filing of Interference | 130 | — | — | — |
| 1.20(b) | Petition—Correction of Inventorship | 130 | — | — | — |
| 1.17(h) | Petition—Refusal to Publish SIR | 130 | — | — | — |
| 1.17(j) | Petition—For Assignment | 130 | — | — | — |
| 1.17(i) | Petition—For Application | 130 | — | — | — |
| 1.17(i) | Petition—Late Priority Papers | 130 | — | — | — |
| 1.17(i) | Petition—Suspend Action | 130 | — | — | — |
| 1.17(i) | Petition—Divisional Reissues to Issue Separately | 130 | — | — | — |
| 1.17(i) | Petition—For Interference Agreement | 130 | — | — | — |
| 1.17(i) | Petition—Amendment After Issue | 130 | — | — | — |
| 1.17(i) | Petition—Withdrawal After Issue | 130 | — | — | — |
| 1.17(i) | Petition—Defer Issue | 130 | — | — | — |
| 1.17(i) | Petition—Issue to Assignee | 130 | — | — | — |
| 1.17(i) | Petition—Accord a Filing Date Under § 1.53 | 130 | — | — | — |
| 1.17(i) | Petition—Accord a Filing Date Under § 1.62 | 130 | — | — | — |
| 1.17(i) | Petition—Make Application Special | 130 | — | — | — |
| 1.17(j) | Petition—Public Use Proceeding | 1,510 | — | — | — |
| 1.17(k) | Non-English Specification | 130 | — | — | — |
| 1.17(*l*) | Petition—Revive Abandoned Application | 110 | 90 | — | — |
| 1.17(*l*) | Petition—Revive Abandoned Application (Small Entity) | 55 | 45 | — | — |
| 1.17(m) | Petition—Revive Unintentionally Abandoned Application | 1,320 | 980 | 1,210 | — |
| 1.17(m) | Petition—Revive Unintent Abandoned Application (Small Entity) | 660 | 490 | 605 | — |
| 1.17(n) | SIR—Prior to Examiner's Action | 920 | — | — | — |
| 1.17(o) | SIR—After Examiner's Action | 1,840 | — | — | — |
| 1.17(p) | Submission of an Information Disclosure Statement (§ 1.97) | 240 | — | — | — |
| 1.17(q) | Petition—Correction of Inventorship (Prov. App.) | 50 | — | — | — |
| 1.17(q) | Petition—Accord a filing date (Prov. App.) | 50 | — | — | — |
| 1.17(q) | Petition—Entry of submission after final rejection (Prov. App.) | 50 | — | — | — |
| 1.17(r) | Filing a submission after final rejection (1.129(a)) | 790 | 610 | 760 | — |
| 1.17(r) | Filing a submission after final rejection (1.129(a)) (Small Entity) | 395 | 305 | 380 | — |
| 1.17(s) | Per add'l invention to be examined (1.129(b)) | 790 | 610 | 760 | — |
| 1.17(s) | Per add'l invention to be examined (1.129(b)) (Small Entity) | 395 | 305 | 380 | — |
| 1.18(a) | Issue Fee | 1,320 | 980 | 1,210 | — |
| 1.18(a) | Issue Fee (Small Entity) | 660 | 490 | 605 | — |
| 1.18(b) | Design Issue Fee | 450 | 350 | 430 | — |
| 1.18(b) | Design Issue Fee (Small Entity) | 225 | 175 | 215 | — |
| 1.18(c) | Plant Issue Fee | 670 | 470 | 580 | — |
| 1.18(c) | Plant Issue Fee (Small Entity) | 335 | 235 | 290 | — |
| 1.19(a)(1)(i) | Copy of Patent | 3 | — | — | — |

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

| 37 CFR | Description | Pre-Oct 1998 | Final rule Oct 1998 | H.R. 3723 | H.R. 3989 |
|---|---|---|---|---|---|
| 1.19(a)(1)(ii) | Patent Copy—Overnight delivery to PTO Box or overnight tax | 6 | — | — | — |
| 1.19(a)(1)(iii) | Patent Copy Ordered by Expedited Mail or Fax—Exp. service | 25 | — | — | — |
| 1.19(a)(2) | Plant Patent Copy | 15 | — | — | — |
| 1.19(a)(3)(i) | Copy of Utility Patent or SIR in Color | 25 | — | — | — |
| 1.19(b)(1)(i) | Certified Copy of Patent Application as Filed | 15 | — | — | — |
| 1.19(b)(1)(ii) | Certified Copy of Patent Application as Filed, Expedited | 30 | — | — | — |
| 1.19(b)(2) | Cert. or Uncert. Copy of Patent-Related File Wrapper/Contents | 150 | — | — | — |
| 1.19(b)(3) | Cert. or Uncert. Copies of Office Records, per Document | 25 | — | — | — |
| 1.19(b)(4) | For Assignment Records, Abstract of Title and Certification | 25 | — | — | — |
| 1.19(c) | Library Service | 50 | — | — | — |
| 1.19(d) | List of Patents in Subclass | 3 | — | — | — |
| 1.19(e) | Uncertified Statement-Status of Maintenance Fee Payment | 10 | — | — | — |
| 1.19(f) | Copy of Non-U.S. Patent Document | 25 | — | — | — |
| 1.19(g) | Comparing and Certifying Copies, Per Document, Per Copy | 25 | — | — | — |
| 1.19(h) | Duplicate or Corrected Filing Receipt | 25 | — | — | — |
| 1.20(a) | Certificate of Correction | 100 | — | — | — |
| 1.20(c) | Reexamination | $2,520 | — | — | — |
| 1.20(d) | Statutory Disclaimer | 110 | 90 | — | — |
| 1.20(d) | Statutory Disclaimer (Small Entity) | 55 | 45 | — | — |
| 1.20(e) | Maintenance Fee–3.5 Years | 1,050 | 770 | 940 | — |
| 1.20(e) | Maintenance Fee—3.5 Years (Small Entity) | 525 | 385 | 470 | — |
| 1.20(f) | Maintenance Fee—7.5 Years | 2,100 | 1,540 | 1,900 | — |
| 1.20(f) | Maintenance Fee—7.5 Years (Small Entity) | 1,050 | 770 | 950 | — |
| 1.20(g) | Maintenance Fee—11.5 Years | 3,160 | 2,360 | 2,910 | — |
| 1.20(g) | Maintenance Fee—11.5 Years (Small Entity) | 1,580 | 1,180 | 1,455 | — |
| 1.20(h) | Surcharge—Maintenance Fee—6 Months | 130 | — | — | — |
| 1.20(h) | Surcharge—Maintenance Fee—6 Months (Small Entity) | 65 | — | — | — |
| 1.20(i)(1) | Surcharge—Maintenance After Expiration—Unavoidable | 700 | — | — | — |
| 1.20(i)(2) | Surcharge—Maintenance After Expiration—Unintentional | 1,640 | — | — | — |
| 1.20(j)(1) | Extension of Term of Patent Under 1.740 | 1,120 | — | — | — |
| 1.20(j)(2) | Initial Application for Interim Extension Under 1.790 | 420 | — | — | — |
| 1.20(j)(3) | Subsequent Application for Interim Extension Under 1.790 | 210 | — | — | — |
| 1.21(a)(1)(i) | Application Fee (non-refundable) | 40 | — | — | — |
| 1.21(a)(1)(ii) | Registration examination fee | 310 | — | — | — |
| 1.21(a)(2) | Registration to Practice | 100 | — | — | — |
| 1.21(a)(3) | Reinstatement to Practice | 40 | — | — | — |
| 1.21(a)(4) | Certificate of Good Standing | 10 | — | — | — |
| 1.21(a)(4) | Certificate of Good Standing, Suitable Framing | 20 | — | — | — |
| 1.21(a)(5) | Review of Decision of Director, OED | 130 | — | — | — |
| 1.21(a)(6)(i) | Regrading of A.M. section (PTO Practice and Procedure) | 230 | — | — | — |
| 1.21(a)(6)(ii) | Regrading of P.M. section (Claim Drafting) | 230 | — | — | — |
| 1.21(b)(1) | Establish Deposit Account | 10 | — | — | — |
| 1.21(b)(2) | Service Charge Below Minimum Balance | 25 | — | — | — |
| 1.21(b)(3) | Service Charge Below Minimum Balance | 25 | — | — | — |
| 1.21(c) | Filing a Disclosure Document | 10 | — | — | — |
| 1.21(d) | Box Rental | 50 | — | — | — |
| 1.21(e) | International Type Search Report | 40 | — | — | — |
| 1.21(g) | Self-Service Copy Charge | .25 | — | — | — |
| 1.21(h) | Recording Patent Property | 40 | — | — | — |
| 1.21(i) | Publication in the *Official Gazette* | 25 | — | — | — |
| 1.21(j) | Labor Charges for Services | 40 | — | — | — |
| 1.21(k) | Unspecified Other Services | [1] | — | — | — |
| 1.21(k) | Terminal Use APS–CSIR (per hour) | 50 | — | — | — |
| 1.21(l) | Retaining abandoned application | 130 | — | — | — |
| 1.21(m) | Processing Returned Checks | 50 | — | — | — |
| 1.21(n) | Handling Fee—Incomplete Application | 130 | — | — | — |
| 1.21(o) | Terminal Use APS–TEXT | 40 | — | — | — |
| 1.24 | Coupons for Patent and Trademark Copies | 3 | — | — | — |
| 1.296 | Handling Fee—Withdrawal SIR | 130 | — | — | — |
| 1.445(a)(1) | Transmittal Fee | 240 | — | — | — |
| 1.445(a)(2)(i) | PCT Search Fee—Prior U.S. Application | 450 | — | — | — |
| 1.445(a)(2)(ii) | PCT Search Fee—No U.S. Application | 700 | — | — | — |
| 1.445(a)(3) | Supplemental Search | 210 | — | — | — |
| 1.482(a)(1)(i) | Preliminary Exam Fee | 490 | — | — | — |
| 1.482(a)(1)(ii) | Preliminary Exam Fee | 750 | — | — | — |
| 1.482(a)(2)(i) | Additional invention | 140 | — | — | — |
| 1.482(a)(2)(ii) | Additional invention | 270 | — | — | — |
| 1.492(a)(1) | Preliminary Examining Authority | 720 | 540 | 670 | — |
| 1.492(a)(1) | Preliminary Examining Authority (Small Entity) | 360 | 270 | 335 | — |
| 1.492(a)(2) | Searching Authority | 790 | 610 | 760 | — |
| 1.492(a)(2) | Searching Authority (Small Entity) | 395 | 305 | 380 | — |

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

| 37 CFR | Description | Pre-Oct 1998 | Final rule Oct 1998 | H.R. 3723 | H.R. 3989 |
|---|---|---|---|---|---|
| 1.492(a)(3) | PTO Not ISA nor IPEA | 1,070 | 790 | 970 | — |
| 1.492(a)(3) | PTO Not ISA nor IPEA (Small Entity) | 535 | 395 | 485 | — |
| 1.492(a)(4) | Claims—IPEA | 98 | 78 | 96 | — |
| 1.492(a)(4) | Claims—IPEA (Small Entity) | 49 | 39 | 48 | — |
| 1.492(a)(5) | Filing with EPO/JPO Search Report | 930 | 790 | — | — |
| 1.492(a)(5) | Filing with EPO/JPO Search Report (Small Entity) | 465 | 395 | — | — |
| 1.492(b) | Claims—Extra Individual (Over 3) | 82 | 64 | 78 | — |
| 1.492(b) | Claims—Extra Individual (Over 3) (Small Entity) | 41 | 32 | 39 | — |
| 1.492(c) | Claims—Extra Total (Over 20) | 22 | 14 | 18 | — |
| 1.492(c) | Claims—Extra Total (Over 20) (Small Entity) | 11 | 7 | 9 | — |
| 1.492(d) | Claims—Multiple Dependents | 270 | 210 | 260 | — |
| 1.492(d) | Claims—Multiple Dependents (Small Entity) | 135 | 105 | 130 | — |
| 1.492(e) | Surcharge | 130 | — | — | — |
| 1.492(e) | Surcharge (Small Entity) | 65 | — | — | — |
| 1.492(f) | English Translation—After 20 Months | 130 | — | — | — |
| 2.6(a)(1) | Application for Registration, Per Class | 245 | — | — | — |
| 2.6(a)(2) | Amendment to Allege Use, Per Class | 100 | — | — | — |
| 2.6(a)(3) | Statement of Use, Per Class | 100 | — | — | — |
| 2.6(a)(4) | Extension for Filing Statement of Use, Per Class | 100 | — | — | — |
| 2.6(a)(5) | Application for Renewal, Per Class | 300 | — | — | — |
| 2.6(a)(6) | Surcharge for Late Renewal, Per Class | 100 | — | — | — |
| 2.6(a)(7) | Publication of Mark Under § 12(c), Per Class | 100 | — | — | — |
| 2.6(a)(8) | Issuing New Certificate of Registration | 100 | — | — | — |
| 2.6(a)(9) | Certificate of Correction of Registrant's Error | 100 | — | — | — |
| 2.6(a)(10) | Filing Disclaimer to Registration | 100 | — | — | — |
| 2.6(a)(11) | Filing Amendment to Registration | 100 | — | — | — |
| 2.6(a)(12) | Filing Affidavit Under Section 8, Per Class | 100 | — | — | — |
| 2.6(a)(13) | Filing Affidavit Under Section 15, Per Class | 100 | — | — | — |
| 2.6(a)(14) | Filing Affidavit Under Sections 8 & 15, Per Class | 200 | — | — | — |
| 2.6(a)(15) | Petitions to the Commissioner | 100 | — | — | — |
| 2.6(a)(16) | Petition to Cancel, Per Class | 200 | — | — | — |
| 2.6(a)(17) | Notice of Opposition, Per Class | 200 | — | — | — |
| 2.6(a)(18) | Ex Parte Appeal to the TTAB, Per Class | 100 | — | — | — |
| 2.6(a)(19) | Dividing an Application, Per New Application Created | 100 | — | — | — |
| 2.6(b)(1)(i) | Copy of Registered Mark | 3 | — | — | — |
| 2.6(b)(1)(ii) | Copy of Registered Mark, overnight delivery to PTO box or fax | 6 | — | — | — |
| 2.6(b)(1)(iii) | Copy of Reg. Mark Ordered Via Exp. Mail or Fax, Exp. Svc | 25 | — | — | — |
| 2.6(b)(2)(i) | Certified Copy of TM Application as Filed | 15 | — | — | — |
| 2.6(b)(2)(ii) | Certified Copy of TM Application as Filed, Expedited | 30 | — | — | — |
| 2.6(b)(3) | Cert. or Uncert. Copy of TM-Related File Wrapper/Contents | 50 | — | — | — |
| 2.6(b)(4)(i) | Cert. Copy of Registered Mark, Title or Status | 15 | — | — | — |
| 2.6(b)(4)(ii) | Cert. Copy of Registered Mark, Title or Status—Expedited | 30 | — | — | — |
| 2.6(b)(5) | Certified or Uncertified Copy of TM Records | 25 | — | — | — |
| 2.6(b)(6) | Recording Trademark Property, Per Mark, Per Document | 40 | — | — | — |
| 2.6(b)(6) | For Second and subsequent Marks in Same Document | 25 | — | — | — |
| 2.6(b)(7) | For Assignment Records, Abstracts of Title and Cert | 25 | — | — | — |
| 2.6(b)(8) | Terminal Use X-SEARCH | 40 | — | — | — |
| 2.6(b)(9) | Self-Service Copy Charge | 0.25 | — | — | — |
| 2.6(b)(10) | Labor Charges for Services | 40 | — | — | — |
| 2.6(b)(11) | Unspecified Other Services | ([1]) | — | — | — |
| 2.7(a) | Recordal application fee | 20 | — | — | — |
| 2.7(b) | Renewal application fee | 20 | — | — | — |
| 2.7(c) | Late fee renewal application | 20 | — | — | — |

—Indicates fees remain at pre-October 1998 amount.
[1] At cost.

[FR Doc. 98–19722 Filed 7–23–98; 8:45 am]
BILLING CODE 3510–16–M

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Parts 201 and 256

**[Docket No. RM 98–4]**

### Cable Compulsory Licenses: Application of the 3.75% Rate

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office is amending its rules in order to clarify how a cable system shall calculate its royalty fees when it carries a distant signal which under the former Federal Communications Commission's regulations would be considered a permitted signal in some communities and a non-permitted signal in others. These amendments also make clear that both the base rate fee and the 3.75% fee

shall be applied toward the statutory minimum fee.

**EFFECTIVE DATE:** August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** Section 111 of the Copyright Act, 17 U.S.C., establishes a compulsory license which authorizes a cable system to make secondary transmissions of copyrighted works embodied in broadcast signals provided that it pays a royalty fee according to the fee structure set out in section 111 and meets all other conditions of the statutory license. The license also provides for an opportunity to adjust the statutory royalty rates once every five years, 17 U.S.C. 803(a)(2), or whenever the Federal Communications Commission (FCC) amends its rules to allow a cable system to carry additional signals beyond the local service area of the primary transmitter, or its rules governing syndicated program and sports exclusivity. 17 U.S.C. 801(b)(2)(B)–(C).

In 1982, the former Copyright Royalty Tribunal (CRT) concluded a rate adjustment proceeding in response to an FCC order repealing its distant signal carriage and program syndication exclusivity restrictions on cable retransmission; wherein the CRT created two new rate structures, apart from those set by statute, to compensate the copyright owners for the loss of the surrogate copyright protection afforded them under the FCC rules: a 3.75% rate for the secondary transmission of formerly non-permitted distant signals, and a syndicated exclusivity surcharge for the secondary transmission of permitted signals that had been subject to the FCC's former syndicated program exclusivity regulations. 47 FR 52146 (November 19, 1982).

Although the Copyright Office adopted final rules to implement the new rate structure of the CRT in 1984, the rules did not specify how a cable system was to calculate its royalty obligation for the carriage of a distant signal which under the former FCC rules was a permitted signal in some communities and a non-permitted signal in others. Instead, the Office allowed each cable system to determine whether to report the signal as entirely permitted, entirely non-permitted, or as partially permitted/partially non-permitted, and calculate its royalty obligation accordingly.

This practice came to an end when, in April, 1997, the Copyright Office adopted a final rule which requires a cable system to calculate the 3.75% rate fees for distant signals on a partially permitted/partially non-permitted basis. 62 FR 23360 (April 30, 1997). Under the new rule, a cable system shall pay the base rate with respect to those communities where the signal would be considered permitted under the FCC's former distant carriage rules in effect on June 24, 1981 (or in the case of those systems that commenced operation after June 24, 1981, would have been considered permitted under those rules), and the 3.75% rate with respect to those communities where the signal would be considered non-permitted. In each case, however, the cable system must base its calculations upon the total amount of gross receipts from subscribers within the relevant community without regard to whether the subscriber actually receives the distant signal.

To assure uniformity in the reporting process and to clarify that both the base rate fees and the 3.75% rate fees shall be applied toward the minimum fee, the Copyright Office proposed additional amendments to its rules detailing how a cable system was to report and calculate its royalty fees for the carriage of a partially permitted/partially non-permitted distant signal. 63 FR 26756 (May 14, 1998). In response to the proposed amendments, the Joint Sports Claimants (JSC), the Motion Picture Association of America, Inc. (MPAA), and the National Cable Television Association (NCTA) filed comments with the Copyright Office.

While no party objects to the underlying rational for the proposed amendments,[1] both JSC and MPAA request clarification of the regulatory language to make it clear that a cable system may not ''prorate gross receipts within communities—claiming that they are not required to apply the 3.75 rate (or any other rate) to revenues from subscribers who do not actually receive the signal in question.'' JSC comment at 2–3 (emphasis omitted); *see also* MPAA comment at 1–2. Because two of the three parties found the proposed regulatory language somewhat ambiguous on this point, the Copyright Office is adopting the language proposed by JSC, since the proposed change merely restates in an affirmative manner the obligation of a cable system to pay royalties based on gross receipts from all subscribers within the relevant community.

As noted by NCTA, these amendments are tailored narrowly and address only the calculation of royalties for the carriage of a partially permitted/partially non-permitted distant signal. They do not resolve any issues concerning the reporting and payment of royalty fees for merged and acquired systems. These questions, which remain unresolved today, were the subject of earlier rulemaking proceedings, see Docket No. RM 89–2 and Docket No. 89–2A, which the Office terminated until further notice when Congress asked the Copyright Office to prepare a report on the compulsory license scheme. 62 FR 23360 (April 30, 1997).

**List of Subjects**

*37 CFR Part 201*

Cable television, Copyright, Jukeboxes, Literary works, Satellites.

*37 CFR Part 256*

Cable television, Copyright.

In consideration of the foregoing, 37 CFR parts 201 and 256 are amended as follows:

## PART 201—GENERAL PROVISIONS

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

**Authority:** 17 U.S.C. 702.

2. Section 201.17(h)(2)(iv) is amended by adding the phrase ''and the syndicated exclusivity surcharge, where applicable,'' after the phrase ''the current base rate'' and by adding two sentences to the end of the paragraph to read as follows:

**§ 201.17 Statements of Account covering compulsory licenses for secondary transmissions by cable systems.**

* * * * *

(h) * * *

(2) * * *

(iv) * * * The calculations shall be based upon the gross receipts from all subscribers, within the relevant communities, for the basic service of providing secondary transmissions of primary broadcast transmitters, without regard to whether those subscribers

[1] JSC continues to oppose the formation of subscriber groups which would reduce either the value of the distant signal equivalent or a system's gross receipts. *See* Comments of the Joint Sports Claimants in Docket No. 89–2A (filed February 23, 1995); Comments of Joint Sports Claimants in Docket No. 89–2 (filed December 1, 1989). Nevertheless, JSC has supported the premise of the current rule. In its December 1, 1989 comment, JSC stated that it ''continue[s] to believe that a cable operator should be required to pay 1) the 3.75 percent rate on gross receipts derived from subscribers located in communities where the particular signal could not have been carried under the former FCC rules; and 2) the statutory (non-3.75 percent) rates on gross receipts derived from all other subscribers.'' JSC comment in Docket No. RM 89–2 at 10.

actually received the station in question. For partially-distant stations, gross receipts shall be the total gross receipts from subscribers outside the local service area.

* * * * *

## PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

3. The authority citation for part 256 continues to read as follows:

**Authority:** 17 U.S.C. 702, 802.

4. Section 256.2(a)(1) is amended by adding the letter ''s'' to the word ''fee'' and by adding the phrase ''and (c)'' to the end of the paragraph after ''(4)''.

5. In § 256.2 the concluding text of paragraph (c) is amended by adding the phrase ''(2) through (4)'' after the phrase ''royalty rates specified in paragraphs (a)''.

Dated: July 1, 1998.

**Marybeth Peters,**

*Register of Copyrights.*

So approved.

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 98–19415 Filed 7–23–98; 8:45 am]

BILLING CODE 1410–31–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 9

**[FRL–6125–1]**

## OMB Approval Numbers Under the Paperwork Reduction Act: Technical Correction

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

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations which were published in the **Federal Register** on February 17, 1998 (63 FR 7709). The regulations related to the amendment of the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Regulation of Fuel and Fuel Additives, Standards for Reformulated and Conventional Gasoline.

**EFFECTIVE DATE:** This correction is effective July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Karen Smith, 202–564–9674.

**SUPPLEMENTARY INFORMATION:**

### Need for Correction

As published, the final regulations contain errors and inadvertently include portions of the OMB approval list which may prove misleading and need to be clarified. The final regulation inadvertently added sections that were already properly included in an earlier document (See 63 FR 1059, January 8, 1998). Since these entries are duplicative, this document removes the spans that are no longer needed (80.91–80.94 and 80.128–80.130). These ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to correct this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of July 24, 1998. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 17, 1998.

**Margo T. Oge,**

*Director, Office of Mobile Sources.*

For the reasons set out in the preamble, 40 CFR Part 9 is amended as follows:

## PART 9—[AMENDED]

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

**Authority:** 7 U.S.C 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242B, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

**§ 9.1 [Amended]**

2. Section 9.1 is amended by removing entries 80.91–80.94 and 80.128–80.130.

[FR Doc. 98–19833 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY–100–1–9814a; FRL–6126–1]**

## Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP) for the general application and attainment status designations. The Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted the revisions to EPA on December 19, 1997.

The revisions to the general application rule clarify the reasonably available control technology (RACT) requirements to assure compatibility with the 1990 Clean Air Act (CAA) requirements for major sources of volatile organic compounds (VOCs) in ozone nonattainment areas. The attainment status designations regulation is being amended to make the boundaries and classifications of nonattainment areas for ozone compatible with the Federal classification. The submittal also included the transportation conformity regulation. Action on that portion of the submittal will be taken in a separate document.

**DATES:** This final rule is effective September 22, 1998 unless adverse or critical comments are received by August 24, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Karla L. McCorkle at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–100–1–9814. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Karla L. McCorkle at 404/562–9043.

**SUPPLEMENTARY INFORMATION:** On December 19, 1997, the Commonwealth of Kentucky, through the KNREPC, submitted revisions to the general application and attainment status designations portions of the Kentucky SIP to EPA. The general application section is amended to clarify the applicability and RACT determination guidelines for VOC sources in moderate and above ozone nonattainment areas. The attainment status designations rule is amended to modify the boundaries and classifications of nonattainment areas for ozone to make them compatible with Federal revised classifications. The miscellaneous rule revisions from the December 19, 1997, submittal that are being approved in this action are discussed below.

Rule 401 KAR 50:012 Section 1—This new subsection is added to clarify the RACT requirements to assure compatibility with the CAA requirements for major sources of VOC in ozone nonattainment areas. The subsection specifies the applicability and guidelines for RACT determination.

Rule 401 KAR 50:010 Section 1.3—The definition of ''road'' is added for clarification in the rule.

Rule 401 KAR 50:010 Section 2.3—The definition of ''road, junction, or intersection of two (2) or more roads'' is added to clarify a nonattainment boundary for a designated ozone nonattainment area.

Rule 401 KAR 50:010 Section 7—This section is revised to change the roads used in portions of Bullitt County and Oldham County to define the Kentucky portion of the Louisville moderate ozone nonattainment area. The Federally approved nonattainment boundary was revised on September 20, 1995 (See 60 FR 48653). This revision makes the Kentucky rule consistent with the EPA approved boundaries.

## Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally approved SIP for conformance with the provisions of the CAA amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 22, 1998 without further notice unless the Agency receives relevant adverse comments by August 24, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS–224.01–040 or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

## Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

### *B. Executive Order 13045*

The final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under Executive Order 12866.

*C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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) and 7410(k)(3).

*D. Unfunded Mandates*

Under Section 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 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 promulgated 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 approves 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. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*F. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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

## PART 52—[AMENDED]

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

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

## Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(89) to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c)

(89) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on December 19, 1997. The regulations being revised are 401 KAR 50:012 General application and 401 KAR 51:010 Attainment status designations.

(i) Incorporation by reference. Division of Air Quality regulations 401 KAR 50:012 General application and 401 KAR 51:010 Attainment status designations are effective November 12, 1997.

(ii) Other material. None.

[FR Doc. 98–19841 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY–93–9821a; FRL–6125–8]**

## Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) for the Prevention of Significant Deterioration (PSD) of air quality. The revision was submitted to EPA on March 21, 1997, by the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet. The PSD rule is revised to incorporate the Federal PSD rule revisions. The changes to the rules incorporate revisions to the ''Guidelines on Air Quality Models'' document and revise the allowable increase of particulate matter from increments for suspended particulate (TSP) to increments for particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM10). The revision also includes the Federal exclusion for pollution control projects undertaken at electric utility units.

**DATES:** This final rule is effective September 22, 1998 unless adverse or critical comments are received by August 24, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments on this action should be addressed to Karla L.

McCorkle at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–93–9821. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Karla L. McCorkle at 404/562–9043.

**SUPPLEMENTARY INFORMATION:** On March 21, 1997, the Commonwealth of Kentucky through the Kentucky Natural Resources and Environmental Protection Cabinet submitted a revision to the Prevention of Significant Deterioration (PSD) rule of the Kentucky SIP. The SIP revision proposes to incorporate the Federal PSD rule revisions. The changes to the Federal rule include a revision to the ''Guideline on Air Quality Models'' document in the PSD rules, as publicized in the **Federal Register** July 20, 1993 and August 9, 1995, revision to the PSD allowable increases to PM10 increments, as publicized in the **Federal Register** June 3, 1993, and the exclusion for pollution control projects undertaken at electric utility units as publicized in the **Federal Register** July 21, 1992. The specific rule revisions from the March 21, 1997, submittal that are being approved in this action are discussed below.

*Rule 401 KAR 51:017 Sections 1–20*—Throughout these sections, the term ''administrative'' was added before the word ''regulation'' for clarity.

*Rule 401 KAR 51:017 Section 1*—Definitions consistent with Federal definitions are added for ''clean coal technology,'' ''clean coal technology demonstration project,'' ''electric utility steam generating unit,'' ''pollution control project,'' ''reactivation of a very clean coal-fired electric utility steam generating unit,'' ''repowering,'' ''representative actual annual emissions,'' and ''temporary clean coal technology demonstration project.'' The following definitions have been amended to be consistent with the Federal rules: ''actual emissions,'' ''complete,'' ''major modification,'' and ''minor source baseline date.''

*Rule 401 KAR 51:017 Sections 6,8,21,*—Various sentence and word structure changes were made to add clarity.

*Rule 401 KAR 51:017 Section 6(3)*—This subsection was deleted because it is obsolete.

*Rule 401 KAR 51:017 Sections 1,2,8,9,11,12,18,21*—In these sections, references are amended and added for clarity.

*Rule 401 KAR 51:017 Sections 22,23,24,25*—These sections are updated to reflect changes in PSD increments from TSP to PM10.

*Rule 401 KAR 51:017 Section 8(10)*—This subsection is added to provide an exemption to the requirements of Section 10(2) for major stationary sources of PM10 that are constructing or modifying if a completed permit application was received before the effective date of the maximum allowable increases for PM10. The exemption allows the current maximum allowable increases for TSP as an alternative to that for PM10.

*Rule 401 KAR 51:017 Section 8(11)*—This subsection is added to provide an exemption to the requirements of Section 10(2). This utility exemption of the maximum allowable increases for nitrogen oxides applies to the construction or modification of a stationary source if a completed permit application was received before the effective date.

*Rule 401 KAR 51:017 Section 11(1)*—This section is updated to adopt by reference the new EPA ''Guideline on Air Quality Models.''

## Final Action

EPA is approving the aforementioned changes to the SIP. The Agency has reviewed this request for revision of the Federally approved SIP for conformance with the provisions of the CAA amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 22, 1998 without further notice unless the Agency receives relevant adverse comments by August 24, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law KRS 224.01–040 or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

## Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive

Order 12866, entitled Regulatory Planning and Review.

*B. Executive Order 13045*

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under Executive Order 12866.

*C. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a 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) and 7410(k)(3).

*C. Unfunded Mandates*

Under Section 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 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 promulgated 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 approves 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.

*D. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 19, 1998.

**A. Stanley Meiburg,**

*Regional Administrator, Region 4.*

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

## PART 52—[AMENDED]

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

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

## Subpart S—Kentucky

2. Section 52.920, is amended by adding paragraph (c)(87) to read as follows:

**§ 52.920 Identification of plan.**

* * * * *

(c) * * *

(87) Revisions to the Kentucky State Implementation Plan submitted by the Natural Resources and Environmental Protection Cabinet on March 21, 1997. The regulation being revised is 401 KAR 51:017 Prevention of significant deterioration of air quality.

(i) Incorporation by reference. Division of Air Quality regulations 401 KAR 51:017 Prevention of significant deterioration of air quality effective March 12, 1997.

(ii) Other material. None.

[FR Doc. 98–19836 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OR 48–1–7263a; FRL–6127–4]**

## Approval and Promulgation of Implementation Plans: Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** Environmental Protection Agency (EPA) approves revisions to the Oregon State Implementation Plan (SIP). EPA is approving revisions to Oregon Administrative Rules (OAR) Chapter 340, Division 25 submitted to EPA on August 31, 1995, and October 8, 1996, to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51.

**DATES:** This direct final rule is effective on September 22, 1998, without further notice, unless EPA receives relevant adverse comment by August 24, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and Oregon Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204.

**FOR FURTHER INFORMATION CONTACT:** Rindy Ramos, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553-6510.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

On August 31, 1995, the Oregon Department of Environmental Quality (ODEQ) submitted to the Environmental Protection Agency (EPA), a revision to the Oregon State Implementation Plan (SIP). This submittal contained a revision to Oregon Administrative Rules (OAR), Chapter 340, Division 25. Specifically, OAR 340–25-305, OAR 340–25–320, and OAR 340–25–325 were revised. The above revision was adopted by the state on January 20, 1995, and became state effective on February 17, 1995. The intent of this revision was to revise the particulate matter allowable emission limit.

Subsequently, on October 8, 1996, another revision to OAR 340–25–320 and OAR 340–25–325 was submitted to EPA for incorporation into the state's federally approved SIP. This revision was adopted by the state on January 12, 1996, and became state effective January 29, 1996. The purpose of this revision was to resolve a conflict between the above rules and Notice of Construction rules OAR 340–28–800 to OAR 340–28–820. EPA will discuss both submittals in this document.

## II. Background

*OAR 340–25–325*

ODEQ originally adopted, as a matter of state law, the particulate matter emission standard, OAR 340–25–325, for the hardboard industry in 1971. It became part of the federally approved SIP in 1986. The emission standard set at that time was 1.0 lb/ksf (1.0 pounds of particulate matter per 1,000 square feet of finished product). In establishing this limit, emissions from exhaust vents above the hardboard presses were assumed to be negligible and therefore were not considered in establishing the 1.0 lb/ksf emission limit. Because they were assumed to be negligible, the limit was not intended to require controls on the vents. Actual emissions from a total facility (vent and nonvent sources) were assumed to be less than 1.0 lb/ksf. However, subsequent to the state adoption of the emission standard, testing of the vents have shown that they are not negligible as originally assumed and therefore, the standard was set too low for existing plants to demonstrate compliance. To correct this matter, ODEQ has revised the rule to account for the press vents particulate matter emissions and has submitted the revised rule for inclusion in the federally approved SIP.

However, even though the actual emissions of a particular facility will not be allowed to increase, the revision will result in an increase in allowable emissions. And, because the current emission limits are part of the federally approved SIP, a demonstration that the revision will not have an adverse impact on air quality is needed.

## III. Discussion

*A. August 31, 1995 Submittal*

*1. OAR 340–25–325:* The August 1995 rule revision to OAR 340–25–325 corrects the emission limit by including press vent emissions. The revision keeps the current limit as it applies to all non-vent emissions sources at a plant and limits vent emissions at each affected plant to their baseline level or a set maximum level. The revised rule does not result in an increase in actual emissions; rather it reflects a correction allowed by OAR 340–028–1020(7)(e) when errors are found or better data is available for calculating PSELs.

The revision creates a new limit calculated from baseline [1] emissions. A plant's limit would be the sum of vent emissions and the lesser of baseline non-vent emissions or 1.0 lb/ksf (the original limit). In no case could the emission rate exceed 2.0 lb/ksf. The effect would be to hold total emissions to what they would have been at baseline had the press/cooling vents emissions been taken into account, or less if baseline non-vent emissions were greater than 1.0, or if the total exceeds 2.0 lb/ksf.

*2. OAR 340–25–305:* The August 1995 revision to OAR 340–25-305 added the definition for ''baseline vent emission rate'', clarified the definition of EPA Method 9, and added the definition for ''press/cooling vent'' to the definitions section of Chapter 340, Division 25, Statewide Rules—Board Products Industries.

*3. OAR 340–25–320:* The revision to OAR 340–25–320 was housekeeping in nature and corrected a cross referencing problem with another rule. The revision required that any person who proposed to control windblown particulate emissions from truck dump storage areas other than by enclosure, had to apply to ODEQ for authorization to utilize alternative controls. The rule was revised to require the application to be submitted pursuant to OAR 340–28–800 through 820 instead of OAR 340–20–020 through 030.

*B. October 8, 1996 Submittal*

*1. OAR 340–25–320 and 340–25–523:* The October 1996 submittal was also housekeeping in nature. OAR 340–25–320(1)(c) Particleboard Manufacturing Operations—Truck Dump and Storage Areas and OAR 340–25–325(1)(c) Hardboard Manufacturing Operations—Truck Dump and Storage Areas were revised by deleting the reference to OAR 340–28–800 to 820. A conflict existed because OAR 340–28–810(2) restricted OAR 340–28–800 through 820 from applying to federal operating permit program sources. Because the state wanted all sources to be subject to OAR 340–25-320(1)(c) and OAR 340–25–325(1)(c), reference to OAR 340–28–800 to 820 was deleted.

## IV. Sources Affected

A total of seven hardboard manufacturing plants are affected by the revision to OAR 340–25–325. Six plants are located in areas currently designated unclassified for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). One of these six plants, Collins Products LLC, is located directly outside the Klamath Falls PM–10 nonattainment area. The seventh plant, a Jeld Wen, Inc. facility is located inside the boundary of the Klamath Falls PM–10 nonattainment area.

*A. Analysis of Revision*

*1. Facilities located in areas unclassified for PM–10:* In accordance with Section 110(l) of the Clean Air Act (CAA), EPA Region 10 required either a demonstration or documentation that the PM–10 National Ambient Air Quality Standards (NAAQS) and visibility would be protected and documentation that the revision would not allow a violation of the Prevention of Significant Deterioration (PSD) requirement.

[1] Baseline vent emission rate is defined as a source's vent emissions rate during the baseline period (1977/1978) as defined in OAR 340–28–0110, expressed as pounds of emissions per thousand square feet of finished product, on a ⅛ inch basis.

Bearing in mind the original intent of the rule revision, ODEQ and the region agreed upon the following methodology: (1) for those sources which had not changed their mode of operation since baseline, the region would not require a PSD analysis instead a written justification including emission calculations would be acceptable; and (2) for those sources whose method of operation had changed since the hardboard rule was promulgated and the change resulted in emission increases above the significant threshold levels, a complete PSD analysis would be required. Sources that would be subject to a PSD analysis would also have to undergo a visibility analysis.

However, a PSD increment analysis for all affected sources would not be required. Since the press vents were in operation when baseline was established (1977/1978), and the rule revision does not allow for an increase in actual emissions, a PSD increment analysis was not required. The rule, by itself, does not allow for increment consumption.

For NAAQS purposes, the assumption is made that since these sources are not located in a nonattainment area (the areas are unclassified) and emissions from the press vents have been occurring since 1977/1978, increasing the allowable limit to reflect actual emissions would not adversely affect air quality. The information before EPA does not indicate that an air quality problem currently exists.

Visibility requirements are addressed through the fact that this revision does not allow for an increase in actual emissions above those accounted for in Oregon's long term visibility strategy. Again, as discussed above, the SIP revision only establishes allowable emissions equal to or less than baseline emissions.

*2. Facility located inside the Klamath Falls PM–10 nonattainment area:* It is EPA position that the revision to OAR 340–025–325 is subject to Section 193 of the CAA, as amended, for a source located in one of Oregon's PM–10 nonattainment areas. And therefore, the revision must demonstrate that the increase in allowable emissions will not have an adverse impact on timely attainment of the PM–10 National Ambient Air Quality Standards (NAAQS) in those areas. Also, the demonstration must ensure that emission reductions equivalent to those required by the current SIP rule are achieved. This position is based on the fact that the rule was part of the federally approved SIP before enactment of the Clean Air Act Amendments (CAAA) of 1990. The only source located inside a PM–10 nonattainment area affected by this rule revision is the Jeld Wen, Inc. facility in Klamath Falls.

On September 22, 1995, ODEQ submitted a revision to the November 15, 1991, attainment plan for the Klamath Falls PM–10 nonattainment area. This revision addressed, among other things, the above Section 193 requirement. A review of the area's attainment demonstration indicated that the increase in allowable emissions would not adversely impact air quality. The 1991 attainment plan and 1995 revision to the plan have both been approved by EPA. See 61 FR 28531 (June 5, 1996) and 62 FR 18047 (April 14, 1997) for details. It is EPA's position that the requirements of Section 193 have been satisfied.

*3. Facility located outside the Klamath Falls PM–10 nonattainment area:* One of the facilities affected by this revision, Collins Products LLC, is located outside the boundary of the Klamath Falls PM–10 nonattainment area. During assessment of the source's impact on the nonattainment area, a 1995 dispersion modeling analysis indicated that a violation of the 24-hour PM–10 NAAQS existed in an unmonitored location outside the nonattainment area boundary. To address the modeled violation, and allow EPA to approve the hardboard rule as it applies to Collins Products, Collins Products agreed to the installation of additional control devices and a reduction in permitted allowable emissions. Through the installation of three baghouses and the reduction in allowable emissions, Collins Products was able to demonstrate compliance with the 24-hour PM–10 NAAQS. The requirement to install additional control devices and the reduction in permitted emission limits have been incorporated into their Air Contaminant Discharge Permit (ACDP).[2] An addendum to their ACDP was issued on June 2, 1997. Oregon's ACDP regulations are part of the federally approved SIP and their permits are federallly enforceable. (See 40 CFR 52.1988).

*B. July 18, 1997 Revision to the PM–10 NAAQS*

On July 18, 1997, EPA revised the PM NAAQS (see 62 FR 38651). This revision changed the form of the 24-hour PM–10 standard, retained the annual standard, and added 24-hour and annual standards for PM with an aerometric mean diameter less than 2.5 micrometers (PM–2.5). Section 50.3 of 40 CFR Part 50 was also revised to remove the requirement to correct the temperature and pressure of measured PM concentrations to standard reference conditions. The revised PM NAAQS and their associated appendices became effective on September 16, 1997. However, the PM–10 NAAQS in effect before September 16, 1997, (pre-existing standard) was not revoked upon establishing the revised PM NAAQS.[3]

Additionally, it is EPA's opinion that the submittal conforms to EPA's guidance for ''Grandfathering'.[4] EPA has developed guidance on applying previously applicable standards to pending SIP revisions where the relevant requirements have changed since the state prepared the SIP submittal. The submittal conforms to the applicable CAA requirements for the pre-existing PM–10 NAAQS.

## V. Summary of Action

Section 110(l) of the CAA provides that EPA may not approve a revision to a state's SIP that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. EPA has thoroughly evaluated the above revision and is approving the revisions to OAR Chapter 340, Division 25, as submitted on August 31, 1995, and October 8, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective September 22, 1998, without further notice unless the Agency receives

[2] See letter from Gregory A. Green, Administrator Air Quality Division, ODEQ to Anita Frankel, Air Director, USEPA, Region 10 dated April 8, 1997.

[3] See memorandum dated December 27, 1997, from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to Regional Administrators entitled Guidance for Implementing the 1-Hour Ozone and Pre-existing PM10 NAAQS.

[4] See memorandum dated January 27, 1988, from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to Director, Air and Toxics Division, Region X, entitled ''Grandfathering'' of Requirements for Pending SIP Revisions.

relevant adverse comments by August 24, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 1998, and no further action will be taken on the proposed rule.

## VI. Administrative Requirements

### *A. Executive Order 12866 and 13045*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled, ''Regulatory Planning and Review'' review.

The final rule is not subject to E.O. 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks'' because it is not an ''economically significant'' action under E.O. 12866.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under Section 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 as promulgated 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 approves 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.

### *D. Submission to Congress and the Comptroller General*

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

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

### *F. Oregon's Audit Privilege Act*

Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

### *G. Oregon's Advance Notice Prior to Penalty*

In reviewing previous SIP revisions, EPA determined that because the five-day advance notice provision required by ORS 468.126(1) enacted in 1991, bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority the State must demonstrate to obtain SIP approval, as specified in Section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a 110 SIP revision.

To correct the problem, the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify the State's program from federal approval or delegation. ODEQ has responded to EPA's understanding of the application of 468.126(2)(e) and agrees that, if federal statutory

requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

**Note:** Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: July 9, 1998.

**Chuck Clarke,**

*Regional Administrator, Region 10.*

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

## PART 52—[AMENDED]

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

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

## Subpart MM—State of Oregon

2. Section 52.1970 is amended by adding paragraph (c) (126) to read as follows:

### § 52.1970 Identification of plan.

* * * * *

(c) * * *

(126) On August 31, 1995, and October 8, 1996, the Director of ODEQ submitted to the Regional Administrator of EPA revisions to its Oregon SIP: the Oregon Administrative Rules (OAR) Chapter 340, Division 25, Specific Industrial Standards (OAR 340–25–305, 320 and 325).

(i) Incorporation by reference.

(A) August 31, 1995, letter from ODEQ to EPA submitting a revision to the Oregon Administrative Rules (OAR); OAR 340–25–305, State effective on February 17, 1995.

(B) October 8, 1996, letter from ODEQ to EPA submitting a revision to the Oregon Administrative Rules (OAR); OAR 340–25–320 and OAR 340–25–325, State effective on January 29, 1996.

[FR Doc. 98–19834 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[CA–189–0078(a); FRL–6127–1]**

## Approval and Promulgation of State Implementation Plans and Redesignation of the South Coast Air Basin in California to Attainment for Nitrogen Dioxide

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on attainment and maintenance plans and a request submitted by the California Air Resources Board (CARB) to redesignate the South Coast Air Basin (South Coast) from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide ($NO_2$). Under the Clean Air Act (CAA), designations can be revised if sufficient data are available to warrant such revisions. In this action, EPA is approving the attainment and maintenance plans as revisions to the California State Implementation Plan (SIP), and EPA is also approving the State's request to redesignate the South Coast to attainment because the plans and request meet the requirements set forth in the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision and grant the redesignation request should relevant adverse comments be filed.

**DATES:** This rule is effective September 22, 1998 unless the Agency receives relevant adverse comments to the rulemaking by August 24, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments should be addressed to the EPA contact below. The rulemaking docket for this notice may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288.

**SUPPLEMENTARY INFORMATION:**

### I. Clean Air Act Requirements

Under section 109 of the CAA, EPA established primary and secondary NAAQS for $NO_2$ in 1971, and slightly revised the NAAQS in 1985.[1] The level of both the primary and secondary NAAQS is 0.053 parts per million (ppm), or 100 micrograms per cubic meter, annual arithmetic mean concentration. The standards are attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, based upon hourly data that are at least 75% complete.[2]

The Federal CAA was substantially amended in 1990 to establish new planning requirements and attainment deadlines for the NAAQS. Under section 107(d)(1)(C) of the amended Act, an area designated nonattainment prior to enactment of the 1990 amendments (as was the South Coast Air Basin) was designated nonattainment by operation of law.[3] Under section 191 of the Act, an $NO_2$ area designated nonattainment under section 107(d) was required to submit to EPA within 18 months of the

[1] See 34 FR 8186, April 30, 1971, and 50 FR 25544, June 19, 1985, codified at 40 CFR 50.11. Nitrogen dioxide is a light brown gas that can irritate the lungs and lower resistance to respiratory infections such as influenza. The principal sources of nitrogen oxides are high-temperature combustion processes, such as those occurring in motor vehicles and power plants.

[2] EPA's monitoring requirements for $NO_2$ are codified at 40 CFR 50, Appendix F. In determining whether an $NO_2$ nonattainment area has attained the NAAQS, EPA considers not only the most recent four quarters of monitored ambient air quality data available, but also the previous four quarters of monitoring data ''to assure that the current indication of attainment was not the result of a single year's data reflecting unrepresentative meteorological conditions.'' 43 FR 8962 (March 3, 1978).

[3] By the date of enactment of the 1990 amendments, the South Coast was the only remaining area in the country designated as nonattainment for $NO_2$. For a description of the boundaries of the South Coast Air Basin (also known as the Los Angeles-South Coast Air Basin Area), see 40 CFR 81.305. The nonattainment area includes all of Orange County and the non-desert portions of Los Angeles, San Bernardino, and Riverside Counties.

designation a plan meeting the requirements of Part D of the Act. Under section 192 of the Act, such plans were required to provide for attainment of the NAAQS as expeditiously as practicable but no later than 5 years from the date of designation. In addition, Section 172 of the Act contains general requirements applicable to SIPs for nonattainment areas.

The most fundamental of the CAA provisions for $NO_2$ nonattainment areas is the requirement that the State submit a SIP demonstrating attainment of the NAAQS as expeditiously as practicable but no later than the applicable CAA deadline. Such a demonstration must provide enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

EPA has issued a ''General Preamble'' describing the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The reader should refer to the General Preamble for a more detailed discussion of EPA's preliminary interpretations of Title I requirements. In this rulemaking action, EPA is applying these policies to the South Coast $NO_2$ SIP submittal, taking into consideration the specific factual issues presented.

Section 107(d)(3)(E) of the 1990 CAA Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS;
2. The area must have a fully approved SIP under section 110 of CAA;
3. The air quality improvement must be permanent and enforceable;
4. The area must have a fully approved maintenance plan pursuant to section 175A of the CAA; and
5. The area must meet all applicable requirements under section 110 and Part D of the CAA.

## II. Description of SIP Submittal

On February 5, 1997, CARB submitted as a revision to the California SIP the 1997 Air Quality Management Plan (AQMP) for the South Coast Air Basin (SCAB), Antelope Valley, and Coachella Valley, adopted by the South Coast Air Quality Management District (SCAQMD) on November 15, 1996. This submittal, which included a revised South Coast $NO_2$ attainment plan and a maintenance plan, was found to be complete on April 1, 1997, with respect to portions of the AQMP relating to $NO_2$ SIP requirements.[4] The 1997 $NO_2$ plan supersedes all prior submittals.[5] This submittal was supplemented by documentation providing information to substantiate the redesignation request. The additional documentation was submitted on March 4, 1998, and determined to be complete on May 5, 1998.

This 1997 $NO_2$ plan provides, among other things, a demonstration of attainment of the $NO_2$ NAAQS, updated historic and projected emission inventories, amended contingency measures, and corrected air quality modeling analyses using the revised inventories.

## III. EPA Review of the SIP Submittal

### *A. Attainment Plan*

1. Procedural Requirements

Both the SCAQMD and CARB have satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption of the plan. The SCAQMD conducted numerous public workshops and public hearings prior to the adoption hearing on November 15, 1996, at which the 1997 AQMP was adopted by the Governing Board of the SCAQMD (Resolution No. 96–23). On January 23, 1997, the Governing Board of CARB adopted the plan (Resolution No. 97–1). The plan was submitted to EPA by Michael P. Kenny, Executive Officer of CARB, on February 5, 1997. The SIP submittal includes proof of publication for notices of SCAQMD and CARB public hearings, as evidence that all hearings were properly noticed.

Supplemental information from the SCAQMD and a formal redesignation request by the State (Executive Order G–125–231) were formally submitted to EPA by Michael P. Kenny on March 4, 1998. The supplemental information was submitted pursuant to the resolutions by the Governing Boards of SCAQMD and CARB in adopting the 1997 AQMP.

Therefore, EPA proposes to approve the $NO_2$ plan as meeting the procedural requirements of section 110(a)(1) of the CAA.

2. Emissions Inventory

Appendix III of the 1997 AQMP includes planning emission inventories for $NO_X$ for the historical years 1987, 1990, and 1993. The plan also includes future year inventories through the year 2010, both with and without planned controls. The inventories detail emissions from all stationary and mobile source categories.

EPA emissions inventory guidance allows approval of California's motor vehicle emissions factors in place of the corresponding federal emissions factors.[6] The motor vehicle emissions factors used in the plan were generated by the CARB EMFAC7G and BURDEN7G program. The gridded inventory for motor vehicles was then produced using an updated Caltrans Direct Travel Impact Model (DTIM2) to combine EMFAC7G data with transportation modeling performed by the Southern California Association of Governments (SCAG). SCAG also provided the socioeconomic data used in the plan.

The baseline emissions inventory meets CAA requirements in that it is comprehensive, accurate, and current. EPA approves the emissions inventory portion of the plan as meeting the requirements of section 172(c)(3) of the CAA.

3. Attainment Demonstration

The 1990 CAA Amendments required the South Coast to demonstrate attainment no later than November 15, 1995.[7] The demonstration must show that emissions will be (or have been) reduced to levels at which the $NO_2$ NAAQS will not be exceeded. This means that the SIP must show that the annual arithmetic mean of $NO_2$ ambient concentrations will not exceed 0.053 ppm at any location within the nonattainment area.

The peak annual arithmetic mean concentrations for all monitoring stations in the South Coast have been

[4] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[5] The initial $NO_2$ SIP for the South Coast was adopted on April 3, 1992, and submitted on May 15,1992. EPA did not act on this plan since significant revisions to the emissions inventory and control strategy were already in progress. The plan was revised as part of a 1994 AQMP update, which was adopted on September 9, 1994, and submitted on November 15, 1994. A revision to the 1994 AQMP was adopted on April 12, 1996, and submitted on July 10, 1996. On January 8, 1997, EPA approved the portions of the 1994 AQMP (as revised in 1996) relating to ozone, including the commitments to adopt additional measures to reduce emissions of volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$).

[6] EPA's general guidance for preparing emission inventories is referenced in Appendix B to the General Preamble (57 FR 18070, April 28, 1992).

[7] The South Coast area was designated nonattainment for $NO_2$ before the date of enactment of the 1990 amendments, but the area lacked a fully approved SIP for $NO_2$. Consequently, the area was subject to the provisions of CAA section 191(b), which required submittal of an attainment plan within 18 months of enactment of the 1990 amendments (or May 15, 1992), and section 192(b), which required attainment within 5 years after the date of enactment of the amendments (or November 15, 1995).

0.0507 ppm in 1992, 0.0499 ppm in 1993, 0.0499 ppm in 1994, 0.0464 ppm in 1995, 0.0461 ppm in 1996, and 0.043 ppm in 1997. Thus, the South Coast has not exceeded the $NO_2$ NAAQS since 1991 at any of the 24 monitoring locations in the air basin.

The South Coast monitoring network is reviewed annually by CARB and EPA, and has been determined to be generally reflective of air quality throughout the air basin. Periodic CARB and EPA reviews also confirm that the data collected has met applicable Federal standards for quality assurance.

As discussed below in the description of the maintenance plan provisions, the SCAQMD has also performed modeling for key locations in the air basin to show that future $NO_2$ concentrations will remain below the NAAQS, taking credit for only those controls that were already fully adopted in regulatory form by September 30, 1996. This modeling shows a continuing decline in $NO_2$ concentrations throughout the air basin.

EPA approves the attainment demonstration portion of the plan as meeting the requirements of sections 192(b) of the CAA, since it demonstrates that the area attained the NAAQS before the applicable deadline of November 15, 1995.

4. Additional Attainment Plan Requirements

Section 172(c)(1) requires that plans provide for the implementation of all reasonably available control measures (RACMs) as expeditiously as practicable, including the adoption of reasonably available control technology (RACT). In numerous prior actions, EPA has approved $NO_X$ RACT regulations for the SCAQMD. The SCAQMD's extensive $NO_X$ regulations are generally recognized as among the most stringent and comprehensive in the nation. Therefore, EPA approves the $NO_2$ plan with respect to the RACM requirement of section 172(c)(1).

Section 172(c)(2) of the CAA requires that nonattainment area plans require reasonable further progress (RFP), which section 171(1) defines as ''annual incremental reductions in emissions of the relevant air pollutant as are required * * * for the purpose of ensuring attainment * * * by the applicable date.'' The emissions inventory data included in the 1997 AQMP and supplement show significant annual declines in $NO_X$ emissions from 1990 through the present. These reductions, derived from SCAQMD stationary and area source controls and CARB mobile source controls, were sufficient to prevent violations of the $NO_2$ NAAQS after 1991, several years before the statutory attainment deadline of 1995. Therefore, EPA approves the plan as meeting the RFP requirements of section 172(c)(2).

CAA sections 172(c)(4) and (5) require that nonattainment plans quantify emissions from major new or modified stationary sources, and include a permit program for these sources that meets the requirements of section 173. The 1997 plan's emissions inventory includes projections of emissions from new sources. EPA has previously approved the South Coast's permit program (Regulation XIII) as meeting the requirements of the CAA and EPA's New Source Review regulations. See 61 FR 64291 (December 4, 1996). Therefore, EPA approves the plan as meeting the new source requirements of sections 172(c)(4) and (5) of the CAA.

CAA section 172(c)(9) requires that nonattainment plans include contingency measures to take effect if the area fails to meet RFP or to attain by the applicable deadline. Since the area attained the $NO_2$ NAAQS before its deadline, this requirement is no longer germane. In Section III.B., below, EPA addresses the contingency measure requirement for the $NO_2$ maintenance plan.

*B. Maintenance Plan and Redesignation*

1. Attainment of the NAAQS

The supplemental information submitted on March 4, 1998, includes Attachment A, which presents a table displaying $NO_2$ annual arithmetic average values for all South Coast monitors for the period 1976 through 1996. This table indicates that the last year with an $NO_2$ violation was 1991, when the Pomona site had a 0.0550 ppm value, slightly above the 0.053 ppm NAAQS. During the most recent year shown in the submittal (1996), only 5 of 23 stations had values above 0.0400 ppm. The peak value, at the East San Fernando Valley site, was 0.0461 ppm, approximately 15% below the NAAQS. Data for 1997 entered in EPA's Aerometric Information Retrieval System (AIRS) show that air quality has improved further, with a peak concentration of 0.043 ppm for the year, almost 20% below the NAAQS. The docket for this rulemaking includes the SCAQMD data summary and the AIRs data for 1997.

The South Coast more than meets applicable EPA redesignation requirements for $NO_2$, since the area has reached and then sustained attainment by having had no exceedances of the NAAQS for 6 complete, consecutive calendar years.

2. Approval of the Applicable Implementation Plan

As set forth in Section III.A. above, this criterion for redesignation is satisfied because the $NO_2$ plan for the South Coast is fully approved.

3. Improvement in Air Quality Due to Permanent and Enforceable Measures

Redesignation to attainment requires that the improvements in air quality must be shown to have occurred because of enforceable controls, rather than as a result of temporary economic conditions or favorable meteorology. The South Coast $NO_X$ emissions inventory shows increases in activity levels for most of the significant categories (including motor vehicle use) during the years with no $NO_2$ violations. This shows that the reductions in $NO_X$ emissions are not due to an economic recession, but are associated with the impact of permanent and enforceable CARB controls on mobile source emissions and SCAQMD regulations on stationary and area sources. Fleet turnover and progressively more stringent CARB requirements for future year vehicles and engines are expected to sustain this continuing decline in areawide $NO_X$ emissions, despite projected growth. Therefore, this redesignation criterion is met.

4. Fully Approved Maintenance Plan

Section 175A of the CAA requires States to submit maintenance plans for areas eligible for redesignation to attainment. The maintenance plan must include four elements: an emissions inventory, a demonstration that the NAAQS will be maintained for at least 10 years from the date of redesignation, contingency measures, and a commitment to submit a revised maintenance SIP eight years after the area is redesignated to attainment.

*a. Emissions inventory.* As discussed above, the 1997 plan includes baseline inventory data for 1987, 1990, and 1993, and thus covers the period associated with attaining the NAAQS, as required for maintenance plans.[8]

As discussed above in Section II, the emission inventories meet applicable inventory requirements and EPA also approves the inventory portions of the plan under section 175A.

*b. Demonstration of maintenance.* For the maintenance demonstration, the plan must either demonstrate that the future year inventory will not exceed the inventory that existed at the time of the request for redesignation, or include a modeling analysis showing that the

[8] See, for example, the General Preamble at 57 FR 13563 (April 16, 1992).

future mix of emissions, assuming existing SIP controls, will not cause violations of the NAAQS.

The 1997 $NO_2$ plan projects baseline emissions to 2010. The table below, labeled ''South Coast $NO_X$ Emissions,'' shows the decline in $NO_X$ emissions from 1993 through 2010, assuming no new control measures. Projections are made for Pomona because that area has generally experienced the highest measured annual $NO_2$ concentrations in the air basin.

SOUTH COAST $NO_X$ EMISSIONS IN TONS PER WINTER DAY FOR THE SOUTH COAST AIR BASIN AND THE POMONA AREA

[1997 AQMP, Appendix V, Table 1–1]

| Year | SCAB | Pomona |
|---|---|---|
| 1993 | 1284 | 36.7 |
| 2000 | 960 | 28.0 |
| 2010 | 759 | 21.9 |

The SCAQMD also employed a linear rollback modeling approach, assuming that ambient concentrations are directly proportional to emissions in adjacent areas. The analysis used $NO_2/NO_X$ ratios averaged over the period 1992–4 for each site. The results of this modeling analysis show annual average $NO_2$ concentrations for a 2010 baseline scenario, assuming reductions only from existing regulations. At the peak site (Pomona), the projected concentration is approximately 0.030 ppm, more than 45% below the NAAQS.

*c. Contingency measures.* Maintenance plans for attainment areas must include contingency provisions, or extra measures beyond those needed for attainment, to offset any unexpected increase in emissions and ensure that the standard is maintained (175(A)(d)). Typically, contingency measures are held in reserve and implemented only if an area violates the standard in the future. However, the California SIP already includes fully adopted regulations which will generate (as shown above) reductions in $NO_X$ emissions in future years that will provide an ample margin of safety to ensure maintenance of the standard and to provide adequate additional reductions to cover the contingency requirements. These regulations include the California motor vehicle and fuels program, California and Federal requirements for nonroad vehicles and engines, and SCAQMD ''declining cap'' regulations for stationary sources: Rule 1135—Emissions of Oxides of Nitrogen from Electric Power Generating Systems, and Regulation XX—Regional Clean Air Incentives Market (RECLAIM). In addition, in acting on the 1994 ozone SIP for the South Coast, EPA has approved and made federally enforceable commitments by SCAQMD and CARB to adopt further stationary and mobile source controls on $NO_X$ emissions. These controls are scheduled to achieve more than 150 tons per day in reductions of $NO_X$ emissions in the South Coast by the year 2010.[9] Therefore, EPA approves the contingency measure provisions under section 175A, based on the regulations and enforceable commitments that have already been incorporated into the SIP.

*d. Subsequent maintenance plan revisions.* In accordance with section 175A(b) of the CAA, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years. In California, nonattainment areas must update their plans every 3 years to meet State law requirements, so even more frequent updates to the maintenance plan are expected.

*e. Approval of the maintenance plan and redesignation request.* EPA approves under section 110(k)(3) of the CAA the South Coast $NO_2$ maintenance plan as meeting the requirements of sections 110 and 175A of the CAA. Since all of the CAA section 107(d)(3)(E) redesignation requirements have been met, EPA grants the request of the State to redesignate the South Coast Air Basin to attainment for the $NO_2$ NAAQS.

## IV. EPA Final Action

Under CAA section 110(k)(3), EPA approves the South Coast $NO_2$ plan portion of the 1997 AQMP as meeting the requirements of CAA sections 110, 172, and 192 with respect to the nonattainment plan requirements, and the requirements of CAA sections 110 and 175A with respect to the maintenance plan requirements. EPA is redesignating the South Coast to attainment for $NO_2$ under CAA section 107.

EPA is taking these actions without prior proposal because the Agency views this as noncontroversial and anticipates no adverse comments. However, if EPA receives relevant adverse comments by August 24, 1998, then EPA will publish a document that withdraws the rule and informs the public that the rule will not take effect. EPA will then address those comments in a final action based upon the proposed rule, which appears as a separate document in the proposed rules section of this **Federal Register** publication. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 1998, and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small business, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA, do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995

[9] See 62 FR 1150–1187 (January 8, 1997), EPA's final approval of the California ozone SIPs, which lists the federally approved CARB and SCAQMD measures, along with both the VOC and $NO_X$ reductions associated with the measures for each ozone milestone year through 2010 (1999, 2002, 2005, 2008, and 2010).

(''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 also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. § 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

*F. Executive Order 13045*

The final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under E.O. 12866.

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

Environmental protection, Air pollution control, Nitrogen dioxide, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Reporting and recordkeeping requirements.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: July 8, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

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

## PART 52—[AMENDED]

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

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

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(247)(i)(A)(*2*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(*2*) Nitrogen dioxide attainment plan and maintenance plan, as contained in the South Coast 1997 Air Quality Management Plan, adopted on November 15, 1996.

* * * * *

## PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.305, the table for California—$NO_2$ is amended by revising the entry for ''South Coast Air Basin'' to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA—$NO_2$

| Designated Area | Does not meet primary standards | Cannot be classified or better than national standards |
|---|---|---|
| * * * * * | * | * |
| South Coast Air Basin | | X |
| * * * * * | * | * |

* * * * *

[FR Doc. 98–19838 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

**[Docket No. FEMA–7692]**

## Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

### Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

### Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

| State/location | Community No. | Effective date of eligibility | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region I** | | | | |
| Maine: | | | | |
| Harpswell, town of, Cumberland County | 230169 | July 15, 1975, July 3, 1985, July 20, 1998, Emerg; Reg; Susp. | July 20, 1998 .... | July 20, 1998. |
| Phippsburg, town of, Sagadahoc County | 230120 | July 29, 1975, August 5, 1986, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Sanford, town of, York County ..... | 230156 | February 24, 1975, March 4, 1985, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Rhode Island: Portsmouth, town of, Newport County. | 445405 | July 30, 1971, August 24, 1973, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region II** | | | | |
| New Jersey: North Wildwood, city of, Cape May County. | 345308 | July 24, 1970, March 5, 1971, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| New York: | | | | |
| Manorhaven, village of, Nassau County | 360479 | December 26, 1974, June 1, 1983, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| North Hempstead, town of, Nassau County. | 360482 | December 17, 1971, April 15, 1977, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Port Washington North, village of, Nassau County. | 361562 | December 4, 1974, July 5, 1983, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Sands Point, village of, Nassau County | 360492 | December 18, 1974, June 15, 1983, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Virgin Islands: St. Croix ..... | 780000 | October 6, 1975, October 15, 1980, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region III** | | | | |
| Maryland: Somerset County, unincorporated areas. | 240061 | May 8, 1975, June 15, 1981, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Virginia: | | | | |
| Northumberland County, unincorporated areas. | 510107 | October 9, 1973, July 4, 1989, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Richmond, independent city ..... | 510129 | August 29, 1973, June 15, 1979, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region IV** | | | | |
| Florida: | | | | |
| Collier County, unincorporated areas ..... | 120067 | July 10, 1970, September 14, 1979, July 20, 1998 Emerg; Reg; Susp. | .....do ..... | Do. |
| Santa Rosa County, unincorporated areas. | 120274 | August 28, 1970, October 14, 1977, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| North Carolina: | | | | |
| Alexander County, unincorporated areas | 370398 | July 23, 1990, February 1, 1991, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Wrightsville Beach, town of, New Hanover County. | 375361 | June 12, 1970, November 6, 1970, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region VI** | | | | |
| Arkansas: Pulaski County, unincorporated areas. | 050179 | March 6, 1979, July 16, 1981, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region VII** | | | | |
| Missouri: Franklin, city of, Howard County .... | 290482 | July 7, 1975, March 2, 1983, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region VIII** | | | | |
| Wyoming: Rock Springs, city of, Sweetwater County. | 560051 | September 1, 1972, July 16, 1979, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| **Region X** | | | | |
| Idaho: | | | | |
| Bellevue, city of, Blaine County ..... | 160021 | May 29, 1975, August 1, 1978, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |
| Blaine County, unincorporated areas ..... | 165167 | May 14, 1971, March 16, 1981, July 20, 1998, Emerg; Reg; Susp. | .....do ..... | Do. |

Code for reading third column: Emerg;—Emergency; Reg;—Regular; Rein.—Reinstatement; Susp—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: July 16, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98–19817 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–05–P

# Proposed Rules

Federal Register
Vol. 63, No. 142
Friday, July 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 981

**[Docket No. FV98–981–2 PR]**

### Almonds Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from $0.02 to $0.025 per pound established for the Almond Board of California (Board) under Marketing Order No. 981 for the 1998–99 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California. Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by August 24, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Diane Purvis, Marketing Assistant, and Martin J. Engeler, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, CA 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California almond handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Board for the 1998–99 and subsequent crop years from $0.02 per pound to $0.025 per pound.

The California almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent crop years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on June 4, 1998, and unanimously recommended 1998–99 expenditures of $13,049,437 and an assessment rate of $0.025 per pound of almonds. In comparison, last year's budgeted expenditures were $11,333,876. The assessment rate of $0.025 is $.005 higher than the rate currently in effect. The higher rate is needed primarily because of a smaller crop this year. The 1997–98 crop was initially estimated at 681,600,000 pounds compared to 528,000,000 pounds estimated for the 1998–99 crop year. The higher assessment rate, when combined with other revenue sources, would generate adequate revenue to fund the recommended programs. The Board also recommended to continue the credit-back program whereby handlers could receive credit for their own promotional activities of up to $0.0125 per pound against their assessment obligation. Handlers not

participating in this program would remit the entire $0.025 to the Board.

The major expenditures recommended by the Board for the 1998–99 crop year include $4,500,000 for paid generic advertising, $2,500,000 for other domestic promotion programs, $1,495,000 for international promotion, $1,144,842 for salaries, $700,000 for nutrition research, $548,207 for production research, $155,000 for market research, $125,000 for travel, $124,700 for quality control programs, $100,700 for crop estimates, and $100,000 for compliance audits.

Comparable expenditures recommended by the Board for the 1997–98 crop year were $3,408,000 for paid generic advertising, $3,174,000 for other domestic promotion programs, $794,043 for international promotion, $881,534 for salaries, $695,000 for nutrition research, $568,679 for production research, $125,000 for market research, $90,000 for travel, $152,175 for quality control programs, $95,400 for crop estimates, and $92,500 for compliance audits.

The assessment rate recommended by the Board was derived by considering anticipated expenses and production levels of California almonds, and additional pertinent factors. In its recommendation, the Board utilized an estimate of 528,000,000 pounds of assessable almonds for the 1998–99 crop year. If realized, this would provide estimated assessment revenue of $6,600,000 from all handlers, and an additional $3,630,000 from those handlers who do not participate in the credit-back program, for a total of $10,230,000. In addition, it is anticipated that $2,819,437 would be provided by other sources, including interest income, Market Access Program reimbursement from the Department for international promotion activities, revenue generated from the Board's annual research conference, miscellaneous income, funds derived from the Board's authorized monetary reserve, and a grant from the State of California. When combined, revenue from these sources would be adequate to cover budgeted expenses. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year. Funds in the reserve at the end of the 1998–99 crop year are estimated to be approximately $3,500,000, which is within the maximum of approximately six months budgeted expenses as permitted by the order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 1998–99 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 7,000 producers of almonds in the production area and approximately 102 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, about 57 percent of the handlers ship under $5,000,000 worth of almonds and 43 percent ship over $5,000,000 worth of almonds on an annual basis. In addition, based on reported acreage, production, and grower prices, and the total number of almond growers, the average annual grower revenue is estimated to be approximately $160,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of California almonds may be classified as small entities.

This rule would increase the assessment rate established for the Board and collected from handlers for the 1998–99 and subsequent crop years from $0.02 per pound to $0.025 per pound. The Board unanimously recommended the increased assessment rate, and 1998–99 expenditures of $13,049,437. The proposed assessment rate of $0.025 is $0.005 higher than the current rate. The quantity of assessable almonds for the 1998–99 crop year is estimated at 528,000,000 pounds. Income from assessments and other sources is expected to generate sufficient revenue to fund this year's expenses. Any unexpended funds from the 1998–99 crop year may be carried over to cover expenses during the succeeding crop year.

The higher assessment rate is needed primarily because of a smaller crop this year. The 1997–98 assessable crop was initially estimated at 681,600,000 pounds, compared to 528,000,000 for the 1998–99 crop year. The higher assessment rate would help generate adequate revenue to fund the recommended programs.

The Board reviewed and unanimously recommended 1998–99 expenditures of $13,049,437, compared to $11,333,876 budgeted for the 1997–98 crop year. The major expenditures recommended by the Board for the 1998–99 crop year include $4,500,000 for paid generic advertising, $2,500,000 for other domestic promotion programs, $1,495,000 for international promotion, $1,144,842 for salaries, $700,000 for nutrition research, $548,207 for production research, $155,000 for market research, $125,000 for travel, $124,700 for quality control programs, $100,700 for crop estimates, and $100,000 for compliance audits.

Comparable expenditures recommended by the Board for the 1997–98 crop year were $3,408,000 for paid generic advertising, $3,174,000 for other domestic promotion programs, $794,043 for international promotion, $881,534 for salaries, $695,000 for nutrition research, $568,679 for production research, $125,000 for market research, $90,000 for travel, $152,175 for quality control programs, $95,400 for crop estimates, and $92,500 for compliance audits.

Prior to arriving at the recommended expenditure level and assessment rate, the Board considered alternatives and ultimately concurred on the recommended programs and expenditure level, and determined a rate of $0.025 would be necessary to generate adequate revenue to fund the recommended programs.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1998–99 season could range between $1.50 and $2.00 per pound of almonds. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .97 and 1.3 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California almond industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 4, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 crop year begins on August 1, 1998, and the marketing order requires that the rate of assessment for each crop year apply to all assessable almonds handled in such crop year; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting.

**List of Subjects in 7 CFR Part 981**

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be amended as follows:

## PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 981.343 is proposed to be revised to read as follows:

**§ 981.343 Assessment rate.**

On and after June 4, 1998, an assessment rate of $0.025 per pound is established for California almonds. Of the $0.025 assessment rate, $0.0125 per assessable pound is available for handler credit-back.

Dated: July 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–19888 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 987

**[Docket No. FV98–987–1 PR]**

## Domestic Dates Produced or Packed in Riverside County, CA; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate from $0.0556 to $0.10 per hundredweight established for the California Date Administrative Committee (Committee) under Marketing Order No. 987 for the 1998–99 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 22, 1998.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Diane Purvis, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning on October 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection

with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent crop years from $0.0556 per hundredweight to $0.10 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on June 4, 1998, and unanimously recommended 1998–99 expenditures of $80,000 and an assessment rate of $0.10 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $60,000. The assessment rate of $0.10 is $0.0444 higher than the rate currently in effect. The higher assessment rate is needed to offset an expected reduction in funds available to the Committee from the sale of cull dates. Proceeds from such sales are deposited into the surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

The Committee expects to apply $40,000 of surplus account monies to cover surplus pool expenses during 1997–98. Based on a recent trend of declining sales of cull dates over the past few years, the Committee expects the surplus pool share of expenses during 1998–99 to be $30,000, or $10,000 less than expected during 1997–98. Hence, the revenue available from the surplus pool to cover Committee expenses during 1998–99 is expected to be 25 percent less than last year. To offset this reduction in income, the Committee recommended increasing the assessment rate and using $20,000 from its administrative reserves to fund the 1998–99 budget.

The major expenditures recommended by the Committee for the 1998–99 year include $32,100 in salaries and benefits, $20,000 in office administration, and $23,990 in office expenses. Office administration includes $16,000 towards the salary for a new compliance officer position. Budgeted expenses for these items in 1997–98 were $37,627 in salaries and benefits and $18,507 in office expenses.

The assessment rate recommended by the Committee was derived from applying the following formula where:

A = 1998–99 surplus account ($30,000);
B = amount taken from administrative reserves ($20,000);
C = 1998–99 expenses ($80,000);
D = 1998–99 expected shipments (300,000 hundredweight);
$(C - (A + B)) \div D$ = $0.10 per hundredweight.

Estimated shipments should provide $30,000 in assessment income. Income derived from handler assessments, the surplus account (which contains money from cull date sales), and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $20,000 by September 30, 1998, and therefore would be less than the maximum permitted by the order (not to exceed 50% of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 135 producers of dates in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. The majority of California date producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent crop years from $0.0556 per hundredweight to $0.10 per hundredweight of assessable dates handled. The Committee unanimously recommended 1998–99 expenditures of $80,000 and an assessment rate of $0.10 per hundredweight. The proposed assessment rate of $0.10 is $0.0444 higher than the 1997–98 rate. The quantity of assessable dates for the 1998–99 crop year is estimated at 300,000 hundredweight. Thus, the $0.10

rate should provide $30,000 in assessment income and, in conjunction with other funds available to the Committee, be adequate to meet this year's expenses. Funds available to the Committee include income derived from assessments, the surplus account (which contains money from cull date sales), and the administrative reserves.

The higher assessment rate is needed to offset an expected reduction in funds available to the Committee from the sale of cull dates to non-human food product outlets. Proceeds from such sales are deposited into the surplus account for subsequent use by the Committee. Last year, the Committee applied $40,000 to the budget from the sale of cull dates as the surplus account's share of Committee expenses. Based on a trend of declining sales of cull dates over the past few years, this year the Committee expects to only be able to apply $30,000 (25 percent less) to the budget from the sale of cull dates.

The Committee reviewed and unanimously recommended 1998–99 expenditures of $80,000 which included increases in salaries and benefits and administrative expenses. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not fund a compliance officer position, but determined that expenditures for the position were necessary to promote compliance with program requirements. The assessment rate of $0.10 per hundredweight of assessable dates was then determined by applying the following formula where:

A = 1998–99 surplus account ($30,000);
B = amount taken from administrative reserves ($20,000);
C = 1998–99 expenses ($80,000);
D = 1998–99 expected shipments (300,000 hundredweight);
$(C - (A + B)) \div D = \$0.10$ per hundredweight.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 1998–99 season could range between $30 and $75 per hundredweight of dates. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue would be less than one percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 4, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule.

### List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

## PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 987.339 is proposed to be revised to read as follows:

**§ 987.339 Assessment rate.**

On and after October 1, 1998, an assessment rate of $0.10 per hundredweight is established for California dates.

Dated: July 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–19887 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 236

**[INS No. 1906–98]**

**RIN 1115–AFO5**

## Processing, Detention, and Release of Juveniles

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization (Service) regulations by establishing the procedures for processing juveniles in Service custody. The new rule sets guidelines for the release of juveniles from custody and the detention of unreleased juveniles in state-licensed programs and detention facilities. The rule also governs the transportation and transfer of juveniles in Service custody.

**DATES:** Written comments must be submitted on or before September 22, 1998.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1906–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** John J. Pogash, Headquarters Juvenile Coordinator, Immigration and Naturalization Service, 425 I Street, NW. Room 3008, Washington, DC 20536, telephone (202) 514–1970.

**SUPPLEMENTARY INFORMATION:**

### Background

*What is the basis for the proposed rule?*

The Service has settled *Flores* v. *Reno,* the class-action lawsuit filed as a challenge to the Service's policies on the detention, processing, and release of juveniles. Although certain aspects of the lawsuit were won previously by either the plaintiffs or the Service, the parties resolved the remaining aspects in a comprehensive settlement that addressed juvenile processing, transport, release, and detention. The substantive terms of the settlement form the basis for the proposed rule.

*Has there been any previous opportunity to comment on the terms of the proposed rule?*

The parties to the *Flores* v. *Reno* lawsuit provided the plaintiff class, composed of all juveniles in Service custody, a 30-day opportunity to object to the terms of the settlement agreement. In the absence of any objection, the federal court approved the terms of the settlement agreement, which now forms the basis for the proposed rule.

**Explanation of Changes**

*What changes are being made to the regulations?*

The proposed rule establishes the framework for the processing, release, and detention of juveniles in Service custody. The proposed rule revises § 236.3. The section is redesignated: ''§ 236.3 Processing, detention, and release of juveniles.''

The rule maintains the substance of former sections § 242.24(f), (g), and (h) regarding notice to parents of juveniles' applications for relief, voluntary departure, and the notice and request for disposition. The language of former § 242.24(g) and (h) has been amended and redesignated as, respectively, paragraphs (c)(3) and (c)(2) of this section. The rule amends those provisions to conform more accurately to the terms of the federal court's ruling in *Perez-Funez* v. *District Director*, 619 F. Supp. 656 (C.D. Cal. 1985). The court's decision in that case required the Service, prior to offering voluntary departure from the United States in lieu of deportation, to provide a simplified rights advisal to each juvenile who was unaccompanied by a natural or lawful parent when taken into custody. (The court also required the Service to provide other safeguards, such as the opportunity to place telephone calls to family members, friends, or legal representatives prior to being offered voluntary departure. The Service previously implemented those safeguards at former § 242.24(g) and now maintains them in paragraph (c)(3) of this section.) The required rights advisal is incorporated into the Form I–770, Notice of Rights and Request for Disposition. This form explains the minor's rights to make telephone calls, to be represented by an attorney, and to have a removal hearing. Although the Form I–770 accurately states that the proper recipients of the form are those juveniles who are unaccompanied by a natural or lawful parent, the former regulation at § 242.24(g) and (h) was overly broad in stating that the Service should apply the voluntary departure procedures to any juvenile alien apprehended by the Service. Therefore, the proposed rule amends the regulatory language to comport with the court's ruling in *Perez-Funez* and the instructions on the Form I–770.

Similarly, the rule proposes to amend the former language of § 242.24(h) to make it clear that the Service must serve the Notice of Rights (Form I–770) only upon those juveniles who are not ''arriving aliens'' as defined at § 1.1(q). That section defines an ''arriving alien'' as ''an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. . . .'' The amended language in paragraph (c)(2) of this section accurately reflects that section 240B of the Immigration and Nationality Act (the Act) explicitly states that voluntary departure is not available to ''an alien who is arriving in the United States.'' The proposed rule's amended language will avoid any confusion caused by the Service of the Form I–770 on an arriving alien juvenile.

Adding new regulatory language on the detention and release of juveniles in custody, the proposed rule provides that the Service shall place detained juveniles in the least restrictive setting appropriate to the juvenile's age and circumstances, so long as the placement is consistent with the need to protect the well-being of the juvenile or others and to ensure the juvenile's presence before the Service or the immigration court. The Service will separate unaccompanied juveniles from unrelated adults in detention. If the Service does not release the juvenile immediately, the Service will hold the juvenile temporarily in a Service facility having separate accommodations for juveniles, or in a juvenile detention facility having separate accommodations for non-delinquent juveniles, pending placement in a state-licensed residential program.

The rule provides that if detention of the juvenile is not necessary to protect the juvenile or others, or to ensure that he or she will appear in immigration court, the Service shall release him or her to a custodian meeting certain qualifications. The custodian will be required to sign an agreement to perform several duties, including providing for the juvenile's needs and ensuring the juvenile's presence in immigration court. The Service may require a suitability assessment and a home visit prior to releasing a juvenile to a custodian.

If a juvenile is to remain in Service custody pending the completion of his or her immigration court proceedings, the Service shall place the juvenile in a State-licensed residential program. The rule requires the Service to place juveniles in such programs within given time periods, depending on the circumstances of the case.

The Service may place certain juveniles in more secure detention. If a juvenile has committed a crime or a juvenile delinquent offense, has committed or threatened to commit violent acts, has engaged in disruptive behavior, is an escape risk, or is in danger, the Service may place him or her in a juvenile detention facility or a Service facility having separate accommodations for juveniles.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule addresses only government operations. It places no new obligations on small entities or other private individuals or businesses.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

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

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and

Naturalization Service, to a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and has not been reviewed by the Office of Management and Budget.

**Executive Order 12612**

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

**List of Subjects in 8 CFR Part 236**

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 236 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

1. The authority citation for part 236 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; 8 CFR part 2.

2. Section 236.3 is revised to read as follows:

### § 236.3 Processing, detention, and release of juveniles.

(a) *Definitions.* As used in this part, the term: *Chargeable* means that the Service has reasonable grounds to believe that the individual has committed a specified offense.

*Escape-risk* means that there is a serious risk that the juvenile will attempt to escape from custody. Factors to consider when determining whether a juvenile is an escape-risk include, but are not limited to, whether:

(i) The juvenile is currently under a final order of removal, deportation or exclusion;

(ii) The juvenile's immigration history includes: a prior breach of a bond; a failure to appear before the Service or the immigration court; evidence that the juvenile is indebted to organized smugglers for his or her transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of removal, deportation, or exclusion;

(iii) The juvenile has previously absconded or attempted to abscond from Service custody.

*Juvenile* means a person under the age of 18 years. However, individuals who have been emancipated by a state court or convicted and incarcerated for a criminal offense as an adult are not considered juveniles. Such individuals must be treated as adults for all purposes, including confinement and release on bond. Similarly, if a reasonable person would conclude that an individual is an adult despite his or her claims to be a juvenile, the Service shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The Service may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the Service subsequently determines that such an individual is a juvenile, he or she will be treated as a juvenile for all purposes.

*Licensed program* means any program, agency, or organization licensed by an appropriate state agency and contracted by the Service to provide residential, group, or foster care services for dependent juveniles. The term may include a program operating group homes, foster homes, or facilities for juveniles with special needs, i.e., mental and/or physical conditions requiring special services and treatment by staff. When possible, the Service shall place juveniles having special needs in licensed programs with juveniles without special needs. All homes and facilities operated by licensed programs shall be non-secure as required under state law. All licensed programs must also meet the standards for program content imposed by the Service.

*Medium security facility* means a state-licensed facility that is designed for juveniles who require close supervision but not secure detention. Such a facility provides 24-hour awake supervision and maintains stricter security measures, such as intense staff supervision, than a licensed program. It may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities. A medium security facility must also meet the standards for program content imposed on licensed programs by the Service.

*Secure facility* means a state or county juvenile detention facility or a Service or Service-contract facility that has separate accommodations for juveniles.

(b) *General policy.* The Service will place each detained juvenile in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to ensure the juvenile's timely appearance before the Service or the immigration court and to protect the juvenile's well-being and that of others. Service officers are not required to release a juvenile to any person or agency who they have reason to believe may harm or neglect the juvenile or fail to present him or her before the Service or the immigration court when requested to do so.

(c) *Processing.* (1) *Current list of counsel.* Every juvenile placed in removal proceedings under section 240 of the Act shall be provided a current list of *pro bono* counsel prepared pursuant to section 239(b)(2) of the Act.

(2) *Notice of rights and request for disposition.* When the Service apprehends a juvenile alien who is not an arriving alien and who is unaccompanied by a natural or lawful parent, the Service shall promptly give him or her a Form I–770, Notice of Rights and Request for Disposition. If the juvenile is less than 14 years of age or is unable to understand the Form I–770, it shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure, a new Form I–770 shall be given to, and signed by, the juvenile.

(3) *Voluntary departure.* Each juvenile who is apprehended in the immediate vicinity of the border while unaccompanied by a natural or lawful parent, and who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form, that he or she may make a telephone call to a parent, close relative, friend, or an organization found on the current list of *pro bono* counsel. Each other juvenile who is unaccompanied by a natural or lawful parent shall be provided access to a telephone and must, in fact, communicate with either a parent, adult relative, friend, or an organization found on the current list of *pro bono* counsel prior to presentation of the voluntary departure form. If such juvenile, of his or her own volition, asks to contact a consular officer and does, in fact, make such contact, the requirements of this section are satisfied.

(4) *Notice of right to bond redetermination and judicial review of placement.* A juvenile charged under

section 237 of the Act and placed in removal proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the juvenile indicates on the Form I–286, Notice of Custody Determination, that he or she refuses such a hearing. A juvenile who is not released shall be provided a written explanation of the right to judicial review of his or her placement.

(5) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal where it appears that the grant of such relief may effectively terminate some interests inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(d) *Custody.* (1) *Placement immediately following arrest.* Following a juvenile's arrest, the Service will provide adequate supervision to protect the juvenile from others and will permit contact with family members who were arrested with the juvenile. The Service will separate unaccompanied juveniles from unrelated adults. Where such segregation is not immediately possible, an unaccompanied juvenile will not be detained with an unrelated adult for more than 24 hours.

(2) *Temporary placement.* If the juvenile is not immediately released from custody under paragraph (e) of this section, and no licensed program is available to care for him or her, the juvenile may be placed temporarily in a secure facility, provided that it separates non-delinquent juveniles in Service custody from delinquent offenders.

(3) *Placement in licensed programs.*

(i) Juveniles who remain in Service custody pending the conclusion of their immigration court proceedings must be placed in a licensed program within:

(A) Three calendar days if the juvenile was apprehended in a Service district in which a licensed program is located and has space available;

(B) Five business days if the juvenile must be transported from remote areas for processing or speaks an unusual language requiring a special interpreter for processing; or

(C) Five calendar days in all other cases.

(ii) These time requirements shall not apply, however, if a court decree or court-approved settlement requires otherwise, or an emergency or influx of juveniles into the United States prevents compliance, in which case all juveniles should be placed in licensed programs as expeditiously as possible. For purposes of this paragraph, the term *emergency* means an act or event (such as a natural disaster, facility fire, civil disturbance, or medical emergency) that prevents timely placement of juveniles. The phrase *influx of juveniles into the United States* means any time at which the Service has more than 130 juveniles eligible for placement in licensed programs, including those already so placed and those awaiting placement.

(4) *Secure and supervised detention.* Notwithstanding paragraph (d)(3) of this section, a juvenile may be held in or transferred to a secure facility, whenever the district director or chief patrol agent determines that the juvenile;

(i) Has been charged with, is chargeable, or has been convicted of a crime, or is the subject of juvenile delinquency proceedings, is chargeable with a delinquent act, or has been adjudicated delinquent, unless the juvenile's offense is:

(A) An isolated offense that was not within a pattern of criminal activity and did not involve violence against a person or the use or carrying of a weapon (such as breaking and entering, vandalism DUI, etc.); or

(B) A petty offense, which is not considered grounds for stricter means of detention in any case (such as shoplifting, joy riding, disturbing the peace, etc.);

(ii) Has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or herself or others) while in Service legal custody or while in the presence of a Service officer;

(iii) Has engaged in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the juvenile or others, as determined by the staff of the licensed program (such as drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) Is an escape-risk; or

(v) Must be held in a secure facility for his or her own safety, such as when the Service has reason to believe that a smuggler would abduct or coerce a particular juvenile to secure payment of smuggling fees.

(5) *Alternatives.* The Service will not place a juvenile in a secure facility pursuant to paragraph (d)(4) of this section if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program.

(6) *Approval and notice.* All determinations to place a juvenile in a secure facility will be reviewed and approved by the Service regional Juvenile Coordinator. Service officers must also provide any juvenile not placed in a licensed program with written notice of the reasons for housing the juvenile in a secure or medium-security facility.

(7) *Service custody.* All juveniles not released under paragraph (e) of this section remain in the legal custody of the Service and may only be transferred or released under its authority; provided, however, that in the event of an emergency, a licensed program may transfer temporary physical custody of a juvenile prior to securing permission from the Service but shall notify the Service of the transfer as soon as is practicable, but in all cases within 8 hours.

(e) *Release.* If the Service determines that detention of a juvenile is not required to secure timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others, the Service shall release the juvenile from custody, in the following order of preference, to:

(1) A parent;

(2) A legal guardian;

(3) An adult relative (brother, sister, aunt, uncle, or grandparent);

(4) An adult individual or entity designated by the parent or legal guardian as capable and willing to care for the juvenile's well-being in:

(i) A declaration signed under penalty of perjury before an immigration or consular officer, or

(ii) Such other documentation that establishes to the satisfaction of the Service, in its discretion, that the person who is designating the custodian is, in fact, the juvenile's parent or guardian;

(5) A program, agency, or organization licensed by an appropriate state agency to provide residential services to dependent juveniles, when it is willing to accept legal, as opposed to simply physical, custody; or

(6) An adult individual or entity seeking custody, in the discretion of the Service, when it appears that there is no other likely alternative to long-term detention and family reunification does not appear to be a reasonable possibility.

(f) *Agreements between the Service and a custodian.* (1) *Certification of custodian.* Before a juvenile is released from Service custody, the custodian must execute Form I–134, an Affidavit of Support, and an agreement to:

(i) Provide for the juvenile's physical, mental, and financial well-being;

(ii) Ensure the juvenile's presence at all future proceedings before the Service and the immigration court;

(iii) Notify the Service of any change of address within 5 days following a move;

(iv) Not transfer custody of the juvenile to another party without the prior written permission of the district director, unless the transferring custodian is the juvenile's parent or legal guardian;

(v) Notify the Service at least 5 days prior to the custodian's departure from the United States, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of removal; and

(vi) Notify the Service of the initiation of any State court dependency proceedings involving the juvenile and the State dependency court of any immigration proceedings pending against the juvenile.

(2) *Emergency transfer of custody.* In an emergency, a custodian may transfer temporary physical custody of a juvenile prior to securing permission from the Service, but must notify the Service of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an ''emergency'' include the serious illness of the custodian or destruction of the home. In all cases where the custodian seeks written permission for a transfer, the district director shall promptly respond to the request.

(3) *Termination of custody arrangements.* The Service may terminate the custody arrangements and assume custody of any juvenile whose custodian fails to comply with the agreement required by paragraph (f)(1) of this section. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the Service of any change of address within 5 days following a move.

(g) *Suitability assessment.* The Service may require a positive suitability assessment prior to releasing a juvenile under paragraph (e) of this section. The Service will always require a suitability assessment prior to any release under paragraph (e)(6) of this section. A suitability assessment may include an investigation of the living conditions in which the juvenile is to be placed and the standard of care he or she would receive, verification of identify and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the juvenile.

(h) *Family reunification.* (1) *Efforts to reunite.* Upon taking a juvenile into custody, the Service, or the licensed program in which the juvenile is placed, will promptly attempt to reunite the juvenile with his or her family to permit the release of the juvenile under paragraph (e) of this section. Such efforts at family reunification will continue as long as the juvenile is in Service custody and will be recorded by the Service or the licensed program in which the juvenile is placed.

(2) *Simultaneous release.* If an individual specified in paragraph (e) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in Service detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates refusal to be released to the parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(i) *Transportation and transfer.* (1) *Separation from adults.* Juveniles unaccompanied by adult relatives or legal guardians should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to a Service office or when separate transportation would be otherwise impractical, in which case juveniles shall be separated from adults. Service officers shall take all necessary precautions for the protection of juveniles during transportation with adults.

(2) *Travel arrangements.* When a juvenile is to be released from custody under paragraph (e) of this section, the Service will assist him or her in making transportation arrangements to the Service office nearest the location of the person or facility to whom the juvenile is to be released. In its discretion, the Service may provide transportation to such juveniles.

(3) *Possessions.* Whenever a juvenile is transferred from one placement to another, he or she shall be transferred with all possessions and legal papers; provided, however, that if the juvenile's possessions exceed the amount normally permitted by the carrier in use, the possessions shall be shipped to the juvenile in a timely manner.

(4) *Notice.* No juvenile who is presented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the juvenile or others is threatened, or the juvenile has been determined to be an escape-risk, or where counsel has waived notice. In these cases notice must be provided to counsel within 24 hours following transfer.

Dated: June 10, 1998.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 98–19712 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–10–M

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 35

## Medical Use of Byproduct Material; Public Meetings

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Nuclear Regulatory Commission has developed a proposed rulemaking for a comprehensive revision of its regulations governing the medical use of byproduct material in 10 CFR Part 35, ''Medical Use of Byproduct Material,'' and a proposed revision of its 1979 Medical Use Policy Statement (MPS). Throughout the development of the proposed rule and MPS, the Commission solicited input from the various interests that may be affected by these proposed revisions. The Commission now plans to solicit comments on the proposed rule and MPS through two mechanisms—publishing the documents in the **Federal Register** for public comment (scheduled for August 1998); and convening three facilitated public meetings, during the public comment period, to discuss the Commission's proposed resolution of the major issues. The public meetings will be held in San Francisco, California, on August 19–20, 1998; in Kansas City, Missouri, on September 16–17, 1998; and in Rockville, Maryland, on October 21–22, 1998. All meetings will be open to the public. Francis X. Cameron, Special

Counsel for Public Liaison, in the Commission's Office of the General Counsel, will be the convener and facilitator for the meetings.

**DATES:** The first public meeting will be in San Francisco on August 19–20, 1998, from 8:30 a.m. to 5:00 p.m. each day; the second public meeting will be in Kansas City on September 16–17, 1998, from 8:30 a.m. to 5:00 p.m. each day; and the third public meeting will be in Rockville on October 21–22,1998, from 8:30 a.m. to 5:00 p.m. each day.

**ADDRESSES:** The San Francisco meeting will be held at the ANA Hotel San Francisco, 50 Third Street, San Francisco, California 94103, 415–974–6400. The Kansas City meeting will be held at the Radisson Suite Hotel Kansas City, Kansas City, 106 West 12th Street, Kansas City, MO 64105, 800–333–3333. The Rockville meeting will be held in the auditorium at the U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852–2738.

**FOR FURTHER INFORMATION CONTACT:** Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, Nuclear Regulatory Commission, Washington D.C. 20555–0001, Telephone: 301–415–1642.

**SUPPLEMENTARY INFORMATION:**

## Background

Following a comprehensive review of its medical use program, the Commission directed the NRC staff to revise 10 CFR Part 35, associated guidance documents, and, if necessary, the Commission's 1979 Medical Policy Statement [Staff Requirements Memorandum (SRM)—COMSECY–96–057, Materials/Medical Oversight (DSI 7), dated March 20, 1997]. The Commission's SRM specifically directed the restructuring of Part 35 into a risk-informed, more performance-based regulation. In its SRM dated June 30, 1997, ''SECY–97–115, Program for Revision of 10 CFR Part 35, 'Medical Uses of Byproduct Material' and Associated **Federal Register** Notice,'' the Commission approved the NRC staff's proposed plan for the revision of Part 35 and the Commission's 1979 Medical Use Policy Statement (MPS). The schedule approved by the Commission in SRM–SECY–97–115 provides for the rulemaking to be completed by June 1999.

After Commission approval of the NRC staff's program to revise Part 35 and associated guidance documents, the NRC staff initiated the rulemaking process, as announced in 62 FR 42219 (August 6, 1997).

The proposed rule and MPS were developed using a group approach. A Working Group and Steering Group, consisting of representatives of NRC, the Organization of Agreement States, and the Conference of Radiation Control Program Directors, were established to develop rule text alternatives, rule language, and associated guidance documents. State participation in the process was intended to enhance development of corresponding rules in State regulations, to provide an opportunity for early State input, and to allow State staff to assess potential impacts of NRC draft language on the regulation of non-Atomic Energy Act materials used in medical diagnosis, treatment, or research, in the States.

The proposed revision of Part 35 is based on the Commission's directions in the SRMs of March 20, 1997, and June 30, 1997. The revision is intended to make Part 35 a more risk-informed, performance-based regulation that will focus the regulations on those medical procedures that pose the highest risk, from a radiation safety aspect, with a subsequent decrease in the oversight of low-risk activities; focus on those requirements that are essential for patient safety; initiate improvements in NRC's medical program, by implementing recommendations from internal staff audits, other rulemaking activities, and results of analyses in medical issues papers; incorporate regulatory requirements for new treatment modalities; and reference, as appropriate, available industry guidance and standards.

As part of the rulemaking process, significant issues associated with the regulation of the medical use of byproduct material and the revision of the MPS were identified, alternatives were developed for them, and public input on them was specifically sought. These alternatives were developed to stimulate input from members of the public in an effort to encourage all interested parties to contribute to the development of the revised regulation and were discussed during facilitated public workshops and meetings throughout the development of the proposed rule and MPS.

The program for revising Part 35, associated guidance document, and MPS has provided more opportunity for input from potentially affected parties (the medical community and the public) than is provided by the typical notice and comment rulemaking process. Early public input was solicited by requesting input through **Federal Register** notices; holding public meetings of the Working and Steering Groups; meeting with medical professional societies and boards; putting background documents, rulemaking alternatives, and a ''strawman'' draft proposed rule on the Internet and in NRC's Public Document Room; and convening two facilitated public workshops. Significant regulatory issues were also discussed at the Part 35 Workshop that was held in conjunction with the All Agreement States Meeting in October 1997, the Advisory Committee on the Medical Uses of Isotopes (ACMUI) meetings in September 1997 and March 1998, and the ACMUI subcommittee meetings in February 1998. Input received during these interactions and in writing were beneficial to the staff in developing the proposed rule and MPS.

## Workshops

Based on the substantive public input received during the early rulemaking process, the Commission believes that it is important for interests affected by the proposed revisions to have an opportunity to comment on the proposed rulemaking and MPS, as well as have an opportunity to discuss the proposed revisions with one another and the Commission. Accordingly, the Commission is convening three public meetings, during the public comment period, where representatives of the interests that may be affected by the proposed rulemaking and MPS will have an opportunity to discuss the proposed revisions. Although the meetings are intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement or disagreement, it is not the intent of the meetings to develop a consensus agreement of the participants on the rulemaking issues.

To have a manageable discussion, the number of participants in each meeting will be limited. The Commission, through the facilitator for the meeting, will attempt to ensure participation by the broad spectrum of interests that may be affected by the proposed rulemaking and MPS. These interests include: nuclear medicine physicians; physician specialists, such as cardiologists and radiologists; medical physicists; medical technologists; nurses; medical education and certification organizations; radiopharmaceutical interests; hospital administrators; radiation safety officers; patients' rights advocates; Agreement States; Federal agencies; and experts in risk analysis. Other members of the public are welcome to attend, and the public will have the opportunity to comment on the proposed rulemaking and MPS and to participate in the meeting discussions at periodic intervals. Questions about participation

may be directed to the facilitator, Francis X. Cameron.

The meetings will have a pre-defined scope and agenda focused on the Commission's resolution of the major issues addressed during the development of the proposed rule and MPS. However, the meeting format will be sufficiently flexible to allow for the introduction of additional related issues that the participants may want to raise. The meeting commentary will be transcribed and made available to the participants and the public.

Copies of the proposed revision of Part 35 and the MPS will be provided to the meeting participants. Also, copies will be available for members of the public in attendance at the meetings. The availability of the proposed rule, and associated documents, and the MPS for individuals who are unable to attend any of the public meetings will be noted in the **Federal Register** notices for these documents.

Public comments on the proposed rule and MPS are solicited but, to be most helpful, should be received by the date that will be announced in the **Federal Register** notices on the proposed rule and MPS. Comments received after this date will be considered if it is practical to do so, but the Commission only is able to ensure consideration of comments received on or before this date. Written input and suggestions can be sent to Secretary, Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand-deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Dated at Rockville, Maryland this 17th day of July, 1998.

For the Nuclear Regulatory Commission.

**Frederick C. Combs,**

*Acting Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98–19805 Filed 7–23–98; 8:45 am]

BILLING CODE 7590–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–163–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 747 series airplanes. This proposal would require a one-time inspection to detect discrepancies of the center fuel tank, and corrective actions, if necessary; replacement of all components of the fuel quantity indicating system (FQIS) of the center tanks with new FQIS components; and replacement of the FQIS wiring with new wiring. For certain airplanes, this proposal also would require a one-time inspection to detect discrepancies of the FQIS, and corrective actions, if necessary; and installation of a flame arrestor in the scavenge pumps of the center fuel tank. This proposal is prompted by design review and testing results obtained in support of an accident investigation. The actions specified by the proposed AD are intended to prevent ignition sources and consequent fire/explosion in the center fuel tank.

**DATES:** Comments must be received by September 8, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Dionne Stanley, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–163–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. 98–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On July 17, 1996, a Boeing Model 747 series airplane was involved in an accident shortly after takeoff from John F. Kennedy International Airport in Jamaica, New York. In support of the subsequent accident investigation, the FAA has participated in design review and testing to determine possible sources of ignition in the center fuel tank. The cause of the accident has not yet been determined.

This design review has identified the need to detect any conditions of in-service deterioration of the wiring, bonding, tubing installations, and other component installations inside the center fuel tank. If such conditions are detected, repair of these discrepancies would reduce the likelihood of these components becoming in-tank ignition sources due to lightning strikes, static electricity, or electrical failures outside of the fuel tank.

In addition, investigation has revealed that the knurled terminal blocks on ''series 3'' (and earlier series) probes of the fuel quantity indication system (FQIS) on Model 747 series airplanes are subject to chafing against their

connecting wires; this chafing could result in an ignition source in the center fuel tank. ''Series 4'' (and subsequent series) probes, in contrast, incorporate a smooth-surface terminal block, nylon wire clamps, and a protective shrink-wrapped coating on the wires. Installation of ''series 4'' (or subsequent series) probes would prevent a potential in-tank ignition source due to incorrect terminal block configuration and resultant chafing damage to the wiring.

The FAA's review of the design of the scavenge pump assembly of the Model 747 center fuel tank has identified its vulnerability to center fuel tank ignition as a result of a potential mechanical failure of the pump. This condition could cause a spark or flame front to emanate from the pump assembly, propagate through the pump inlet line, and ignite the fuel-air mixture inside the center fuel tank.

Further, the FAA has become aware of numerous FQIS probe failures and system reliability problems in military applications. Subsequent investigation of Model 747 FQIS wiring has revealed the presence of corrosion, in the form of copper sulfur residue, on the affected probes and silver-plated copper wiring. This corrosion of the commonly used silver-plated copper wire is attributed to sulfur compounds inherently present in aviation fuels, bacterial growth, and the polysulfide sealant used in fuel tanks. Testing has demonstrated the potential for arcing and incandescing of copper sulfur residues at a given voltage, which could create a possible ignition source in the center fuel tank. A hot short failure in the FQIS outside of the fuel tank, in conjunction with the latent condition of excessive copper sulfur residue on probes or wiring inside the tank, could cause arcing or high-temperature leakage paths in fuel tanks. By contrast, nickel-plated wires have been shown to exhibit little or no corrosion in this same environment.

The unsafe conditions associated with damage to the center fuel tank wiring and other components described above, if not corrected, could result in ignition sources and consequent fire/explosion in the center fuel tank.

## Wing Fuel Tanks vs. Center Fuel Tanks

The actions identified by the FAA during the course of the ongoing accident investigation are part of continued activity to correct any design- or maintenance-related deficiencies in the Boeing 747 fuel tanks that may lead to the existence of an ignition source. This proposed AD focuses on the center fuel tanks only.

Over the past 30 years, the service history for turbine-powered transport airplanes, excluding those used in military combat, has shown that in-flight explosions in wing fuel tanks occurred mainly when wide-cut fuels or a mixture of wide-cut fuel and kerosene-type fuels were used. The FAA has considered several factors that may contribute to the significantly improved safety record of wing fuel tanks relative to center fuel tanks:

1. On average, wing tank temperatures are lower than those in the center tanks because wing tanks have no significant on-airplane heat sources located in or near them, and the top and bottom surfaces of the wing tanks cool quickly as the airplane climbs into colder air.

2. Except for immediately after landing, wing tanks usually contain a relatively large amount of fuel to act as a heat sink while the airplane is on the ground being heated by sunlight and ambient air, whereas center tanks are often empty or near empty on airplanes during operation; and

3. Wing tank fuel pumps are normally operated with their pump inlets covered with fuel, which ensures that the wing tank pumps are always fuel-cooled during operation and mechanical sparks or high metal temperatures at the impeller cannot ignite vapor in the fuel tank.

In general, the flammability of a fuel is dependent on the concentration of fuel/air mixture and the fuel temperature. As a function of temperature, the fuel/air mixture can be too lean for combustion (lower flammability limit) or too rich for combustion (upper flammability limit). For kerosene-type fuels such as Jet A, elevated fuel/air mixture temperatures increase the likelihood of the mixture being within the flammable range. Avoiding airplane operation with fuel temperatures in the flammable range reduces the fuel/air mixture's exposure to ignition in the presence of an ignition source.

The unique environmental and operational conditions and service history information of fuel tanks show that the risk of an in-flight explosion is lower in wing fuel tanks than in center fuel tanks. Therefore, the FAA is not proposing to include the wing fuel tanks in this rulemaking activity.

## Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998. This service bulletin describes procedures for a visual inspection to detect discrepancies (damage, disbonding, and incorrect installation) of the center fuel tank wiring and components; and corrective actions, if necessary. Corrective actions involve repair or replacement of discrepant parts with new or serviceable parts. In addition, this service bulletin describes procedures for an electrical bonding test of the center fuel tank components, and reworking of any component with bonding outside specified maximum resistance limits.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998. This alert service bulletin describes procedures for:

- insulation resistance testing of the FQIS;
- visual inspection of the FQIS wiring and components to detect discrepancies (chafing damage to the wiring and incorrect configuration of the terminal blocks), and repair of discrepant components or replacement with new or serviceable components;
- replacement of ''series 3'' (or earlier series) FQIS probes with new ''series 4'' (or subsequent series) probes;
- retermination of the wires to the tank units and compensator, and replacement of FQIS wire bundle assemblies with new parts, if necessary;
- retesting (insulation resistance) of all components; and
- performing a system adjustment and a system operational test of the FQIS.

The FAA also has reviewed and approved Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998. This alert service bulletin describes procedures for installation of a flame arrestor in the inlet line of the scavenge pump of the center fuel tank.

## FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the accident and subsequent investigations. The FAA finds that, in addition to the actions specified in the service bulletins described previously, replacement of the Model 747 FQIS components (FQIS probes, compensator, and terminal strip) and wiring will reduce the risk of ignition in the center fuel tank, for the reasons described in the Discussion section above.

The FAA has determined that repeated entry into the fuel tank will increase the risk of damage to in-tank components and systems. Moreover, extensive time and effort are required to access, purge, and close the fuel tank to accomplish each action proposed by this AD. Therefore, the FAA proposes a compliance time of 24 months to allow operators to concurrently perform all of the proposed actions in order to reduce

the risk of damage to the airplane from repeated entry. The proposed compliance time for accomplishment of the actions also would provide operators time for planning and scheduling, thus reducing the cost impact on the operators.

The FAA is currently considering separate rulemaking to address long-term maintenance issues.

**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:

1. Performing a one-time visual inspection to detect damage, disbonding, and incorrect installation of the center fuel tank wiring and components; and repair or replacement, if necessary.
2. Performing an electrical bonding test of the center fuel tank components; and rework, if necessary.
3. For certain airplanes, performing an insulation resistance test of the FQIS and a one-time visual inspection to detect discrepancies of the FQIS; replacement of ''series 3'' (and earlier series) FQIS probes with new ''series 4'' (and subsequent series) FQIS probes; and corrective actions, if necessary.
4. Replacing all FQIS components (FQIS probes, compensator, and terminal strip) with new components.
5. Replacing silver-plated copper FQIS wiring with new nickel-plated copper FQIS wiring.
6. For certain airplanes, installing a flame arrestor into the inlet line of the scavenge pumps of the center fuel tank.

The actions are required to be accomplished in accordance with the service bulletins (described previously), the 747 Maintenance Manual, or a method approved by the FAA.

The proposed AD also would require that operators report inspection findings to the manufacturer.

**Other Relevant Rulemaking**

Other fuel tank ignition scenarios have been studied by the FAA and have resulted in rulemaking action.

On December 9, 1997, the FAA issued AD 97–26–07, amendment 39–10250 (62 FR 65352, December 12, 1997), applicable to Boeing Model 747 series airplanes, which superseded AD 96–26–06, amendment 39–9870 (62 FR 304, January 3, 1997). AD 97–26–07 requires repetitive inspections of the Teflon sleeves that protect wiring to the boost pumps on the outboard main tanks on all Boeing 747 series airplanes. The Teflon sleeves are intended to protect the main tank boost pump wiring from chafing damage caused by the wires rubbing against each other or against the metal conduit that encases the wiring routed through the fuel tank. Chafing of these wires could lead to electrical arcing, which could potentially cause ignition of flammable vapors within the outboard wing fuel tanks. Similar action was taken on Model 737 series airplanes by telegraphic AD 98–11–52, issued May 14, 1998. The FAA is currently reviewing other Boeing airplane models to determine whether similar action is warranted.

During the inspections required by AD 97–26–07, one operator discovered that the required Teflon sleeves were missing on one airplane. In response, on May 5, 1998, the FAA issued AD 98–10–10, amendment 39–10522 (63 FR 26063, May 12, 1998), to require all operators of Boeing 747 series airplanes to verify that the protective Teflon sleeves were installed on the main tank boost pump wiring. AD 98–10–10 requires any operator discovering the absence of any Teflon sleeve on an airplane to perform corrective action prior to further flight.

On November 26, 1997, the FAA issued a notice of proposed rulemaking (NPRM) (Docket 97-NM–272-AD) (62 FR 63624, December 1, 1997), applicable to all Boeing Model 747–100, –200, and –300 series airplanes. This NPRM proposed a modification of the FQIS to incorporate separation, shielding, and/or electrical transient suppression features to prevent electrical signals with excessive energy from entering the fuel tanks. This action is intended to preclude electrical energy needed to produce ignition from entering the fuel tanks and will preclude the development of an ignition source within the FQIS if damage to wiring, corrosion, or other failures were to occur. On April 14, 1998, the FAA issued a similar NPRM (Docket 98–NM–50–AD) (63 FR 19852, April 22, 1998), for Boeing Model 737 series airplanes. The FAA is currently reviewing other Boeing airplane models to determine whether similar action is warranted.

In addition, the FAA is addressing airplane fuel tank flammability issues with respect to the transport airplane fleet. On January 23, 1998, the FAA established an Aviation Rulemaking Advisory Committee (ARAC) working group on fuel tank flammability reduction with the publication of a Notice of New Task Assignment in the **Federal Register**. This notice gives the ARAC working group until July 23, 1998, to provide the FAA and Joint Aviation Authority (JAA) with a report outlining specific recommendations and proposed regulatory text that will eliminate or significantly reduce the hazards associated with explosive vapors in the fuel tanks of transport category airplanes.

As mentioned previously, the FAA also is considering rulemaking to require that each type certificate holder develop a fuel tank maintenance and inspection program, and that each operator have an FAA-approved fuel system maintenance program. That proposal also would require a review of the original certification compliance findings to revalidate that failures within the fuel system will not result in ignition sources.

**Cost Impact**

There are approximately 1,069 airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 40 work hours per airplane to purge, access, and close the center fuel tank, at an average labor rate of $60 per work hour. The cost impact on U.S. operators to purge, access, and close the fuel tank is estimated to be $2,400 per airplane.

The FAA estimates that the proposed inspection of the center fuel tank would be required to be accomplished on 251 airplanes. It would take approximately 56 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $843,360, or $3,360 per airplane.

The FAA estimates that the proposed FQIS inspection and system operational test, probe replacement, and insulation resistance test would be required to be accomplished on 202 airplanes. It would take approximately 60 work hours (maximum) per airplane to accomplish the proposed FQIS inspection, at an average labor rate of $60 per work hour. Required parts would cost approximately $30,000 per airplane (maximum). Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be a maximum of $6,787,200, or $33,600 per airplane.

The FAA estimates that the proposed installation of a flame arrestor would be required to be accomplished on 214 airplanes. It would take approximately 2 work hours per airplane to accomplish the proposed installation, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,107 per airplane. Based on these figures, the cost impact of this proposed installation on U.S.

operators is estimated to be $262,578, or $1,227 per airplane.

The FAA estimates that the proposed replacement of all FQIS components would be required to be accomplished on 251 airplanes. It would take approximately 24 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $10,000 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $2,871,440, or $11,440 per airplane.

The FAA estimates that the proposed replacement of the FQIS wiring would be required to be accomplished on 251 airplanes. It would take approximately 24 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $10,000 per airplane. Based on these figures, the cost impact of this proposed replacement on U.S. operators is estimated to be $2,871,440, or $11,440 per airplane.

The cost impact figures discussed above are 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 AD were not adopted.

## Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket 98-NM–163-AD.

*Applicability:* All Model 747 series airplanes, certificated in any category.

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

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

To prevent ignition sources and consequent fire/explosion in the center fuel tank, accomplish the following:

(a) Within 24 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2), in accordance with Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998.

(1) Perform a visual inspection of the center fuel tank wiring and components to detect discrepancies (damage, disbonding, and incorrect installation). If any discrepancy is detected, prior to further flight, repair the discrepant component, or replace it with a new or serviceable component. And

(2) Perform an electrical bonding test of the center fuel tank components. If any measured resistance exceeds the limit specified by Figure 1 of the service bulletin, prior to further flight, rework the discrepant component.

**Note 2:** Revision 1 of Boeing Service Bulletin 747–28–2205 provides two additional actions (inspection of the body fuel tank components and measurement of the ground resistance of the pressure switch case on the auxiliary power unit pump) that were not provided in the original version of this service bulletin. Inspections and testing accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–28–2205, dated June 27, 1997, are considered acceptable for compliance with the applicable actions specified in this AD.

(b) Within 24 months after the effective date of this AD, perform an insulation resistance test of the fuel quantity indication system (FQIS), visual inspection of the FQIS wiring and components to detect discrepancies (chafing damage to the wiring and incorrect configuration of the terminal blocks), replacement of ''series 3'' (or earlier series) FQIS probes with new ''series 4'' (or subsequent series) FQIS probes, and system adjustment and system operational test; as specified by paragraph (b)(1) or (b)(2) of this AD, as applicable; in accordance with Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998. If any discrepancy is detected, prior to further flight, perform corrective actions in accordance with the alert service bulletin.

(1) For Groups 1 and 2 airplanes, as listed in the alert service bulletin: Accomplish the inspection, testing, and corrective actions, as applicable, in accordance with Figure 2 of the alert service bulletin.

(2) For Groups 3 and 4 airplanes, as listed in the alert service bulletin: Accomplish the inspection, testing, and corrective actions, as applicable, in accordance with Figure 3 of the alert service bulletin.

(c) At the applicable time specified in paragraph (c)(1) or (c)(2) of this AD, submit a report of the results of the inspections required by paragraphs (a) and (b) of this AD, as applicable, to the Manager, Airline Support, Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. The report must include the information specified in Boeing Service Bulletin 747–28–2205, Revision 1, dated April 16, 1998 [for paragraph (a) of this AD]; and Boeing Alert Service Bulletin 747–28A2208, dated May 14, 1998 [for paragraph (b) of this AD]. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspections required by paragraphs (a) and (b) of this AD, as applicable, are accomplished after the effective date of this AD: Submit the report within 10 days after performing the applicable inspection.

(2) For airplanes on which the inspections required by paragraphs (a) and (b) of this AD, as applicable, have been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(d) Within 20 years since date of manufacture, or within 24 months after the effective date of this AD, whichever occurs later: Replace all center fuel tank FQIS components (FQIS probes, compensator, and terminal strip) with new FQIS components, in accordance with the 747 Maintenance Manual, chapters 28–11–00, 28–41–00, 28–41–01, 28–41–02, and 28–41–09.

(e) Within 20 years since date of manufacture, or within 24 months after the effective date of this AD, whichever occurs later: Replace the silver-plated copper FQIS wiring of the center fuel tank with new nickel-plated copper FQIS wiring, in accordance with 747 Maintenance Manual, chapters 28–11–00, 28–41–00, 28–41–01, 28–41–02, and 28–41–09.

(f) For airplanes having line positions 1 through 971 inclusive: Within 24 months after the effective date of this AD, install a flame arrestor in the inlet line of the electrical motor-operated scavenge pump of the center fuel tank, in accordance with Boeing Alert Service Bulletin 747–28A2210, dated May 14, 1998.

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

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

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

Issued in Renton, Washington, on July 15, 1998.

**Darrell M. Pederson,**

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

[FR Doc. 98–19460 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–106–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Short Brothers Model SD3–60 and SD3–60 SHERPA Series Airplanes

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

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

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, that would have required repetitive inspections to detect corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the main landing gear (MLG), and repair, if necessary. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by expanding the applicability to include an additional airplane model. The actions specified by this new proposed AD are intended to detect and correct corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, which could result in failure of the MLG to extend or retract.

**DATES:** Comments must be received by August 18, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P. O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97-NM–106-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. 97–NM–106–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 6, 1997 (62 FR 52053). That NPRM would have required repetitive inspections to detect corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the main landing gear (MLG), and repair, if necessary. That NPRM was prompted by reports of corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG. Such corrosion or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, if not corrected, could result in failure of the MLG to extend or retract.

### Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that the unsafe condition described in the original NPRM also may exist on all Short Brothers Model SD3–60 SHERPA series airplanes. The shear decks of the stub wings on Model SD3–60 SHERPA series airplanes are similar in design to those on Model SD3–60 series airplanes; therefore, both models are subject to the same unsafe condition. The FAA has revised the applicability of this

supplemental NPRM to add Model SD3–60 SHERPA series airplanes.

**New Service Information**

Short Brothers has issued Service Bulletin SD3–60 SHERPA–53–3, dated November 4, 1997, which describes procedures for repetitive inspections to detect corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, and repair, if necessary. For airplanes on which certain depths of corrosion or wear is detected, the service bulletin describes procedures for a visual inspection to detect any discrepancy of the pintle pin and sleeve. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–11–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

The FAA has revised this supplemental NPRM to reference this service bulletin as the appropriate source of service information for accomplishment of the actions proposed by this AD for Model SD3–60 SHERPA series airplanes.

**Explanation of Change Made to NPRM**

In the original NPRM, the FAA inadvertently omitted a paragraph requiring operators to repeat the inspection for corrosion of the top and bottom shear decks of the left and right stub wings at intervals not to exceed 6 months even if no corrosion, wear, or discrepancy of the measurement of the holes for the retaining pin of the pintle pin is found. Accordingly, the FAA has included this requirement in paragraph (a)(1) of this supplemental NPRM.

**Conclusion**

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

The FAA estimates that 58 Model SD3–60 series airplanes and 28 Model SD3–60 SHERPA series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $67,080, or $780 per airplane, per inspection cycle.

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 AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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:

**Short Brothers PLC: Docket 97-NM–106-AD.**

*Applicability:* All Model SD3–60 and SD3–60 SHERPA series airplanes, certificated in any category.

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

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

To detect and correct corrosion and/or wear of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the main landing gear (MLG), which could result in failure of the MLG to extend or retract, accomplish the following:

(a) Within 90 days after the effective date of this AD, conduct an inspection for corrosion of the top and bottom shear decks of the left and right stub wings in the area of the forward pintle pin of the MLG, and measure the retaining pin holes of the pintle pin for wear; in accordance with Part A. of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–42, dated September 1996 (for Model SD3–60 series airplanes), or Short Brothers Service Bulletin SD3–60 SHERPA–53–3, dated November 4, 1997 (for Model SD3–60 SHERPA series airplanes), as applicable.

(1) If no corrosion, wear, or discrepancy of the measurement of the holes for the retaining pin of the pintle pin is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 6 months.

(2) If any corrosion, wear, or measurement of the holes for the retaining pin of the pintle pin is found that is within the limits specified in Part A. of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, repair the discrepancy in accordance with the applicable service bulletin. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 6 months.

(3) If any corrosion, wear, or measurement of the holes for the retaining pin of the pintle pin is found that is beyond the limits specified in Part A. of the Accomplishment Instructions of the applicable service bulletin, prior to further flight, perform the actions required by paragraph (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Remove the corrosion and install bushings on the upper and lower shear webs in the retaining pin holes for the pintle pin in accordance with Part B. (left MLG) and/or Part C. (right MLG), as applicable, of the Accomplishment Instructions of the applicable service bulletin.

(ii) Perform a visual inspection of the pintle pin and the sleeve for any discrepancy, in accordance with Part B. and/or Part C., as applicable, of the Accomplishment Instructions of the applicable service bulletin.

(A) If no discrepancy is detected, the pintle pin and the sleeve of the pintle pin may be returned to service.

(B) If any discrepancy of the pintle pin and sleeve is detected, prior to further flight, repair the pintle pin and sleeve in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) Removal of corrosion and installation of bushings in accordance with Part B. and/or Part C., as applicable, of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–42, dated September 1996 (for Model SD3–60 series airplanes), or Short Brothers Service Bulletin SD3–60 SHERPA–53–3, dated November 4, 1997 (for Model SD3–60 SHERPA series airplanes), as applicable, constitutes terminating action for the repetitive inspection requirements of this AD.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

**Note 3:** The subject of this AD is addressed in British airworthiness directives 005–09–96 and 005–11–97.

Issued in Renton, Washington, on July 20, 1998.

**S. R. Miller,**

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

[FR Doc. 98–19778 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–107–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310, A300–600, and A320 Series Airplanes

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

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

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A310, A300–600, and A320 series airplanes, that currently requires inspections to verify proper installation of the grill over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of any discrepancies. This action would add a requirement for modification of the grill of the air extraction duct, which, when accomplished, would terminate the repetitive inspections. This action also would expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent obstructions in the air extraction system of the lavatory, which may result in the failure of the smoke detection system to detect smoke in the lavatories.

**DATES:** Comments must be received by August 24, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–107–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. 97–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On February 17, 1995, the FAA issued AD 95–04–12, amendment 39–9164 (60 FR 11619, March 2, 1995), applicable to certain Airbus Model A310, A300–600, and A320 series airplanes, to require inspections to verify proper installation of the grill over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of any discrepancies. That action was prompted by reports of obstructions in the air extraction system of the lavatories. The requirements of that AD are intended to prevent obstructions in the air extraction system of the lavatory, which may result in the failure of the smoke detection system to detect smoke in the lavatories.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that it has received several additional reports of incorrectly installed grill hoods of the air extraction system of the lavatory on certain Airbus Model A310, A300–600, and A320 series airplanes. This condition, if not corrected, could result in obstructions in the air extraction system, and consequent failure of the smoke detection system to detect smoke in the lavatories.

### Explanation of Relevant Service Information

Airbus has issued Service Bulletins A310–26–2030, Revision 02, dated April 4, 1997 (for Model A310 series airplanes); A300–26–6030, Revision 02, dated April 4, 1997 (for Model A300–600 series airplanes); and A320–26–1037; Revision 02, dated July 8, 1997 (for Model A320 series airplanes). These service bulletins describe procedures for modification of the grill of the air extraction duct in the lavatory. The modification involves installing an insert and a threaded guide pin to the lavatory ceiling, which will align with a new hole in the hood and the grill of the air extraction duct. This modification will ensure that the sub-assemblies of the air extraction system of the lavatory can only be installed in the correct position. Such modification would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 96–186–204(B)R1, dated January 15, 1997 (for Model A310 and A300–600 series airplanes), and 96–007–073(B), dated January 3, 1996 (for Model A320 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

### FAA's Conclusions

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

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–04–12 to continue to require inspections to verify proper installation of the grill over the air extraction duct of the lavatory and to detect blockages in the air extraction duct of the lavatory, and correction of any discrepancies. This action would add a requirement for modification of the grill of the air extraction duct, which, when accomplished, would terminate the repetitive inspections. This action also would expand the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the service bulletins described previously.

### Cost Impact

There are approximately 36 Airbus Model A310 series airplanes, 54 Airbus Model A300–600, and 118 Airbus Model A320 series airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are currently required by AD 95–04–12 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $24,960, or $120 per airplane, per inspection cycle.

For Airbus Model A310 series airplanes, the new proposed modification would take approximately 5 work hours per airplane (5 lavatories per airplane; 1 work hour per lavatory) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators of Airbus Model A310 series airplanes is estimated to be $10,800, or $300 per airplane.

For Airbus Model A300–600 and A320 series airplanes, the new proposed modification would take approximately 10 work hours per airplane (5 lavatories per airplane; 2 work hours per lavatory) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators of Airbus Model A300–600 and A320 series airplanes is estimated to be $103,200, or $600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9164 (60 FR 11619, March 2, 1995), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 97–NM–107–AD. Supersedes AD 95–04–12, Amendment 39–9164.

*Applicability:* Model A310 and A300–600 series airplanes on which Airbus Modification 10156 has not been accomplished (reference Airbus Service Bulletin A310–26–2023 or A300–26–6024), and Model A320 series airplanes on which Airbus Modification 22561 (reference Airbus Service Bulletin A320–26–1017) or Airbus Modification 24548 (reference Airbus Service Bulletin A320–26–1037) has not been accomplished; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in

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

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

To prevent obstructions in the air extraction system of the lavatory, which may result in the failure of the smoke detection system to detect smoke in the lavatories, accomplish the following:

**Restatement of Requirements of AD 95–04–12**

(a) Within 450 flight hours after March 17, 1995 (the effective date of AD 95–04–12), perform an inspection of each lavatory to verify proper installation of the grill over the air extraction duct of the lavatories, and to detect blockage in the air extraction duct of the lavatories, in accordance with Airbus All Operators Telex (AOT) 26–12, Revision 1, dated July 4, 1994.

(1) If the grill is found to be properly installed and if no blockage is found, repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grill) of the ceiling light in the lavatory is removed or replaced for any reason.

(2) If the grill is found to be improperly installed and/or if blockage is found, prior to further flight, correct any discrepancies found, in accordance with Airbus AOT 26–12, Revision 1, dated July 4, 1994. Repeat the inspection thereafter whenever the cover over the air extraction duct of the lavatories or any ceiling louver (grill) of the ceiling light in the lavatory is removed or replaced for any reason.

**New Requirements of this AD**

(b) Within 500 flight hours after the effective date of this AD, modify the grill of the air extraction duct of the lavatory, in accordance with Airbus Service Bulletin A310–26–2030, Revision 02, dated April 4, 1997 (for Model A310 series airplanes); A300–26–6030, Revision 02, dated April 4, 1997 (for Model A300–600 series airplanes); or A320–26–1037, Revision 02, dated July 8, 1997 (for Model A320 series airplanes); as applicable. Accomplishment of the modification constitutes terminating action for the inspection requirements of paragraph (a) of this AD.

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

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

**Note 3:** The subject of this AD is addressed in French airworthiness directives 96–186–204(B)R1, dated January 15, 1997 (for Model A310 and A300–600 series airplanes), and 96–007–073(B), dated January 3, 1996 (for Model A320 series airplanes).

Issued in Renton, Washington, on July 20, 1998.

**S. R. Miller,**

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

[FR Doc. 98–19777 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–46]**

## Proposed Establishment of Class E Airspace; Granite Falls, MN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Granite Falls, MN. A VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34 has been developed for Granite Falls Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace with a 6.4-mile radius for this airport.

**DATES:** Comments must be received on or before September 15, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–46, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administrator, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–46.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing

list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airsapce at Granite Falls, MN, to accommodate aircraft executing the proposed VOR/DME Rwy 34 SIAP at Granite Falls Municipal Airport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Granite Falls, MN [New]**

Granite Falls Municipal Airport, MN
(Lat. 44°45′12″ N., long. 95°33′22″ W.)

That airspace extending upward from 700 feet above the surface within an 6.4-mile radius of the Granite Falls Municipal airport.

* * * * *

Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19850 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–47]**

## Proposed Modification of Class E Airspace; Orr, MN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Orr, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 13 has been developed for Orr Regional Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the existing controlled airspace for Orr Regional Airport.

**DATES:** Comments must be received on or before September 15, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–47, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–47.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket,

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Orr, MN, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP at Orr Regional Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 401003, 450113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Orr, MN [Revised]**

Orr Regional Airport, MN
(Lat. 48°00′57″N, long. 92°51′22″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Orr Regional Airport and within 2.5 miles each side of the 324° bearing from the airport extending from the 6.4-mile radius to 7.0 miles northwest of the airport, excluding that airspace within the Cook, MN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19849 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–44]**

## Proposed Establishment of Class E Airspace; Park Falls, WI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Park Falls, WI. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 36 has been developed for Park Falls Municipal Airport. Controlled airspace extending upward form 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would create controlled airspace with a southern extension for Park Falls Municipal Airport.

**DATES:** Comments must be received on or before September 15, 1998.

**ADDRESSES:** Send comments on the proposal to triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–44, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must summit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–44.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East

Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Park Falls, WI, to accommodate aircraft executing the proposed NDB Rwy 34 SIAP at Park Falls Municipal Airport by creating controlled airspace with a southern extension for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Park Falls, WI [New]**

Park Falls Municipal Airport, WI
(Lat. 45°57′18″N, long. 90°25′28″W)
Park Falls NDB
(Lat. 45°57′11″N, long. 90°25′35″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Park Falls Municipal Airport and within 2.5 miles each side of the 176° bearing from the Park Falls NDB, extending from the 6.3-mile radius of 7.0 miles south of the airport.

* * * * *

Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19848 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–45]**

## Proposed Modification of Class E Airspace; Menomonie, WI

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Menomonie, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Menomonie Municipal-Score Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would increase the radius of the existing controlled airspace for Menomonie Municipal-Score Field Airport.

**DATES:** Comments must be received on or before September 15, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–45, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–45.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Menomonie, WI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Menomonie Municipal-Score Field Airport by increasing the radius of the existing controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL WI E5 Menomonie, WI [Revised]**

Menomonie Municipal-Score Field Airport, WI
(Lat. 44°53′32″ N, long. 91°52′04″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Menomonie Municipal-Score Field Airport.

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Issued in Des Plaines, Illinois on July 15, 1998.

**Richard K. Petersen,**

*Acting Assistant Manager, Air Traffic Division.*

[FR Doc. 98–19847 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AWP–1]**

## Proposed Modification of Class E Airspace, Colusa, CA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify the Class E airspace area at Colusa, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 13 and GPS RWY 31 at Colusa County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 13 and GPS RWY 31 SIAP to Colusa County Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Colusa County Airport, Colusa, CA.

**DATES:** Comments must be received on or before September 3, 1998.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–1, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, 90261.

The official docket may be examined in the Office of the Regional Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific

Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725-6539.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AWP–1.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

## The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Colusa, CA. The establishment of a GPS RWY 13 and GPS RWY 31 SIAP at Colusa County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach and departure procedures at Colusa County Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 13 and GPS RWY 31 SIAP at Colusa County Airport, Colusa, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(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) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AWP CA E5 Colusa, CA [Revised]**

Colusa County Airport, CA
(Lat. 39°10′45″ N, long. 121°59′36″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Colusa County Airport. That airspace extending upward from 1,200 feet above the surface bounded on the east by the west edge of V–23, on the south by the north edge of V–200 and on the west by the west edge of V–195.

* * * * *

Issued in Los Angeles, California, on July 16, 1998.

**Charles A. Ullmann,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 98–19846 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 95–ANM–3]**

**RIN 2120–AA66**

## Proposed Alteration of Federal Airways V–19, V–148, and V–263; Colorado

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on August 2, 1995. The NPRM proposed to realign three Federal airways located in Colorado (CO), when the Byers, CO, Very High Frequency Omnidirectional Range/Distance measuring Equipment (VOR/DME) became operational as part of the new Denver Airport airspace realignment. The FAA has determined that withdrawal of the proposal is warranted due to an in-flight aeronautical evaluation (flight check) which revealed that the proposed airways would not meet FAA designed criteria.

**DATES:** The withdrawal is effective July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:** On August 2, 1995, an NPRM was published in the **Federal Register** proposing to amend 14 CFR part 71 to realign three Federal airways located in Colorado. No comments were received on the proposal.

The FAA has decided to withdraw the proposal at this time because the flight check revealed that the proposed airways would not meet FAA criteria for such routes.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Withdrawal of the Proposed Rule

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 95–ANM–3, as published in the **Federal Register** on August 2, 1995 (60 FR 39280), is hereby withdrawn.

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Washington, DC, on July 15, 1998.

**Reginald C. Matthews,**

*Acting Program Director for Air Traffic Airspace Management.*

[FR Doc. 98–19579 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–P

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 30

## Concept Release on the Placement of a Foreign Board of Trade's Computer Terminals in the United States

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for comment.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is publishing this release to solicit the views of the public on how to address issues related to the placement by foreign boards of trade of computer terminals in the U.S. that would be used for the purpose of facilitating the trading of products available through those boards of trade. The Commission's staff has received requests for no-action positions and other inquiries regarding the Commission's regulatory treatment with respect to foreign board of trade computer terminals placed in the U.S. In general, these boards of trade, their members or their members' affiliates have sought confirmation from the Commission's staff that the placement and usage of trading terminals in U.S. offices of foreign board of trade members and/or their affiliates would not require the foreign board of trade to be designated as a ''contract market'' under the Commodity Exchange Act (''Act''). In light of a significant increase in these types of requests, the Commission believes that it is appropriate to address the subject by way of the notice and comment rulemaking process. The Commission intends to propose rules and ultimately to adopt rules to govern the treatment of foreign terminals in the U.S. Toward this end, the Commission believes that it is appropriate first to issue this concept release to solicit public comment regarding issues raised with respect to foreign terminal placement and usage in the U.S.

**DATE:** Comments must be received on or before September 22, 1998.

**ADDRESSES:** Comments on the proposed rules should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to ''Foreign Board of Trade Terminals.''

**FOR FURTHER INFORMATION CONTACT:** I. Michael Greenberger, Director, David M. Battan, Chief Counsel, Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5450.

**SUPPLEMENTARY INFORMATION:**

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### I. Background

In general, under Section 4(a) of the Act,[1] a futures contract may be traded lawfully in the U.S. only if it is traded on or subject to the rules of a board of trade that has been designated as a ''contract market'' under Section 5 of the Act,[2] unless the contract is traded on or subject to the rules of a board of trade, exchange or market located outside the U.S.[3] or is exempted from the Act. With respect to the regulation of transactions involving foreign futures,[4] Section 4(b) of the Act permits the Commission to regulate persons who offer or sell futures, but prohibits the Commission from adopting any rule or regulation that: (1) Would require Commission approval of any foreign board of trade contract, rule, regulation or action; or (2) governs any rule, contract term or action of a foreign board of trade.[5]

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[1] 7 U.S.C. 6(a) (1994).

[2] 7 U.S.C. 7 (1994). Section 5 of the Act authorizes the Commission to designate any board of trade as a contract market provided that the board of trade complies with certain conditions and requirements set forth in the Act.

[3] Section 4(a) of the Act states in relevant part:

. . . [I]t shall be unlawful for any person to offer to enter into, to enter into, execute, to confirm the execution of, or to conduct any office or business anywhere in the U.S., its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the U.S., its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated by the Commission as a ''contract market'' for such commodity; [and]

(2) such contract is executed or consummated by or through a member of such contract market[.]

[4] The Commission has defined the terms ''foreign futures'' and ''foreign options'' in Rules 30.1 (a) and (b). Commission rules cited herein can be found at 17 CFR Ch. I (1998).

[5] Section 4(b) of the Act states in pertinent part:

The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of

Continued

Significant developments in technology in recent years have now made automated trading methods an attractive addition or alternative to traditional open outcry for trading of commodity futures and option products on or subject to the rules of foreign and domestic boards of trade. Automated trading systems make it possible to execute trades on computer terminals within the U.S., no matter where the central computer is located, thus providing U.S. customers with a potential additional means of access to foreign products. Additionally, systems have been developed that enable customer orders to be submitted electronically to an FCM and then routed for execution on a foreign board of trade with little or no human intervention by a member of the foreign board of trade. These technological advances raise myriad issues concerning the use of these technologies. In this regard, a variety of issues has arisen concerning the degree to which a foreign board of trade's cross-border trading activities in the U.S. are subject to Commission regulation. Specifically, at what point does a foreign board of trade's presence within the U.S. become indistinguishable from that of a U.S. board of trade? Put another way, when should a board of trade be deemed to be a U.S. board of trade that is required to be designated as a contract market under Section 5 of the Act in order to offer its products lawfully within the U.S.? Should the Commission permit foreign boards of trade to place dedicated computer terminals in the U.S., or permit foreign boards of trade or their parties to provide persons in the U.S. with computer software that provides electronic access to a foreign board of trade, without the foreign board of trade first being designated as a U.S. contract market? [6] To the extent that ''terminals'' of foreign boards of trade are allowed to be placed in the U.S. for trading without the foreign board of trade being designated as a contract market, what conditions should apply? And finally, with respect to the interface with foreign board of trade terminals, to what extent should customer use of automated order routing and execution systems be permitted and what safeguards, restrictions and conditions should apply to their use?

As described below, certain Commission staff have addressed some inquiries concerning electronic access to foreign boards of trade from within the U.S. by way of no-action letters. These staff letters do not constitute Commission action and do not establish any precedent. They merely convey the views of certain staff members that they will not urge the Commission to take enforcement action for violation of the Act or Commission regulations by the requestor of the letter if certain conditions are met. The Commission is free to act contrary to the views expressed by staff in such letters. The Commission now finds it appropriate to review the views set forth by certain Commission staff in these letters and to seek public comment on the proper approach for oversight going forward. The Commission desires to act as quickly as practicable in this regard and, accordingly, intends to adhere strictly to the 60-day comment period provided for in this release.

*A. Prior Views of Certain Commission Staff Concerning Terminal Placement in the U.S.*

1. Prior Staff Views Related to Listing Products of Foreign Boards of Trade on Globex

The first two letters issued by Commission staff that addressed issues concerning automated trading in the U.S. by foreign boards of trade involved trading through the Chicago Mercantile Exchange (''CME'') Globex system (''Globex'').[7] The first letter was a response to a request from the CME for an opinion regarding whether trading contracts of a foreign board of trade through Globex computer terminals in the U.S. required the foreign board of trade to obtain contract market designation pursuant to Section 5 of the Act (''CME Letter'').[8] In the CME Letter, the Commission's Division of Trading and Markets (''Division'') noted that, consistent with Section 4(b) of the Act, the Commission has not issued rules governing the terms and conditions of contracts traded on foreign boards of trade or the rules or actions of foreign boards of trade. The Division provided its view that trading of contracts of foreign boards of trade through Globex terminals in the U.S. should not cause the Commission to deem any foreign board of trade for which products are listed through that system to be a domestic board of trade. The Division noted, however, that it would review the particulars of any proposal to trade the contracts of a foreign board of trade through Globex in light of the Commission's obligations under the Act to maintain the integrity of U.S. markets and to provide for the protection of U.S. customers.[9]

The Division issued a second letter on related issues to the Marché à Terme International de France (''MATIF'') in response to MATIF's request that the Commission confirm that it would not assert jurisdiction over MATIF or MATIF contracts traded on Globex (''MATIF Letter'').[10] In its response, the Division, among other things, reiterated its view that the mere trading of foreign board of trade products through Globex terminals in the U.S. should not cause any foreign board of trade for which products are listed through the Globex system to be deemed a domestic board of trade.[11]

reports, the keeping of books and records, the safeguarding of customers' funds, and the registration with the Commission by any person located in the U.S., its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange or market located outside the United States, its territories or possessions. . . . No rule or regulation may be adopted by the Commission under this subsection that (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange or market.

[6] A discussion concerning how to define ''computer terminal'' or some similar term is found at Section II.B.1, below, and makes clear that the Commission would intend this term (and this release) to cover not only dedicated proprietary terminals, but also certain other technologies that are used in a similar manner.

[7] Globex is an automated order entry and matching system for futures and options on futures. *See* note 25, *infra*, and accompanying text.

[8] *See* Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, to Carl Royal, Vice President and General Counsel, CME (May 26, 1989).

[9] In a later no-action position, the Division also granted the CME and Chicago Board of Trade (''CBT'') so-called ''pass the book'' relief, which allows CME and CBT member firms the flexibility to provide continuous access to Globex trading without the need for members to staff their offices 24 hours a day. The letter permits CME and CBT member firms to conduct Globex-related U.S. customer business through the offices of a foreign affiliate without requiring the foreign affiliate to register separately with the Commission as a futures commission merchant (''FCM''). Thus, CME contracts may be traded on Globex terminals located in non-U.S. offices of foreign affiliates of FCM-registered CME members, and U.S. customers may place orders for such contracts on Globex by contacting the FCMs' affiliates during hours that the CME floor is closed. The term ''passing the book'' is used to describe the process by which a customer order that is placed outside of regular U.S. business hours is transferred for entry into a Globex terminal located in a non-U.S. office of a foreign affiliate of an exchange member firm. CFTC Interpretative Letter No. 92–11, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,325 (June 25, 1992), *superseded in part by* CFTC Interpretative Letter No. 93–83, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,849 (Aug. 9, 1993).

[10] *See* Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, to Gerard Pfauwadel, President, MATIF (May 7, 1990).

[11] The Commission later approved a formal cross-exchange access program between CME and MATIF. The Commission's approval of the CME/MATIF cross-exchange access program and other ''trading link'' programs is discussed in Section I.B., below.

2. Prior Staff Views Concerning the Placement of Foreign Board of Trade Terminals in the U.S.

The Deutsche Terminborse (''DTB'')[12] was the first foreign board of trade to seek and receive a staff no-action letter for U.S. placement of computer terminals for execution of trades on its market. The DTB sought a no-action position from Commission staff regarding placement of DTB computer terminals in the U.S. officers of its members for their principal trading purposes[13] and, where the DTB member is also an FCM registered under the Act, on behalf of U.S. customers as well, without obtaining designation as a contract market. After analyzing, among other things, the German regulatory structure and DTB's order processing network, clearing process and trading system integrity and architecture, the Division issued a no-action letter subject to the following conditions imposed upon DTB and their U.S.-located members who seek to place terminals in their offices.[14]

1. DTB terminals will be located only in the U.S. offices of DTB members;

2. Only DTB members that also are U.S.-registered FCMs may trade for customers—non-FCM DTB members are limited to principal-only trading;

3. DTB members will (a) provide the Commission and the National Futures Association (''NFA'') with access to their books and records and the premises where DTB terminals are installed, and (b) consent to U.S. jurisdiction with respect to compliance with relief provided in the no-action letter;

4. All DTB members that will operate pursuant to the relief granted will be identified to the Commission and NFA;

5. Upon request, DTB (a) will provide the Commission with information received from its members regarding the location of DTB terminals in the U.S. and (b) will update the information on a periodic basis;

6. DTB will continue to comply with the International Organization of Securities Commissions (''IOSCO'') ''Principles for Oversight of Screen-Based Trading Systems for Derivative Products'';[15]

7. DTB will submit on at least a quarterly basis information reflecting the volume of trades from U.S.-based computer terminals compared to DTB's overall trading volume; and

8. DTB will provide the Division with prompt notice of all material changes to any DTB rules or German laws that may impact the provided relief.

In analyzing DTB's no-action request, the Division reiterated the positions set forth in the Globex letters discussed above. The Division concluded that no public interest would be affected adversely by DTB members having access to DTB terminals in the U.S. because (1) no customer trading would be permitted from U.S.-based terminals unless the DTB member firm is registered as an FCM and (2) the Commission's ability to inspect relevant books and records and the premises where DTB terminals are installed, in combination with information-sharing assurances received from the German Federal Securities Supervisory Office (''BAWe''),[16] provided an adequate basis for supervision of such trading. The Division noted that the DTB and/or the relevant German state or federal regulatory authorities have rules, systems, and compliance mechanisms in place that address, among other things, the processing of orders, including prioritization and execution (*i.e.*, DTB's order execution algorithm), and the timely availability of information necessary to conduct adequate surveillance of the DTB system for supervisory and enforce purposes.[17] Further, DTB members located in the U.S. are permitted to enter trades for, and access trading screens of, only those contracts permissible for trading by U.S. persons.[18] Finally, the Division also emphasized the importance of DTB's agreement to provide information to the Commission concerning the location of terminals in the U.S. and the volume of trades originating from the U.S.

The no-action position taken in the DTB letter was based upon, among other things, the premise that the DTB is a ''*bona fide* foreign board of trade'' whose main business activities take place in Germany. By conditioning its letter on the DTB providing the Division with quarterly updates of DTB's U.S.-originated trading volume, the Division intended to leave open the possibility that at some point DTB's activities in the U.S. might rise to a level that would necessitate greater Commission regulation.

The initial DTB no-action letter was modified in a no-action letter to the DTB dated, May 9, 1997, in which the Division agreed not to recommend Commission enforcement action if DTB terminals

[12] On June 18, 1998, DTB changed its name to Eurex Deutschland as a step toward a planned merger later this year with the Swiss Options and Financial Futures Exchange (''SOFFEX''). For the sake of historical accuracy and simplicity we will continue to refer to the DTB in this release.

The DTB is headquartered in Frankfurt, Germany, and is a fully automated international futures and option exchange on which all trades are executed and cleared electronically. Trading is conducted solely via computer terminals. The market participants' computers and terminals are linked to the DTB computer center by means of a wide-ranging telecommunications network. As noted above, DTB and SOFFEX plan to merge to create Eurex AG. Further, CBT, DTB and SOFFEX have signed a letter of intent to form an electronic trading link between CBT and Eurex with the eventual goal of providing users of Eurex and Project A (the CBT's adjunct electronic trading system, discussed in Section I.C.below) with access to both markets from a single screen.

[13] A ''principal'' trade under DTB rules is limited to a trade made by a DTB member for its own account. DTB's definition of ''principal'' is narrower than the definition of ''proprietary'' in Commission Rule 1.3(y). A proprietary trade under Commission rules would include not only trades of board of trade members for their own accounts, but also those made by certain members' affiliates and insiders for the their respective accounts.

[14] *See* CFTC Interpretative Letter No. 96–28, [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,669 (Feb. 29, 1996). The Division's letter did not alter DTB's obligations to: (a) request a no-action position from the Commission prior to engaging in the offer or sale of any foreign stock index futures in the U.S.; or (b) have any foreign debt obligation first designated as an ''exempt security'' by the Securities and Exchange Commission (''SEC'') before engaging in the offer of sale of any futures contract or option thereon in the U.S. Section 2(a)(1)(B)(v) of the Act states generally that no person shall offer or enter into a contract of sale for future delivery of any security except an ''exempt security'' under Section 3 of the Securities Act of 1933 or Section 3(a)(12) of the Securities Exchange Act of 1934.

[15] The Commission has adopted principles formulated by a working group of IOSCO for the regulatory review of automated trading systems. These principles address the following topics:

1. Compliance with applicable legal standards, regulatory policies, and/or market custom or practice where relevant;

2. The equitable availability of accurate and timely trade and quotation information;

3. The order execution algorithm used by the system;

4. Technical operation of the system that is equitable to all market participants;

5. Periodic objective risk assessment of the system and system interfaces;

6. Procedures to ensure the competence, integrity, and authority of system users and to ensure fair access to the system;

7. Consideration of any additional risk management exposures pertinent to the system;

8. Mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available;

9. Adequacy of risk disclosure, including system liability; and

10. Procedures to ensure that the system sponsor, providers, and users are aware of and will be responsive to relevant regulatory authorities.

*See* Policy Statement Concerning the Oversight of Screen-Based Trading Systems, 55 FR 48670 (Nov. 21, 1990), in which the Commission adopted the principles set forth in the IOSCO report entitled ''Screen-Based Trading Systems for Derivative Products'' (June 1990).

[16] The BAWe carries out oversight of the German securities and futures markets pursuant to the German Securities Trading law and is the central authority in Germany for cooperation with the Commission in questions of futures trading oversight and in matters that are subject to the oversight of the German Federal States.

[17] In this regard, DTB terminals located in the U.S. have a systems capability to ''time stamp'' the execution of customer orders so that an electronic ''audit trail'' is maintained.

[18] *See* note 14, *supra*.

were placed in DTB member firm booths at the CME, subject to compliance with the terms and conditions of the original DTB letter.[19] Under the May 1997 letter, no enforcement action would be recommended if DTB terminals are placed only at booths of firms that are both CME and DTB members; only DTB contracts authorized or permissible for trading by U.S. persons are eligible to be traded from the terminals; no CME contracts are traded via the terminals; and CME has no involvement in clearance or settlement of the contracts. Currently, there are no terminals in DTB member firm booths at the CME.

Pursuant to the DTB no-action letters, if a DTB member located in the U.S. wishes to install a DTB terminal in its office, the DTB itself must make a written filing to the NFA on behalf of that member. The DTB makes this filing after a DTB member applies to the DTB to place a DTB terminal in the U.S. The filing identifies the member that intends to operate a DTB terminal in the U.S. and includes: (1) A Declaration signed by the member whereby the member declares that it acknowledges (a) the terms and conditions of the division's no-action letter and that it will comply therewith and (b) its obligation to inform DTB in writing of any changes regarding its DTB membership or the placement of DTB terminals in the U.S.; and (2) an Acknowledgment of Jurisdiction signed by the member whereby the member acknowledges that (a) for purposes of the DTB no-action letter it is subject to the Act and the Commission's regulations thereunder, (b) it will provide upon request prompt access to original books and records and the premises where DTB terminals are installed in the U.S., and (c) the person signing the Acknowledgment on behalf of the member is duly authorized to do so. Under the terms of the Division's no-action letter, the DTB member may begin trading on its U.S.-based DTB terminal five business days after the DTB member is identified to the NFA unless NFA or the Division informs DTB otherwise. The DTB does not inform the member of the approval of its application until the five-day period has passed.

*B. Commission Approval of the Trading of Products of Foreign Boards of Trade in the U.S. Pursuant to Trading Link Programs*

As noted above, the Division issued the MATIF Letter which, among other things, enunciated the Division's view that the trading of MATIF products through Globex terminals in the U.S. should not cause MATIF to be deemed a domestic board of trade. After the issuance of the MATIF Letter, the Commission approved a formal cross-exchange access program between CME and MATIF previously submitted by CME, which allows CME and MATIF members to enter orders through Globex terminals located in the U.S. and France, respectively, to buy and sell each other's products.[20] Under the program, the rules of the exchange whose products are traded apply to the members of the other exchange when they trade those products. Accordingly, CME members trading MATIF contracts through Globex terminals located in the U.S. are subject to MATIF's Globex trading rules, while MATIF members trading CME contracts through Globex terminals located in France are subject to CME's Globex trading rules.

In approving the CME–MATIF proposal, the Commission evaluated MATIF's Globex trading rules, CME and MATIF rules regarding member eligibility to participate in the cross-exchange program, how each exchange would monitor its members in trading the other exchange's contracts, and the market surveillance and financial and sales practice rules that would apply in each instance.[21] The Commission noted and relied on the fact that MATIF'S Globex trading rules governing trading of MATIF contracts are generally the same as the CME's Globex trading rules. Accordingly, all market participants trading MATIF contracts through Globex are subject to the same trading rules whether they are CME members or MATIF members.

Pursuant to its regulatory authority, the Commission also approved last year a reciprocal trading link between the CBT and the London International Financial Futures and Options Exchange (''LIFFE'').[22] The parties to this linkage have determined not to operate the linkage at this time, but the Commission's evaluation of the proposal remains illustrative of the Commission's standards and requirements for link arrangements which allow products of foreign boards of trade to be traded in the U.S. Under the CBT–LIFFE trading link, each exchange can list the other's major financial futures and option contracts for trading on its floor by open outcry during regular trading hours. In evaluating this trading link, the Commission compared the trading rules and member eligibility rules of LIFFE with those of the CBT and analyzed the manner in which surveillance and investigations related to contracts traded over the link could be implemented effectively at each board of trade. The Commission approved this trading link under the condition, *inter alia*, that LIFFE-designated contracts traded on CBT be subject to CBT rules.

The Commission also has approved other trading arrangements commonly referred to as trading links whereby products of U.S. designated contract markets can be traded through automated trading system terminals located in foreign jurisdictions.[23] These arrangements do not, however, allow the trading of the foreign exchanges' products in the U.S.[24]

*C. Foreign Regulators' Treatment of U.S. Terminals in Their Jurisdictions*

Several U.S. futures exchanges have developed automated trading systems for exchange members and their customers to trade in certain of the exchanges's futures and options contracts after regular trading hours. The CME's Globex system, for example, is an electronic trade execution system developed by the CME and Reuters for trading CME contracts, generally outside regular business hours.[25] Globex brings

[19] *See* Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, to Volker Potthoff, Senior Vice President and Dr. Ekkehard Jaskulla, Deutsche Borse AG (May 9, 1997).

[20] The Commission took this action pursuant to the regulatory authority provided under Section 5a(12), now Section 5a(a)(12)(A), of the Act. *See* Letter from Jean A. Webb, Secretary of the Commission, to Eileen T. Flaherty, Associate General Counsel, CME (Sep. 25, 1992).

[21] The responsibility for enforcing each exchange's Globex trading rules is shared between the two exchanges. Surveillance for compliance with these rules by those trading over the Globex terminals is the responsibility of the exchange whose contracts are traded. Each exchange continues to carry out its own market surveillance activities for all its contracts traded on a terminal, and each exchange's members continue to be subject to their respective exchange's financial and sales practice requirements.

[22] *See* Letter and Order from Jean A. Webb, Secretary of the Commission, to Paul J. Draths (May 6, 1997).

[23] In 1995, the New York Mercantile Exchange (''NYMEX'') established a linked access arrangement with the Sydney Futures Exchange (''SFE'') and linked SFE terminals located in Sydney to the NYMEX ACCESS trading system. In 1997, a linked access arrangement between NYMEX and the Hong Kong Futures Exchange (''HKFE'') permitted HKFE members to trade NYMEX contracts on NYMEX ACCESS terminals located in Honk Kong.

[24] These arrangements are referred to in Section I.C., below, which discusses foreign regulators' treatment of U.S. terminals placed in their jurisdictions. *See* note 27, *infra*.

[25] Although the Globex system originally was intended as an after-hours system for trading products otherwise traded on the floor of the CME, the CME now trades E-mini Standard and Poor's 500 contracts both on Globex and on the floor of the CME, depending upon the size of the order, during regular trading hours. The CME recently announced that it intends to launch a new electronic trading system, ''GLOBEX2,'' in September 1998 in a joint venture with MATIF. GLOBEX2 will use a new system architecture that will replace that currently used by the Globex system.

buy and sell orders together by linking individual terminals to a central computer where orders are processed. NYMEX and the CBT also have developed automated trading systems, known as NYMEX ACCESS and Project A, respectively.[26]

CME, NYMEX A and CBT each have computer terminals located in certain foreign countries on which trading for foreign firms and customers is conducted.[27] CME Globex terminals are located abroad in the offices of both CME members and offshore affiliates of those members. Similarly, NYMEX ACCESS terminals are located in offices of NYMEX members and affiliates thereof. The CBT Project A terminals in the U.K. are located in branch offices of CBT members and in the offices of affiliates of CBT members. CBT, NYMEX and CME permit users of their terminals in foreign countries to trade for both proprietary and customer accounts.

Foreign jurisdictions vary in their approaches to reviewing requests by U.S. boards of trade to place computer terminals in their countries. A non-U.K. board of trade that wishes to place computer terminals in the U.K., for example, must first become a ''recognised overseas investment exchange'' (''ROIE'') under Section 40 of the Financial Services Act (''FSA'').[28] Under the FSA, an application by a non-U.K. board of trade for treatment as an ROIE is reviewed to ensure, among other things, that: (1) Investors in the U.K. are afforded protections at least equivalent to those provided by the FSA for customers trading on or subject to the rules of U.K. boards of trade; (2) the applicant is willing to cooperate by sharing information with U.K. regulators; and (3) adequate arrangements exist for information sharing between the applicant's regulator and U.K. regulators. The FSA also provides that, in determining whether it is appropriate to ''make a recognition order,'' a relevant consideration is the extent to which persons in the U.K. and the country of the applicant have access to each other's financial markets.

The procedures for approval of U.S board of trade terminal placement appear somewhat less formal in other foreign countries, although each jurisdiction appears to require some form of review by the jurisdiction's regulatory authorities prior to allowing a U.S. board of trade to place computer terminals in its country. Australia and Hong Kong, for example, appear to require foreign boards of trade to be approved through an exemption process.[29] In France, the placement of terminals must be recognized by the Ministry of Finance. Prior to installing terminals, the Commission des Opérations de Bourse (''COB'') must be informed of the dates that screens will be installed and the location of their intended installation. Additionally, a foreign firm operating a terminal must comply with French rules governing disclosure and solicitation of the public. In Japan, approval by the Ministry of Finance is necessary before trading may take place through ''foreign screen-based systems.''[30]

*D. Order Routing and Execution of U.S. Customers Order on a Foreign Board of Trade*

In developing the Commission's policy with respect to the treatment of foreign board of trade computer terminals in the U.S., it is helpful to review the basic methods by which a U.S. customer traditionally placed orders for products offered on a foreign board of trade where computer terminals of that exchange were not located within the U.S.

U.S. customers traditionally have transacted business on a foreign board of trade by way of: (1) Communicating through a U.S.-registered FCM or IB; or (2) communicating with a foreign firm that has received an exemption from registration under Part 30 of the Commission rules.[31] U.S. customers traditionally have placed orders via the telephone. In the case of a communication from a U.S. customer to a U.S.-registered FCM or IB, the FCM or IB generally would relay the customer's order for execution to a foreign member of the foreign board of trade by telephone or other means (e.g. facsimile transmission). The trade would be carried on the books of the foreign firm on an omnibus basis.[32] If the U.S. customer communicated directly with a foreign firm with a Part 30 exemption, the foreign firm simply would execute the customer's trade either electronically or on the floor of an exchange, as appropriate. With advances in available technology, many intermediaries are implementing automated order routing systems that allow customers electronically to submit their orders and that are intended to pass these orders to a board of trade with minimal, if any, human intervention. Issues concerning such automated systems are discussed in Section II. C. 2., below.

**II Request for Comment**

The Commission solicits comment from the public on the broad range of issues related to providing electronic access to a foreign board of trade from within the United States. The Commission notes that any action taken

[26] Certain CBT contracts initially were listed for trading on Globex. However, CBT later withdrew from participation in the Globex system to develop its own automated trading system, Project A.

[27] As of the beginning of 1998, the CME had placed Globex terminals in the U.K., Hong Kong, Japan, France and Bermuda, NYMEX ACCESS terminals were located in Australia, Hong Kong and the U.K., and CBT's Project A terminals were located in the U.K.

In certain cases, a board of trade in the foreign jurisdiction in which U.S. terminals are located has formal business agreements or arrangements with the U.S. exchange that has placed terminals in that country. For example, agreements exist between NYMEX and the SFE and the HKFE, respectively, which permit SFE and HKFE members to trade products on NYMEX ACCESS. Likewise, there is an agreement in effect between the CME and MATIF that permits, under certain circumstances, each exchange to trade the contracts of the other through Globex. As discussed above, the Commission has approved the necessary CME and NYMEX rule changes enabling these agreements and has permitted the trading arrangements proposed by these exchanges, subject to certain conditions. *See* Letters from Jean A. Webb, Secretary of the Commission, to Ronald S. Oppenheimer, Esq., Executive Vice President and General Counsel, NYMEX (June 5, 1997); Letter from Jean A. Webb, Secretary of the Commission, to Ronald S. Oppenheimer, Esq., Executive Vice President and General Counsel, NYMEX (Sep. 1, 1995); Letter from Jean A. Webb, Secretary of the Commission, to Eileen T. Flaherty, Associate General Counsel, CME (Sep. 25, 1992).

[28] CME, NYMEX and CBT were designated as ROIEs prior to placing computer terminals in the U.K.

[29] On August 30, 1995, the Australian Federal Attorney General signed a Declaration exempting NYMEX ACCESS from regulation under the Australian Corporations Law, subject to certain conditions pertaining primarily to information sharing between the SFE an NYMEX and disciplinary procedures for breaches of NYMEX ACCESS trading rules. With respect to the placement of Globex and NYMEX ACCESS terminals in Hong Kong, the Hong Kong Securities and Futures Commission requested that it be kept informed with respect to operations of terminals with Hong Kong dealers and requested information-sharing arrangements with the CME and NYMEX.

[30] The Japanese Ministry of Finance informed the CME of its approval with respect to the placement of Globex terminals in Japan by letter to the CME on February 8, 1993.

[31] In general, under the Commission's Part 30 rules, foreign brokerage firms may be exempted from the registration requirements of the Act provided that the Commission determines that the firm is subject to comparable rules and regulations in its home country. 17 CFR part 30.

[32] If contact with U.S. customers is limited to carrying the customer omnibus account of the U.S. FCM for execution on the foreign exchange, the foreign firm would not be required to register with the Commission as an FCM or receive an exemption under Part 30. *See* CFTC Interpretative Letter No. 87–7 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,972 (Nov. 17, 1987).

in this area must ensure the Commission's ability to carry out its obligations under the Act to maintain the integrity of the U.S. markets and to provide protection to U.S. customers. At the same time, the Commission believes that its regulatory approach should not inhibit cross-border trading by imposing unnecessary regulatory burdens.

As a means of raising relevant issues and facilitating a discussion thereon, this concept release provides a framework that may form the basis for a later rulemaking. For example, Division staff has explored the possibility of a new rule that might be included among the Commission's Part 30 rules (concerning foreign futures and options transactions) and could implement a two-step procedure similar in some respects to that currently in effect under Rule 30.10 with respect to foreign firms that wish to obtain an exemption from compliance with the Commission's part 30 regulations.[33]

Under the potential procedure envisioned by the Division, a foreign board to trade initially would petition the Commission for an order to place its computer terminals in the U.S. without being designated as a U.S. contract market. If the Commission issued the requested order, a member of the board of trade or an affiliate of a member would then be permitted to request confirmation of relief under the order to allow the member or affiliate to place and to operate a foreign board of trade computer terminal in the U.S., subject to appropriate conditions contained in the order. The remainder of the concept release describes this potential approach more fully and raises a variety of issues concerning foreign board of trade terminal placement and use in the U.S. generally. The following discussion assumes that a foreign board of trade wishes to place computer terminal in the U.S. without being designated as a contract market. Any foreign board of trade, of course, may apply for designation as a U.S. contract market and, upon the Commission's approval of such designation, may offer its products in the U.S. subject to rules for U.S. contract markets.

*A. A Possible Approach for Foreign Terminal Placement and Use in the U.S.*

1. Petition Procedure

As noted above, under the possible approach envisioned by Division staff, a foreign board of trade would be required to petition for an order that would allow the foreign board of trade to place its computer terminals in the U.S.[34] In evaluating DTB's request for a no-action position to allow it to place computer terminals in the U.S., the Division reviewed, among other things the following information provided by the DTB: (1) An overview of the DTB, including the regulatory structure applicable to the operation of the DTB and transactions thereon; (2) a description of the order processing network utilized by the DTB; (3) a description of the DTB's clearing process; (4) a description of the system integrity and architecture of the DTB system, including security arrangements and procedures regarding system failures; and (5) a description of the contracts which initially were to be traded on the DTB through computer terminals located in the U.S. and a discussion of the rules and regulations governing such contracts.[35] The Commission's petition procedure could set forth a specific list of items, similar to the information reviewed as part of the DTB's no-action request. The Commission could review all of the information received from each petitioner and, based upon the totality of the information received, make a determination as to whether an order of exemption should be issued. Under such an approach no particular piece of information would necessarily be dispositive. The Commission could publish petitions in the **Federal Register** for public comment.[36] The Commission requests comment as to whether specific tests should be used to evaluate each required item of information rather than reviewing all of the information based upon a ''totality of the circumstances.'' If so, what tests are appropriate for each category of information discussed below?

Six general categories of information might be requested.[37] (1) General information concerning the petitioner foreign board of trade and its products; (2) information concerning the petitioner's rules and regulations, the laws and regulations in effect in the petitioner's home country, and the methods for monitoring compliance therewith; (3) information related to the petitioner's technological system and standards; (4) financial and accounting information pertaining to the petitioner; (5) information concerning the ability of U.S. boards of trade to place and operate computer terminals in the petitioner's home country; and (6) information concerning the petitioner's intended U.S. activities and presence. More specifically, the first category of information discussed above (general information concerning the petitioner and its products) could include information such as the petitioner's main business address, its address in the U.S. for service of process, a copy of the petitioner's organizational documents and a list of the contracts that the petitioner desires to trade in the U.S. through its terminals.

The next category of information concerning the regulatory requirements of the petitioner and its home regulatory authority might include: (1) A copy of the petitioner's rules; (2) a list of the persons responsible, and the supervisory arrangements in place, for monitoring compliance with respect to those rules of the petitioner that apply to activities conducted in the U.S.; and (3) a comprehensive discussion of the regulatory structure in the petitioner's home country. This last point might include information on the following: (a) the regulatory authorities to which the petitioner is subject in its home

[33] Commission Rule 30.10 is an exemptive provision that allows the Commission to exempt foreign firms from the application of certain CFTC rules and regulations (*e.g.*, those governing registration and financial requirements) based upon substituted compliance by a firm with comparable regulatory requirements imposed by the firm's home-country regulator. In considering a request from a foreign regulatory or self-regulatory authority for Rule 30.10 comparability relief, the Commission considers, among other things: (1) registration, authorization or other form of licensing, fitness review, or qualification of persons through whom customer order are solicited and accepted; (2) minimum financial requirements for those persons that accept customer funds; (3) minimum sales practice standards, including disclosure of risks and the risk of transactions undertaken outside of the U.S.; (4) procedures for auditing compliance with the requirements of the regulatory program, including recordkeeping and reporting requirements; (5) protection of customer funds from misapplication; and (6) the existence of appropriate information-sharing arrangements. The Commission has issued orders to permit certain foreign firms that have comparability relief under Rule 30.10 to engage in limited marketing activities of foreign futures and option products from locations within the U.S. *See* orders of October 28, 1992 and August 4, 1994. 57 FR 49644 (Nov. 3, 1992) and 59 FR 42156 (Aug. 17, 1994), respectively.

[34] Given the type and scope of information concerning the foreign board of trade and its operations that likely would be required to be provided to the Commission in a petition, it would be most appropriate for the foreign board of trade itself to submit such a petition. However, the Commission requests comment as to whether it would be feasible and appropriate to allow the petition to be submitted on behalf of the foreign board of trade by a member of the foreign board of trade or an affiliate thereof or by the foreign board of trade's foreign regulatory authority.

[35] Requirements with respect to the offer and sale of foreign stock index futures and futures and option contracts on foreign debt obligations would still be applicable if the Commission were to adopt the procedure outlined herein. *See also*, note 14, *supra*.

[36] The Commission could, upon the request of a petitioner, limit the public availability of information if it determined that such information constituted a trade secret or that public disclosure would result in material competitive harm to the petitioner.

[37] Information requested would be required to be translated into English where appropriate.

country and the petitioner's status under the laws of the country; (b) applicable requirements established by law or by regulatory and self-regulatory authorities in the petitioner's home country regarding the protection of customer funds (including in the event of insolvency), recordkeeping, reporting, timing of transactions, allocation of orders, ability to obtain the identity of customers, including rules concerning entry of account numbers, and trade practice standards, including any rules concerning prearranged trading, noncompetitive trading, ''frontrunning,'' trading ahead of customers, wash sales and bucketing of transactions; (c) procedures employed by the regulatory and self-regulatory authorities in the petitioner's home country to ensure compliance with their rules, including a history of market failures and defaults in the petitioner's home country; (d) information sharing arrangements in effect among the relevant regulatory authorities and the Commission, including information concerning any blocking statutes or data protection laws in effect in the petitioner's home country which might impair the Commission's ability to obtain information under such an arrangement; and (e) a discussion of any disciplinary action taken against the petitioner by its home country regulatory authorities. For petitioners that have received an exemption under Commission Rule 30.10 or petitioners from a jurisdiction where another entity has received such an exemption, providing the information discussed above concerning the petitioner's home country regulatory requirements would likely prove duplicative in some respects. The Commission requests comment generally on means by which the Commission could prevent unnecessary duplication of information.

Information concerning technological systems and standards of the petitioner might include a discussion of the order processing system, its system integrity and architecture and its clearing and settlement process. A discussion of the order processing system might include, among other things, a complete discussion of the order execution algorithm for each contract traded (to the extent the algorithm differs by contract). The discussion of the system integrity and architecture might include, for example, the location of computer servers (if appropriate), information concerning the processing time for executed transactions, security arrangements and procedures regarding system failures that govern U.S.-placed computer terminals, including a discussion of liability for market interruptions, and a discussion as to whether these features and procedures differ (and, if so, how they differ) from those used in the petitioner's home country or on petitioner's computer terminals located in other countries, if any.

General financial information and trading volume data might include the petitioner's most recent annual financial statements and the total trading volume, on a contract-by-contract basis and in the aggregate, for its most recent year and most recent quarter (or other period if data is not maintained on an annual and quarterly basis). The Commission requests comment generally as to what types of trading volume information are maintained by foreign boards of trade and how volume is calculated. More specifically, the Commission requests comment as to whether foreign boards of trade maintain information such that it would be feasible to provide the Commission with information concerning, for each contract traded and in the aggregate, the percentage of trading volume that originates from U.S. registered FCMs, the percentage of trading volume that originates from U.S. customers, and the percentage of trading volume that originates from each other jurisdiction where trading activity occurs.

Each petitioner might be required to provide a statement from its home country regulator as to any requirements or restrictions placed by authorities in its home country on U.S. boards of trade with respect to the placement and operation of computer terminals or the sale of products in such country. If any such requirements or restrictions exist, the statement might include a description of the restrictions or regulations, be accompanied by copies of any relevant statutes or other relevant legal materials, and include a description of the application process, if any, required for a U.S. board of trade and their members or affiliates of members to place its computer terminals and/or to sell products in the petitioner's home country.

Information concerning the petitioner's U.S. activities might include, for example, information concerning the location of any office, delivery points or employees of the foreign board of trade within the U.S. and any marketing, educational or other activities in the U.S. in which the foreign board of trade engages. The Commission requests comment regarding the appropriateness of each of these items of information and encourages commenters to address what additional information might prove valuable for the Commission to consider in evaluating a petition from a foreign board of trade to place its terminals in the U.S.

2. Conditions of an Order

Under Commission Rule 30.10, the Commission may, upon request, grant a petition of a foreign firm for an exemption from certain Part 30 requirements ''subject to such terms and conditions as the Commission may find appropriate.'' In developing a rule concerning foreign board of trade terminal placement in the U.S., the Commission could reserve for itself similar flexibility to issue orders to a foreign board of trade subject to appropriate terms and conditions. Moreover, the rule could set forth certain conditions that the Commission would include, at a minimum, in each order allowing U.S. terminal placement by a foreign board of trade. The Division staff has urged that many of these conditions should be similar to those imposed upon the DTB in the Division's no-action letter, discussed above. The Commission requests comment on the following list of conditions that might be included in a Commission order:

1. Computer terminals must be located only in the offices of members of the foreign board of trade and their affiliates or in a member's or affiliate's firm booth on the floor of a U.S. board of trade;

2. Any member or affiliate thereof that executes trades under an order must be registered as an FCM unless it trades solely for its proprietary account; [38]

3. The foreign board of trade must notify the Commission in writing immediately of any material changes in the information provided in its petition to the Commission, in its rules, or in the laws or rules of its home country;

4. The foreign board of trade must notify the Commission immediately of any Known violations of the order, the Act, the Commission's regulations, or any other futures regulatory scheme by the board of trade or by a member of affiliate operating under a Commission order;

5. The foreign board of trade, in order to ensure compliance with the terms of the Commission's order, must conduct an on-site review of the activities of each member or affiliate operating under the order at least every two years or upon notice of a possible violation of the order.[39]

[38] ''Proprietary account'' as used herein has the same meaning as that contained in Commission Rule 1.3(y).

[39] Comment is requested on whether to permit the foreign board of trade to arrange for NFA or a U.S.

Continued

6. Satisfactory information sharing arrangements must be in effect among the appropriate regulatory authorities and the Commission;[40] and

7. The foreign board of trade must provide the Commission with quarterly reports indicating: (a) With respect to each contract traded through U.S. computer terminals, (i) the total trade volume, and (ii) the trade volume broken down by customer and proprietary trades; (b) with respect to each contract traded through computer terminals in other jurisdictions, the total trade volume by jurisdiction and in the aggregate; and (c) with respect to all contracts traded on the board of trade (whether traded in the U.S. or elsewhere), the total trading volume for the period and by contract.[41] If applicable, the foreign board of trade also would be required to provide quarterly reports indicating the stocks held as of the end of the quarter at any warehouse maintained by in the U.S. for products that require physical delivery;

In addition to the conditions discussed above, the Commission could retain the authority to condition, modify, suspend, terminate or otherwise restrict an order that it issues, as applied to a specific person operating thereunder or with respect to the order in its entirety. The Commission could then take action, for example, if the Commission determined that the foreign board of trade that received and order, or an entity operating in the U.S. based on the order, ceased to comply with a stated condition of the order or that continuation of the order would be contrary to public policy or the public interest.

3. Request for Confirmation of Relief from Members and Their Affiliates

Under the possible approach the Division envisions, following the issuance of an order, an entity that desired to operate a computer terminal in the U.S. under the order would request confirmation of its ability to do so by filing a confirmation request with NFA. Such a procedure would be similar to the current procedure followed by DTB on behalf of its members that wish to install DTB terminals in the U.S. under the DTB's no-action letter.

Such a written confirmation request would be signed by a duly authorized representative of the foreign board of trade member or affiliate, and the member or affiliate would do the following: (1) Certify that it is a member or an affiliate of a member in good standing of a foreign board of trade that has received a Commission order; (2) certify that it will take reasonable precautions to safeguard access to computer terminals operated by it under the order; (3) agree to comply with all applicable conditions of the order; (4) provide the NFA with the address where computer terminals are to be kept and the number of terminals to be placed in each location.[42] (5) acknowledge that is subject to the jurisdiction of the Commission and the U.S. with respect to its activities related to the order; (6) agree to keep books and records in accordance with the Act and the Commission's regulations, if the member or affiliate is registered as an FCM, or in accordance with Rule 1.3 if not registered;[43] (7) agree to provide the Commission with prompt access to the premises where computer terminals are located;[44] (8) indicate what type of business it intends to operate in the U.S. and whether it will be trading for its proprietary account, for customer accounts or both (and if the person intends to engage in customer business, certify that it is or will be registered as an FCM and acknowledge that it is subject to all applicable Commission regulations); (9) provide a description of any litigation, enforcement actions, disciplinary proceedings or other civil, criminal or administrative proceedings, within the prior five years, involving the requester or any principal of the requester (as the term ''principal'' is defined in Commission Rule 3.1(a)), in which there was an allegation of fraud, customer abuse, or violation of applicable regulatory or board of trade requirements; (10) agree to provide NFA and the Commission with immediate written notice of any material changes in its structure, status or operations that might impact the entity's activities under the order; (11) agree to provide additional information as necessary; and (12) make any other certifications that may be required by the order. The Commission requests comment as to the appropriateness of these potential requirements. Are any of these requirements unduly burdensome? Are there any additional certifications, undertakings, or acknowledgments that the Commission should consider including?

Such a confirmation request could become effective automatically ten business days after its receipt by NFA unless the requester was notified otherwise. If contacted, the requester would have to receive written notification from the Commission or NFA prior to placing any terminals in the U.S.

*B. Definitional Issues*

As discussed above, the Division envisions a regulatory approach that would provide a means for a foreign board of trade to petition the Commission to place computer terminals in the U.S. for use by its members and their affiliates. Initially, several definitional issues are raised by such an approach. For example: (a) how should the term ''computer terminal'' be defined? (b) where in the U.S. may computer terminals be placed; and (c) who is an ''affiliate'' of a foreign board of trade member? These issues are discussed individually below, and the Commission requests comment on them.

1. Definition of Computer Terminal

The Commission believes that the term ''computer terminal,'' or some similar term should be defined broadly under any rule adopted regarding foreign board of trade terminal placement in the U.S. to anticipate, to the extent practicable, the evolution of electronic trading systems. By defining such a term broadly to anticipate

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self-regulatory organization to conduct the required on-site review. The Commission also requests comment as to whether the on-site review is appropriate and, if so, whether it should be conducted more or less frequently than biennially.

[40] The Commission requests comment concerning whether its rules should specify particular elements that would be required to be included in a ''satisfactory'' information sharing arrangement and, if so, what elements are appropriate. Additionally, the Commission requests comment as to who should be a party to such an arrangement. Should the arrangement be only between the Commission and the relevant home country regulator, or should the foreign board of trade itself be a party to the arrangement?

[41] The Commission requests comment as to what information foreign boards of trade currently maintain concerning trading volume on a jurisdiction by jurisdiction basis and, in particular, whether foreign boards of trade currently maintain information in a manner that would enable them to provide the Commission with quarterly reports indicating the percentage of its total volume that originated from each foreign jurisdiction, whether from terminals or otherwise.

[42] Such information would be required to be updated when a change occurs. The Commission requests comment as to whether ten business days is a reasonable time period in which to update such information.

[43] In the case of an unregistered entity engaged only in proprietary trading, the entity could keep either its original books and records or a complete copy of its books and records in its U.S. office. However, if copies were kept rather than originals, the member or affiliate thereof would be required to: (1) state why it is necessary or beneficial to keep the originals outside the U.S.; (2) provide the address where they are kept; (3) agree to provide the books and records in the U.S. within 72 hours of a request of a Commission or NFA representative; and (4) certify that no foreign laws would prevent the Commission's inspection of the books and records.

[44] If the member or affiliate is a registered FCM that utilizes an automated order routing system for transmitting trades submitted electronically from customers, the FCM could be required to keep a list of the names and addresses of each customer who utilizes this system and make such list available to the Commission or a Commission representative upon request.

changes in technology, the Commission would hope to ensure that a person could not circumvent any rules adopted by the Commission simply by contending that a particular device is not a computer terminal even though the device performs essentially the same operation. Historically, the term ''computer terminal'' was thought to be a dedicated proprietary computer system that provided access to a board of trade (*e.g.*, a DTB computer terminal). This perception is rapidly changing, however, as new technologies enter the marketplace. The Commission anticipates that ''computer terminal'' or some similar term would be defined for purposes of proposed rules in such a way as to contemplate such changes, and would include not only proprietary computer systems, but also any other device that currently is being used or may be used in the future to provide access to a foreign board of trade in the same manner and providing the same functionality as a proprietary system. Such devices might take the form of specialized computer software, a telephonic system, or Internet access to a foreign board of trade through a personal computer, telephone or similar device which is provided in a manner that makes Internet use the functional equivalent of a proprietary terminal. The Commission requests comment as to whether a mechanism that enables a customer order to be submitted electronically to an FCM and subsequently to a foreign board of trade without the necessity for human intervention at the FCM should be considered a ''computer terminal'' under Commission rules.[45]

As new technology evolves, new types of access to foreign markets likely will develop. The Internet, which has seen tremendous growth in recent years, provides one likely source for such development.[46] The Commission solicits comment on what types of ''computer'' or other technological systems currently are in use or anticipated that could provide access to a foreign board of trade. To what extent is Internet access to foreign futures and options currently available? Is direct Internet access (*i.e.*, not conducted through an intermediary) currently available to any foreign board of trade? To what extent is the Internet currently being used for the placement of orders for futures and option products with U.S. or foreign FCMs? How should the Commission define ''computer terminal'' so as to be sufficiently inclusive?

2. Where May Computer Terminals Be Located in the U.S.?

The Division's approach would permit members of a foreign board of trade and members' affiliates to place computer terminals in their U.S. offices or in their firm booths on the floor of a U.S. board of trade. The Division does not currently contemplate that proposed rules would permit the installation of a foreign computer terminal that provides a customer a direct link to a foreign board of trade's floor or computer system without first flowing through a registered FCM that is a member or affiliate thereof of the foreign board of trade. Neither does the Division contemplate that the proposed rules would permit any customer to utilize a foreign board of trade's computer terminal maintained by a member of the foreign board of trade or its affiliate to achieve such direct access. The Commission requests comment as to these positions of the Division and as to what safeguards might be required to prevent improper access to a foreign board of trade's computer terminals in the U.S.

3. Definition of an ''Affiliate'' of a Foreign Board of Trade Member

The Division's approach would allow affiliates of members of a foreign board of trade to operate foreign board to trade computer terminals pursuant to a Commission Order. This position raises the issue of who is a *bona fide* affiliate of a member. Arguably, only those person who have a substantial ownership connection to a member should be permitted to have access to a foreign board of trade's U.S.-located terminals, this preventing customers from circumventing Commission rules by becoming an ''affiliate'' in name only. An affiliated of a foreign board of trade member for those purposes could be defined as: (1) A person that owns 50 percent or more of a member (*i.e*, a foreign board of trade member's parent company with an ownership interest in the member of 50 percent or more); (2) a person owned 50 percent or more by a member (*i.e.*, a foreign board of trade member's 50 percent or more owned subsidiary); (3) a person that is owned 50 percent or more by a third person that also owns 50 percent or more of a member (*i.e.*, a member's sister company where both the member and the sister company are owned 50 percent or more by a third person); or (4) any person that otherwise has control, is controlled by or is owned 50 percent or more by a third person that has control of a member. The Commission requests comments as to the appropriateness of this definition. Should the Commission permit affiliates of foreign board of trade members to operate computer terminals in the U.S. absent the foreign board of trade's designation as a U.S. contract market? Is a 50 percent threshold too high or too low?

The Commission is also concerned that foreign board of trade do not create categories of membership without creating meaningful distinctions between a member of a foreign board of trade and a customer thereof. The Commission requests comment as to whether the Commission should consider imposing any requirements that would enable the Commission to ensure that a member of a foreign board of trade is a *bona fide* member. If so, what types of requirements are appropriate?

*C. Other Issues Concerning Foreign Board of Trade Terminal Placements in the U.S.*

1. *Bona Fide* Foreign Board of Trade

The Division in the DTB letter took the position that only a *bona fide* foreign board of trade should be entitle to place and operate computer terminals in the U.S. without being designated as a contract market. At some level of U.S. activity, a board of trade can no longer claim to be a board of trade located outside the U.S. and would be required to be designated as contract market. The Division's approach describe above would establish a number of requirements that are aimed specifically at providing the Commission with initial and ongoing information concerning a foreign board of trade's U.S. presence. For example, as noted above, the Commission could receive in a petition from a foreign board of trade information concerning: (1) Any physical presence the board of trade has in the U.S.; and (2) any marketing, education or other activities that are conducted by a foreign board of trade in the U.S. or that otherwise are directed toward U.S. customers. This information could be required to be updated in the event of a material change. The Commission also could receive in a foreign board of trade's petition certain information concerning the foreign board of trade's recent trade volume originating from the U.S. and the current quantity of stocks, if any, held in any U.S.-located warehouses. Such information could be required to

[45] *See also*, discussion of automated order routing and execution issues in section II.C.2, below.

[46] In this regard, FutureCom, a U.S. exchange owned by the Texas Beef Trading Co., Ltd., has applied to the Commission for contract market designation. If its application is approved, FutureCom would be the first U.S. Internet-based futures and option exchange.

be provided quarterly. Information about a foreign board of trade's activities and presence in the U.S. is relevant in determining whether a board of trade should be required to be designated as a U.S. contract market. Likewise, the percentage of a foreign board of trade's volume that originates from the U.S. also is relevant in determining such questions. The Commission solicits public comment as to whether it should define in its rules the level of U.S. activity requiring contract market designation. If so, how should the level be defined? Additionally, the Commission requests comment as to any U.S. activities, other than those discussed above, that might be relevant to a determination as to whether a board of trade that desires to place its computer terminals in the U.S. is a *bona fide foreign* board of trade.

The Division's potential approach describes above also assumes that any foreign board of trade that would petition the Commission for an order under such procedures would be a *bona fide* board of trade that is subject to an established rulemaking structure. This view is in keeping with Congressional intent with respect to what is meant by the term ''foreign board of trade'' under the Act. In this regard, the legislative history concerning the 1982 amendments to the Act suggests that, when Congress amended the Act in 1982, it intended that the exclusion of futures contracts traded on ''a board of trade, exchange or market located outside the United States'' form the off-exchange ban in Section 4(a) of the Act, as well as the limitation on the Commission's regulatory authority in Section 4(b), apply only to ''bona fide foreign futures contracts'' traded in a regulated exchange environment.[47] Consistent with Congressional intent, the Commission made clear when promulgating part 30 that the part 30 rules do not permit the offer and sale in the U.S. of foreign futures or options that are not executed *on or subject to the rules of* a foreign board of trade.

2. Order Execution and Order Routing Issues

Technological capabilities now exist that would enable a customer, who is not a member of a foreign board of trade, to send orders to the foreign board of trade through an automated order routing system that is linked to the board of trade through a member. Through such a system, customers could place orders on the foreign board of trade with little, if any, human intervention by the member. Execution of the customer's order could be accomplished either through the foreign board of trade's system interface or on the floor of an exchange.

To date, the Commission has not opined on the appropriateness of an FCM's use of an automated order routing system that would allow customer orders that have been submitted electronically to the FCM to be transmitted into a foreign board of trade computer system for placing orders on the foreign board of trade.[48] As discussed above, the Division's approach does not contemplate that the Commission's rules would permit customers to have access to ''computer terminals'' such that they would have the functionality of a proprietary terminal and could place a trade directly on a foreign board of trade without the use of an intermediary. The Commission requests comment on whether its rules should permit the use of some type of automated process to be employed by FCMs to allow customer orders that have been submitted electronically to the FCM to be transmitted into a foreign board of trade computer system. If so, what features would the system have to include or lack so that it would not be deemed a computer terminal under Commission rules? For example, should any automated order transmission system allowing a customer to transmit orders to its FCM require an employee of the FCM to review and to accept such orders and to take some affirmative, non-automated action to transmit such order to the foreign board of trade, or should fully automated intermediation be permitted, in which a fully computerized process would substitute for acceptance and transmission of orders by FCM employees? Should any such system limit a customer's view of information to only a portion of that otherwise available to a member of a foreign board of trade that has a computer terminal? If so, what types of information should be permissible to be viewed by the customer on such a system and what information should be inaccessible? Should automated systems be required to provide, at a minimum, credit and position limit checks? The Commission requests comment as to other safeguards that should be required if automated verification, acceptance and transmission of customer orders to a foreign board of trade's computer system is permitted.

If the Commission were to permit an FCM to use a fully automated process to transmit electronically submitted customer orders to a foreign board of trade, should the FCM's use of this process be permitted only pursuant to the requirements of a Commission order to the foreign board of trade? That is, should customer access through an automated order routing system be provided: (1) only to a foreign board of trade that had received an order from the Commission to place computer terminals in the U.S. without being designated as a contract market; and (2) only through an FCM that is a member or affiliate of a member of such foreign board of trade and that had undergone the appropriate confirmation process to operate computer terminals under the foreign board of trade's order? Or should fully automated order routing systems allowed to provide access to all foreign boards of trade even if they have not received permission to place terminals in the U.S.? How should foreign firms that operate pursuant to an exemption under Commission Rule 30.10 be treated?

3. Linkages Between Boards of Trade

As electronic trading systems continue to evolve, some boards of trade are finding it advantageous to enter into partnerships with other boards of trade to make their products more widely available.[49] These partnerships raise issues regarding how a Commission rule should accommodate situations where the products of one board of trade are being made available through another board of trade's computer terminals located in the U.S. or where two or more boards of trade share the same electronic trading platform. The Division's approach, described above, would apply not only with respect to a single foreign board of trade, but also in circumstances where the products of multiple foreign boards of trade are traded from a single system. In such a

[47] *See* S. Rep. 384, 97th Cong., 2d Sess. 45–47, 84–85 (1982); H.R. Rep. No. 565, Part I, 97th Cong., 2d Sess. 84–85 (1982).

[48] By letter to the CME dated August 14, 1997, the Division, under authority delegated by the Commission in Rule 1.41a(a)(3), informed the CME that its proposal to permit customers to transmit Globex orders to FCMs via the Internet did not require Commission approval under Section 5a(a)(12) of the Act. Under CME's proposal, customers do not have direct access to Globex. Rather, the proposal permits CME clearing members to accept customer orders via the Internet. After receipt of a customer order, the order is transmitted to Globex via the clearing member's order routing system and CME's computer-to-computer interface (''CTCI''), which enables clearing members to upload and download orders between the member's order routing system and Globex. A CME clearing member may use CME's CTCI only if (1) the member's order routing system contains automated credit controls or position limits, or (2) customer orders received by the member through its order routing system are subject to manual review and processing by a clearing member employee prior to being entered into a Globex terminal.

[49] See, e.g., note 12, *supra*.

case, each foreign board of trade whose products would be made available through U.S.-located computer terminals would be required to comply with any requirements adopted by the Commission in its order. For example, if two or more foreign boards of trade share the same computer terminal platform and each wished to place computer terminals in the U.S. for the use of its members (or members' affiliates), each would be required to receive an order from the Commission and comply with the requirements in that order under the approach described above. The Division's approach would also arguably apply to a foreign board of trade which trades through terminals shared with a U.S. exchange that has been designated as a U.S. contract market.[50] The Commission requests comment as to whether different requirements should apply to a foreign board of trade's products which are traded on the computer terminals of a U.S. contract market. If so, how should such requirements differ and why?

## III. Conclusion

The Commission believes that it is appropriate to develop rules concerning placement of foreign board of trade terminals in the U.S. in light of the growing interest among foreign boards of trade to do so. The Commission hopes to develop an approach to address these issues that will provide certainty to foreign exchanges that wish to place their computer terminals in the U.S. for trading purposes and will be consistent with the Commission's obligations under the Act to maintain the integrity and competitiveness of the U.S. markets and to provide protection to U.S. customers. To this end, the Commission requests public comment on the issues and the Division's approach, as discussed above.

Issued in Washington, D.C. on July 17, 1998 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 98–19723 Filed 7–23–98; 8:45 am]

BILLING CODE 6351–01–M

[50] The Commission anticipates that a foreign board of trade that currently is trading its products through computer terminals in the U.S. would be required to comply with any new rules eventually adopted by the Commission, but would be provided a transition period in which to come into compliance.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 808

**[Docket No. 97N–0222]**

## Medical Devices; Preemption of State Product Liability Claims

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

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it is withdrawing a proposed rule that published in the **Federal Register** of December 12, 1997 (62 FR 65384), relating to medical device preemption of State product liability claims. FDA is making this withdrawal because of concerns that have been raised regarding the interplay between the FDA Modernization Act of 1997 (FDAMA) and the proposed rule.

**DATES:** The proposed rule is withdrawn July 24, 1998.

**ADDRESSES:** Copies of the draft proposed rule and its comments may be obtained from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–2974.

**SUPPLEMENTARY INFORMATION:** Section 521 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k) contains an express preemption provision applicable to medical devices regulated by FDA. The Supreme Court addressed whether section 521 of the act preempts State common law tort claims arising from allegedly defective medical devices. (See *Medtronic, Inc.* v. *Lohr* (*Lohr*), 116 S.Ct. 2240 (1996).) The Court concluded that section 521 of the act did not supplant the State law duties for devices marketed pursuant to a premarket clearance issued under section 510(k) of the act (21 U.S.C. 360(k)). Since *Lohr* was decided, the lower courts have interpreted section 521 of the act inconsistently and have reached conflicting conclusions with respect to whether section 521 of the act preempts State law claims for injuries allegedly resulting from medical devices that have received premarket approval under section 515 of the act (21 U.S.C. 360e), or have received an investigational device exemption under section 520(g) of the act (21 U.S.C. 360j(g)).

In light of the confusion among the lower courts in interpreting section 521 of the act since *Lohr*, and in accordance with the Supreme Court's recognition that FDA's interpretation of the preemptive effect of section 521 of the act is entitled to substantial weight, the agency issued the proposed rule in the **Federal Register** of December 12, 1997 (62 FR 65384), addressing the circumstances under which section 521 of the act preempts State common law tort claims based on injury from allegedly defective medical devices. The proposal is consistent with the position that the agency has historically taken on issues related to device preemption. The comment period on this proposed rule was open until February 10, 1998. The agency received 41 comments from a variety of associations, law firms, and individuals representing industry and consumer interests.

FDA has decided to withdraw the rulemaking to amend its regulations regarding preemption of State and local requirements applicable to medical devices. FDA is taking this action because, even though the proposed rule was issued after the enactment of FDAMA, it was conceptualized and written prior to enactment.

Concerns have been raised by industry and congressional representatives that the agency did not share its thinking on its interpretation of section 521 of the act during FDAMA deliberations, even though an early draft of the proposed rule was shared during the spring of 1997 with attorneys for Public Citizen Litigation Group, who represented Lohr in the *Lohr* case. The remedy under FDA's regulations for disclosure of a draft regulation is ordinarily to issue a notice in the **Federal Register** making the draft publicly available. See 21 CFR 10.80(b)(2). Such a contemporaneous notice was not, however, provided in this case.

Because of the great policy significance of these preemption issues, the concern that Congress was not aware of the agency's thinking during FDAMA deliberations, and the potential interplay between the FDAMA device provisions and device preemption, the agency believes that it is imperative for all interested parties to have confidence that the agency is addressing their concerns in an impartial manner. Therefore, the agency is taking the unusual step of withdrawing the proposed rule.

The early draft of the proposed rule that was disclosed, the comments on it, and the correspondence raising

concerns about the disclosure are being placed in the Dockets Management Branch (address above) and can be identified with the docket number found in brackets in the heading of the document.

Dated: July 17, 1998.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 98–19916 Filed 7–21–98; 5:07 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

**[WV–077–FOR]**

## West Virginia Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening of public comment period and opportunity for a public hearing.

**SUMMARY:** OSM is reopening the public comment period on certain parts of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted on April 28, 1997 (with revisions submitted on May 14, 1997) and amends both the West Virginia Surface Mining Reclamation Regulations and the West Virginia Surface Mining Code. The comment period is being reopened specifically on the amendments to the definition of surface mining, special authorizations, fish and wildlife as a postmining land use for mountaintop removal operations, removal of abandoned coal refuse piles, remining, and no-cost reclamation. The amendments are intended to revise the State program to be consistent with the counterpart Federal provisions and to improve the effectiveness of the West Virginia program.

**DATES:** Written comments must be received on or before 4:00 p.m. on August 24, 1998. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on August 18, 1998. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 10, 1998.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the West Virginia program, the program amendments, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed changes by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158.

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the amendments that are the subject of this notice are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 048.15, and 948.16.

### II. Discussion of the Proposed Amendment

By letter dated April 28, 1997 (Administrative Record Number WV–1056), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program pursuant to 30 CFR 732.17. Some revisions of the original amendments were submitted by letter dated May 14, 1997 (Administrative Record Number WV–1057). The amendment revises the West Virginia Surface Mining Reclamation Regulations (CSR Section 38–2 *et seq.*), and Sec. 22–3 of the West Virginia Surface Mining Code. The amendment concerns changes to implement the standards of the Federal Energy Policy Act of 1992, and other changes desired by the State.

During OSM's review of the proposed amendments the State submitted a new amendment to its Surface Mining Reclamation Regulations at CSR 38–2 by letter dated may 11, 1998 (Administrative Record Number WV 1086). The public comment period on the new amendment is open until July 15, 1998 (63 FR 32632; June 15, 1998). Certain of the proposed regulations in the new amendment are intended to implement some of the statutes which OSM is reviewing under the current amendment. Therefore, OSM is reopening the public comment period on the specific statutes identified below for which the State has recently submitted a new amendment containing implementing regulations. In addition, OSM received a request from a commenter that the public comment period be reopened on the proposed amendments at Section 22–3–13(c)(3) concerning the proposed addition of fish and wildlife habitat and recreation lands as an approvable postmining land use for mountaintop removal operations.

The Director is reopening the public comment period on the following Sections:

22–3–3(u) concerning the definition of ''surface mine,'' ''surface mining'' or ''surface mining operations;''

22–3–3(y) concerning the definition of ''lands eligible for remining;''

22–3–13(b)(20) concerning the revegetation responsibility period for lands eligible for remining;

22–3–13(c) concerning the proposed addition of fish and wildlife habitat and recreation lands as an approvable postmining land use for mountaintop removal operations; and

22–3–28 concerning special authorization for reclamation of existing abandoned coal processing waste piles; coal extraction pursuant to a government financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic uses; and no cost reclamation contracts.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendments identified above. Comments should address whether the amendments identified above satisfy the applicable program approval criteria of 30 CFR 732.15. Commenters may refer to the relevant proposed implementing regulations submitted by the State on May 11, 1998, to support their comments. If the amendments are deemed adequate, they will become part of the West Virginia program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by the close of business on August 10, 1998. If no one requests an opportunity to testify at the public hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specific date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those schedules. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*Public Meeting*

If only one person or group requests to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Charleston Field Office listed under **ADDRESSES** by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made a part of the Administrative Record.

## IV. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et. seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 17, 1998.

**Allen D. Klein,**

*Regional Director Appalachian Regional Coordinating Center.*

[FR Doc. 98–19792 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–05–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY–100–1–9814b; FRL–6125–9]**

## Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the revisions to the Commonwealth of Kentucky's State Implementation Plan (SIP) for the general application and attainment status designations. The Commonwealth of Kentucky, through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) submitted the revisions to EPA on December 19, 1997.

The revisions to the general application rule clarify the reasonably available control technology (RACT) requirements to assure compatibility with the 1990 Clean Air Act (CAA) requirements for major sources of volatile organic compounds (VOCs) in ozone nonattainment areas. The attainment status designations regulation is being amended to make the boundaries and classifications of nonattainment areas for ozone compatible with the Federal classification.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time.

**DATES:** To be considered, comments must be received by August 24, 1998.

**ADDRESSES:** Written comments should be addressed to Karla L. McCorkle at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–100–1–9814. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Karla L. McCorkle at 404/562–9043.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 19, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 98–19842 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY–93–9821b; FRL–6125–7]**

## Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted by the Commonwealth of Kentucky for the Prevention of Significant Deterioration (PSD) of air quality to incorporate recent amendments to the **Federal Register**, the EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on the rule should do so at this time.

**DATES:** To be considered, comments must be received by August 24, 1998.

**ADDRESSES:** Written comments should be addressed to Karla L. McCorkle at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–93–9821. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Karla L. McCorkle at 404/562–9043 (E-mail: mccorkle.karla@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 19, 1998.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 98–19837 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[OR 48–1–7263b; FRL–6127–5]**

## Approval and Promulgation of State Implementation Plans: Oregon

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision to Oregon Administrative Rules, Chapter 340, Division 25 submitted by the State of Oregon on August 31, 1995, and October 8, 1996. The revision was submitted to satisfy the requirements of section 110 of the Clean Air Act (CAA) and 40 CFR part 51. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period.

**DATES:** Comments must be received in writing by August 24, 1998.

**ADDRESSES:** Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public

inspection during normal business hours at the following locations: Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, Washington, and Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Rindy Ramos, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6510.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: July 9, 1998.

**Chuck Clarke,**

*Regional Administrator, Region 10.*

[FR Doc. 98–19835 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[CA–189–0078(b); FRL–6127–2]**

### Proposed Approval and Promulgation of State Implementation Plans and Redesignation of the South Coast Air Basin in California to Attainment for Nitrogen Dioxide

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve an attainment and maintenance plan and grant a request submitted by the California Air Resources Board (CARB) to redesignate the South Coast Air Basin (South Coast) from nonattainment to attainment for the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide ($NO_2$). Under the Clean Air Act (CAA), designations can be revised if sufficient data are available to warrant such revisions. In this action, EPA is proposing to approve the attainment and maintenance plans as revisions to the California State Implementation Plan (SIP), and EPA is also proposing to grant the State's request to redesignate the South Coast to attainment because the plans and request meet the requirements set forth in the CAA.

**DATES:** Written comments must be received by August 24, 1998.

**ADDRESSES:** Comments should be addressed to the EPA contact below. The rulemaking docket for this notice may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket. Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288

**SUPPLEMENTARY INFORMATION:** In this action, EPA is proposing to approve the South Coast $NO_2$ attainment and maintenance plans and grant California's request to redesignate the South Coast to attainment for $NO_2$, because the plans and redesignation request meet the requirements set forth in the CAA.

In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision and granting the redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no relevant adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this proposed rule. However, if EPA receives relevant adverse comments, then EPA will publish a document that withdraws the rule and informs the public that the rule will not take effect. EPA will then address those comments in a final action based upon this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Intergovernmental relations, Oxides of nitrogen, Reporting and recordkeeping requirements.

Dated: July 8, 1998.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 98–19839 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 43, and 63

**[IB Docket No. 98–118, FCC 98–149]**

### Biennial Review of International Common Carrier Regulations

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On July 9, 1998, the Federal Communications Commission adopted a Notice of Proposed Rulemaking (NPRM) to further streamline the rules governing international common carriers. The Commission proposes to eliminate review of many international applications, reduce the scope of information that must be provided in applications, and clarify its rules so that carriers can more easily understand their obligations. The proposals will benefit U.S. consumers because they will eliminate unnecessary regulatory delay and will facilitate entrance into the international telecommunications market. The Commission believes that the proposed rules will lessen the regulatory burdens on applicants, authorized carriers, and the Commission by allowing carriers to operate more efficiently.

**DATES:** Comments are due on or before August 10, 1998; and reply comments are due on or before August 25. Written comments by the public on the proposed information collections are due September 22, 1998.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW, Room 222, Washington, DC 20554. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Douglas Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1470. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 98–149, adopted on July 9, 1998. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center

(Room 239) of the Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554. The complete text of this NPRM also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

The Commission initiated this proceeding in response to the Telecommunications Act of 1996, which requires the Commission to review all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

**Summary of Notice**

1. The Commission adopted a Notice of Proposed Rulemaking (FCC 98–149) to further streamline the international Section 214 authorization process and tariff requirements. This proceeding was initiated pursuant to the Telecommunications Act of 1996, which directs the FCC to undertake, on every even-numbered year, a review of all regulations that apply to operations or activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer necessary in the public interest. Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations that are overly burdensome or no longer serve the public interest. We seek comment on the proposals contained in this Notice.

2. In this proceeding, the Commission proposes to streamline and, where appropriate, eliminate many of the rules for seeking authorization pursuant to Section 214. The Commission proposes a blanket Section 214 authorization for international service to unaffiliated points. The blanket authorization would certify that it would serve the pubic interest, convenience, and necessity to allow any entity that would be a non-dominant carrier to provide facilities-based service, or to resell the international services of other carriers, to any international points except a market in which an affiliated carrier operates. Carriers providing service pursuant to this blanket authorization would continue to be subject to all of the Commission's rules and regulations governing international service. Furthermore, the authorization of any particular carrier could be revoked or conditioned as necessary.

3. We seek comment on the scope of the proposed blanket Section 214 authorization. In particular, we seek comment on whether there is a smaller or larger class of carriers or services for which a blanket authorization would be appropriate. For example, should the blanket authorization be limited to the resale of other carriers' services instead of also authorizing the provision of facilities-based services? Comments should address whether there remain any public interest considerations that might warrant denying an authorization to provide facilities-based service to a foreign market where the applicant has no affiliate. Furthermore, we seek comment on ways to identify affiliations that are equally unlikely to raise public interest concerns that therefore should not require prior Commission review. Commenters should address whether there is a way to include within the blanket authorization a carrier's provision of facilities-based or resold service on routes where it has an affiliation with a carrier that, for example: we have previously found (in some other context) to lack market power in the foreign destination market; has no telecommunications facilities in that market; and/or has only mobile wireless facilities in that market. We tentatively conclude that we must maintain a requirement that carriers notify the Commission that they are providing international service pursuant to the blanket authorization, and that we must be able to condition or revoke an authorization if necessary to prevent anticompetitive effects. We seek comment on the applicability of our tentative conclusions to commercial mobile radio services (CMRS) licenses.

4. We propose to add a new rule section to define *pro forma* and to allow carriers to undertake *pro forma* assignments and transfers of control of international Section 214 authorizations without Commission approval. We tentatively conclude that given the mechanisms in place, many *pro forma* transfers and assignments meet the forbearance standard as defined by Section 10 of the Communications Act. So that the Commission can maintain accurate records of the entities holding Section 214 authorization, we propose to require that authorized carriers that undertake a *pro forma* assignment notify the Commission by letter within 30 days after consummation of the transaction. We tentatively conclude that we need not require that carriers notify us of *pro forma* transfers of control. The proposed rule would apply to all authorized international carriers.

5. We seek comment on a proposal to amend § 63.21 of the rules to provide that an international Section 214 authorization effectively authorizes the carrier to provide services through its wholly owned subsidiaries. Although this proposal promotes flexibility, it must not be used by carriers to circumvent any structural-separation provision in the Commission's rules. We seek comment on whether the proposed rule would defeat any of the Commission's structural-separation requirements.

6. The Commission's rules currently provide that a carrier with a global facilities-based authorization may not use non-U.S-licensed facilities unless and until it has received specific prior approval or the Commission generally approves their use and so indicates on an exclusion list maintained by the International Bureau. We propose to amend the rules and the exclusion list to allow any carrier with a global facilities-based authorization to use any non-U.S.-licensed submarine cable system without prior Commission approval of each cable system. The exclusion list would then provide that carriers with global Section 214 authorizations to provide facilities-based service would be authorized to serve any unaffiliated market except Cuba and would be permitted to use any facilities except non-U.S.-licensed satellite systems that are not specifically identified. This proposed rule change would not affect the rules for use of non-U.S.-licensed satellite systems, which continues to be governed by the policies adopted in the Commission's *DISCO II Order* (62 FR 64167, December 4, 1997).

7. We also seek comment on our proposal to eliminate the need to apply for separate Section 214 authority to build a new common carrier cable system by including the authorization to construct new lines in the global facilities-based Section 214 authorization. We tentatively conclude that we must limit this provision by stating that it does not authorize the construction or extension of lines that may have a significant effect on the environment as defined in our rules. We propose to eliminate the requirement currently in the rules that requires the applicant to include a statement whether an authorization of the facilities is categorically excluded from environmental processing. We

tentatively conclude that the construction of new submarine cable systems will not have a significant effect on the human environment and therefore should be categorically excluded from our environmental processing requirements. This proposal is subject to a change in the application fees for cable landing licenses and Section 214 authorizations, which are set by statute.

8. We also propose to reorganize and simplify some of our existing rules. We tentatively conclude that we should reorganize § 63.18, which describes the contents of international Section 214 applications, and list the obligations of each category of carrier in a separate rule section. We propose to include in the rules a provision codifying the benchmark settlement rate condition that we adopted in the *Benchmarks Order* (62 FR 45758, August 29, 1997). We also propose to create new sections for definitions and for our policy on the provision of switched services over international private lines.

9. We also propose to modify our rules so that applicants will be required to list only the direct and indirect shareholders with interests greater than 25 percent.

Currently, applicants must report every 10-percent-or-greater direct and indirect shareholder. We seek comment on whether it remains necessary to scrutinize direct and indirect investments in applicants at a greater level of detail than we require after the carrier is authorized.

10. In the *Foreign Participation Order*, 62 FR 64741. December 9, 1997, we removed the prior-approval requirement for dominant carriers but neglected to amend the rules to provide that dominant resellers of international private lines are nevertheless subject to the annual reporting requirement. We propose to strike the word *non-dominant* from that provision and move that provision to the new rule section containing obligations generally applicable to resellers.

11. We propose to require that carriers authorized to undertake an assignment notify the Commission by letter within 30 days after either consummation of the assignment or a decision not to go forward with the assignment. We also propose to clarify that a carrier that changes its name need only notify the Commission by letter within 30 days after the name change.

12. We propose to create a new Section 63.16 containing the Commission's policy on the provision of switched services over international private lines interconnected to the public switched network. This section would provide that carriers could seek a Commission finding authorizing such service by filing a petition for declaratory ruling, rather than a Section 214 application. This change would not modify the requirement that carriers have the necessary underlying Section 214 authority to provide facilities-based or resold service between the United States and the country at the foreign end of the private line.

13. No substantive changes are intended other than those discussed in the NPRM. We seek comment on whether any inadvertent substantive changes would result from the proposed reorganization of our rules.

**Initial Regulatory Flexibility Analysis**

14. The Regulatory Flexibility Act of 1990, 5 U.S.C. 601–612, (RFA) as amended by the Contract with America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847, requires an initial regulatory flexibility analysis in notice-and-comment rulemaking proceedings, unless we certify that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The purposes of this proceeding are to eliminate some regulatory requirements and to simplify and clarify other existing rules. The proposals do not impose any additional compliance burden on small entities dealing with the Commission. In fact, we anticipate that the rule changes we propose will reduce regulatory and procedural burdens on small entities. Accordingly, we certify, pursuant to Section 605(b) of the RFA, that the rules, if promulgated, would not have a significant economic impact on a substantial number of small business entities, as defined by the RFA. The Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. We will analyze the information submitted during the comment period, and if it is determined at the final rule stage that the rule changes will have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis will be prepared.

**Initial Paperwork Reduction Act of 1995 Analysis**

15. This Notice of Proposed Rulemaking contains both proposed and modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due September 22, 1998. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0686.

*Title:* Streamlining the International 214 Process and Tariff Requirements.

*Form No.:* N/A.

*Type of Review:* Revision of existing collection.

*Respondents:* Business or other For-Profit.

*Number of Respondents:* 105.

*Estimated Time Per Response:* 1 hour.

*Total Annual Burden:* 105.

*Estimated costs per respondent:* $150.00.

*Frequency of Response:* Annually; Semi-Annually; Quarterly: and On occasion reporting requirements.

*Needs and Uses:* The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications services, or to construct and operate submarine cables, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are necessary for the Commission to maintain effective oversight of U.S. carriers that are affiliated with, or involved in certain co-marketing or similar arrangements with, foreign carriers that have sufficient market power to affect competition adversely in the U.S. market. The information collected is necessary for the Commission to ensure that rates, terms and conditions for international service are just and reasonable, as required by the Communications Act of 1934.

**Comment Filing Procedures**

16. Comments and reply comments should be captioned in IB Docket No. 98–118. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR

1.415, 1.419, interested parties may file comments on or before August 10, 1998, and reply comments on or before August 25, 1998. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Douglas Klein of the International Bureau, 2000 M Street, NW., Suite 800, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC. Parties are also encouraged to file a copy of all pleadings on a 3.5-inch diskette in WordPerfect 5.1 format.

17. For purposes of this proceeding, we hereby waive those provisions of our rules that require formal comments to be filed on paper, and we encourage parties to file comments electronically. Electronically filed comments that conform to the following guidelines will be considered part of the record in this proceeding and accorded the same treatment as comments filed on paper pursuant to our rules. To file electronic comments in this proceeding, you must use the electronic filing interface available on the FCC's World Wide Web site at http://dettifoss.fcc.gov:8080/cgi-bin/ws.exe/beta/ecfs/upload.hts. Further information on the process of submitting comments electronically is available at that location and at http://www.fcc.gov/e-file/.

18. Written comments by the public on the proposed information collections are due on or before September 22, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

## Ordering Clauses

19. Accordingly, it is ordered that, pursuant to Sections 1, 4(i), 10, 11, 201(b), 214, 303(r), 307, 309(a), and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161, 201(b), 214, 303(r), 307, 309(a), 310, this notice of proposed rulemaking is hereby adopted.

*20. It is further ordered* that the Office of Public Affairs, Reference Operations Division, shall send a copy of this notice of proposed rulemaking, including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

*21. It is further ordered* that the Office of Public Affairs, Reference Operations Division, shall send a copy of this notice of proposed rulemaking to the Council on Environmental Quality.

## List of Subjects in 47 CFR Parts 1, 43, and 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

## Rule Changes

Parts 1, 43, and 63 of title 47 of the Code of Federal Regulations are amended as follows:

## Part 1—Practice and Procedure

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

**Authority:** 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. Section 1.767 is amended by revising paragraphs (a)(6) and (a)(7) and adding new paragraphs (a)(8) and (a)(9) to read as follows:

### § 1.767 Cable landing licenses.

(a) * * *

(6) A statement as to whether the cable will be operated on a common carrier or non-common carrier basis;

(7) A list of the proposed owners of the cable system, their voting interests, and their ownership interests by segment in the cable;

(8) For each proposed owner of the cable system, a certification as to whether the proposed owner is, or has an affiliation with, a foreign carrier. Include the information and certifications required in § 63.18(h)(1) and (2) of this chapter; and

(9) Any other information that may be necessary to enable the Commission to act on the application.

* * * * *

3. Section 1.1306 is amended by adding the following sentence to the end of Note 1:

### § 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

**Note 1:** * * * The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

## Part 43—Reports of Communication Common Carriers and Certain Affiliates

4. The authority citation for part 43 continues to read as follows:

**Authority:** 47 U.S.C. 154.

5. Section 43.61 is amended by revising the last sentence of paragraph (c) to read as follows:

### § 43.61 Reports of international telecommunications traffic.

* * * * *

(c) * * * For purposes of this paragraph, *affiliation* and *foreign carrier* are defined in § 63.09 of this chapter

## PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

6. The authority citation for part 63 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 403, 533 unless otherwise noted.

7. New § 63.09 is added to read as follows:

### § 63.09 Definitions applicable to international Section 214 authorizations.

The following definitions shall apply to §§ 63.09–63.24 of this part, unless the context indicates otherwise:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest in bare capacity in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable or an INTELSAT or separate satellite system.

(b) *Control* includes actual working control in whatever manner exercised and is not limited to majority stock ownership.

(c) *Special concession i*s defined as in § 63.14(b).

(d) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World

Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC–88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

(e) An *affiliation with a foreign carrier* includes the following:

(1) A greater than 25 percent ownership of capital stock, or controlling interest at any level, by the carrier, or by any entity that directly or indirectly controls or is controlled by it, or that is under direct or indirect common control with it, in a foreign carrier or in any entity that directly or indirectly controls a foreign carrier; or

(2) A greater than 25 percent ownership of capital stock, or controlling interest at any level, in the carrier by a foreign carrier, or by any entity that directly or indirectly controls or is controlled by a foreign carrier, or that is under direct or indirect common control with a foreign carrier; or by two or more foreign carriers investing in the carrier in the same manner in circumstances where the foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of basic international telecommunications services in the United States. A U.S. carrier also will be considered to be affiliated with a foreign carrier where the foreign carrier controls, is controlled by, or is under common control with a second foreign carrier that is affiliated with that U.S. carrier under this section.

(f) An *affiliation with a U.S. facilities-based international carrier* is defined as in paragraph (e), except that the phrase ''U.S. facilities-based international carrier'' shall be substituted for the phrase ''foreign carrier.''

**Note 1:** The assessment of ''capital stock'' ownership will be made under the standards developed in Commission case law for determining such ownership. See, e.g., Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995). ''Capital stock'' includes all forms of equity ownership, including partnership interests.

**Note 2:** Ownership and other interests in U.S. and foreign carriers will be attributed to their holders and deemed cognizable pursuant to the following criteria: Attribution of ownership interests in a carrier that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it shall not be included for purposes of this multiplication. For example, if A owns 30 percent of company X, which owns 60 percent of company Y, which owns 26 percent of ''carrier,'' then X's interest in ''carrier'' would be 26 percent (the same as Y's interest because X's interest in Y exceeds 50 percent), and A's interest in ''carrier'' would be 7.8 percent ($0.30 \times 0.26$). Under the 25 percent attribution benchmark, X's interest in ''carrier'' would be cognizable, while A's interest would not be cognizable.

8. Section 63.10 is amended by removing the third sentence of paragraph (a) introductory text, the last sentence of paragraph (a)(4), and the last sentence of paragraph (c)(5).

9. Section 63.11 is amended by revising paragraphs (a)(1) and (a)(2) and by removing the last sentence of paragraph (c)(1) to read as follows:

**§ 63.11 Notification by and prior approval for U.S. international carriers that have or propose to acquire an affiliation with a foreign carrier.**

(a) * * *

(1) acquisition of a direct or indirect controlling interest in a foreign carrier by the authorized carrier, or by any entity that directly or indirectly controls the authorized carrier, or that directly or indirectly owns more than 25 percent of the capital stock of the authorized carrier; or

(2) acquisition of a direct or indirect interest in the capital stock of the authorized carrier by a foreign carrier or by an entity that directly or indirectly controls a foreign carrier where the interest would create an affiliation within the meaning of § 63.09(e)(2).

* * * * *

10. Section 63.14 is amended by removing the last sentence of paragraph (a).

11. Section 63.15 is removed.

**§ 63.15 [Removed]**

12. New § 63.16 is added to read as follows:

**§ 63.16 Switched services over private lines.**

(a) Except as provided in § 63.22(g)(2), a carrier may provide switched basic services over its authorized private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines.

(b) An authorized carrier seeking to add a foreign market to the list of markets to which carriers may provide switched services over private lines must make the following showing in a Section 214 application filed pursuant to § 63.18 or in a petition for declaratory ruling:

(i) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a WTO Member country, the applicant shall demonstrate either that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 *or* that the country affords resale opportunities equivalent to those available under U.S. law.

(ii) If seeking a Commission ruling to permit the provision of international switched basic services over private lines between the United States and a non-WTO Member country, the applicant shall demonstrate that settlement rates for at least 50 percent of the settled U.S.-billed traffic between the United States and the country at the foreign end of the private line are at or below the benchmark settlement rate adopted for that country in IB Docket No. 96–261 *and* that the country affords resale opportunities equivalent to those available under U.S. law.

(c) With regard to showing under paragraph (b) of this section that a destination country affords resale opportunities equivalent to those available under U.S. law, an applicant shall include evidence demonstrating that equivalent resale opportunities exist between the United States and the subject country, including any relevant bilateral or multilateral agreements between the administrations involved. The applicant must demonstrate that the foreign country at the other end of the private line provides U.S.-based carriers with:

(i) The legal right to resell international private lines, interconnected at both ends, for the provision of switched services;

(ii) Reasonable and nondiscriminatory charges, terms and conditions for interconnection to foreign domestic carrier facilities for termination and origination of international services, with adequate means of enforcement;

(iii) Competitive safeguards to protect against anticompetitive and discriminatory practices affecting private line resale; and

(iv) Fair and transparent regulatory procedures, including separation between the regulator and operator of international facilities-based services.

**Note 1 to § 63.16:** The Commission's benchmark settlement rates are available in International Settlement Rates, *Report and*

*Order,* 12 FCC Rcd 19,806, 62 FR 45758 (August 29, 1997).

13. Section 63.17 is amended by changing ''(e)(6)'' to ''(e)(4)'' at the end of paragraph (b)(4).

14. Section 63.18 is amended by revising paragraphs (e), (g), (h), and (i) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

* * * * *

(e) One or more of the following statements, as pertinent:

(1) *Global Facilities-Based Authority.* If applying for authority to become a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a facilities-based carrier pursuant to § 63.18(e)(1) of the Commission's rules

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) *Global Resale Authority.* If applying for authority to resell the international services of authorized U.S. common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting Section 214 authority to operate as a resale carrier pursuant to § 63.18(e)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request authorization under this paragraph (see § 63.23(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23.

(3) *Transfer of Control or Assignment.* If applying for authority to acquire facilities through the transfer of control of a common carrier holding international Section 214 authorization, or through the assignment of another carrier's existing authorization, the applicant shall complete paragraphs (a) through (d) of this section for both the transferor/assignor and the transferee/assignee. Only the transferee/assignee needs to complete paragraphs (h) through (k) of this section. At the beginning of the application, the applicant should also include a narrative of the means by which the transfer or assignment will take place. The Commission reserves the right to request additional information as to the particulars of the transaction to aid it in making its public interest determination. An assignee shall notify the Commission no later than 30 days after either consummation of the assignment or a decision not to consummate the assignment. The notification may be by letter and shall identify the file numbers under which the initial authorization and the authorization of the assignment were granted. See also § 63.24 (*pro forma assignments and transfers of control).*

(4) *Other Authorizations.* If applying for authority to acquire facilities or to provide services not covered by paragraphs (e)(1) through (e)(3), the applicant shall provide a description of the facilities and services for which it seeks authorization. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(4) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.311 of this chapter need not be filed with the application.

(h) A certification as to whether or not the applicant is, or has an affiliation with, a foreign carrier, supported by the following information:

(1) In support of the required certification, each applicant shall also provide the name, address, citizenship and principal businesses of its greater-than-25-percent direct and indirect shareholders or other equity holders and identify any interlocking directorates.

(2) The certification shall state with specificity each foreign country in which the applicant is, or has an affiliation with, a foreign carrier.

(3) Any applicant that seeks to provide international telecommunications services to a particular country and that is a foreign carrier in that country, or directly or indirectly controls a foreign carrier in that country, or has an affiliation within the meaning of paragraph § 63.09(e)(2) of this section with a foreign carrier in that country shall make one of the following showings:

(i) The named foreign country (i.e., the destination foreign country) is a Member of the World Trade Organization; or

(ii) The applicant's affiliated foreign carrier lacks sufficient market power in the named foreign country to affect competition adversely in the U.S. market; or

(iii) The named foreign country provides effective competitive opportunities to U.S. carriers to compete in that country's market for the service that the applicant seeks to provide (facilities-based, resold switched, or resold non-interconnected private line services). An effective competitive opportunities demonstration should address the following factors:

(A) If the applicant seeks to provide facilities-based international services, the legal ability of U.S. carriers to enter the foreign market and provide facilities-based international services, in particular international message telephone service (IMTS);

(B) If the applicant seeks to provide resold services, the legal ability of U.S. carriers to enter the foreign market and provide resold international switched services (for switched resale applications) or non-interconnected private line services (for non-interconnected private line resale applications);

(C) Whether there exist reasonable and nondiscriminatory charges, terms and conditions for interconnection to a foreign carrier's domestic facilities for termination and origination of international services or the provision of the relevant resale service;

(D) Whether competitive safeguards exist in the foreign country to protect against anticompetitive practices, including safeguards such as:

(*1*) Existence of cost-allocation rules in the foreign country to prevent cross-subsidization;

(*2*) Timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities; and

(*3*) Protection of carrier and customer proprietary information;

(E) Whether there is an effective regulatory framework in the foreign country to develop, implement and enforce legal requirements, interconnection arrangements and other safeguards; and

(F) Any other factors the applicant deems relevant to its demonstration.

(4) Any applicant that proposes to resell the international switched services of an unaffiliated U.S. carrier for the purpose of providing international telecommunications services to the named foreign country and that is a foreign carrier in that country or has an affiliation with a foreign carrier in that country shall either provide in its application a showing that would satisfy § 63.10(a)(3) or state that it will file the quarterly

traffic reports required by § 43.61(c) of this chapter.

(5) With respect to regulatory classification under § 63.10, any applicant that certifies that it is or has an affiliation with a foreign carrier in a named foreign country and that desires to be regulated as non-dominant for the provision of particular international telecommunications services to that country should provide information in its application to demonstrate that it qualifies for non-dominant classification pursuant to § 63.10.

(i) Each applicant shall certify that the applicant has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market and will not enter into such agreements in the future.

* * * * *

15. Section 63.21 is amended by revising the section heading and paragraph (a), and adding new paragraphs (i) and (j) to read as follows:

**§ 63.21 Conditions applicable to all international Section 214 authorizations.**

* * * * *

(a) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and in any event within thirty days file with the Secretary in duplicate a corrected certification referencing the FCC File No. under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

* * * * *

(i) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned subsidiaries without seeking additional Commission authorization, *provided* that this provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(j) An authorized carrier that changes its name shall notify the Commission by letter filed with the Secretary in duplicate within 30 days of the name change. Such letter shall reference the FCC File No. under which the carrier's authorizations were granted.

* * * * *

16. Sections 63.22 through 63.25 are added to read as follows:

**§ 63.22 Facilities-based international common carriers.**

The following conditions apply to authorized international facilities-based carriers:

(a) A carrier authorized under § 63.18(e)(1) may provide international facilities-based services to international points for which it qualifies for non-dominant regulation as set forth in § 63.10, except in the following circumstance: If the carrier is or is affiliated with a foreign carrier in a destination market and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)), the carrier shall not provide service on that route unless it has received specific authority to do so under § 63.18(e)(4).

(b) The carrier may provide service using half-circuits on any appropriately licensed U.S. common carrier and non-common carrier facilities (under either Title III of the Communications Act of 1934, as amended, or the Submarine Cable Landing License Act, 47 U.S.C. §§ 34–39) that do not appear on an exclusion list published by the Commission. Carriers may also use any necessary non-U.S.-licensed facilities, including any submarine cable systems, that do not appear on the exclusion list. Carriers may not use U.S. earth stations to access non-U.S.-licensed satellite systems unless the Commission has specifically approved the use of those satellites and so indicates on the exclusion list, and then only for service to the countries indicated thereon. The exclusion list is maintained on the Commission's World Wide Web site at http://www.fcc.gov/ib/td/pf/exclusion list.html.

(c) The carrier may not provide service to any country listed on an exclusion list published by the Commission unless it has received specific authority under § 63.18(e)(4).

(d) The carrier may provide international basic switched, private line, data, television and business services.

(e) Subject to the requirements of the Submarine Cable Landing License Act, 47 U.S.C. 34–39, the carrier is authorized to construct, acquire, or operate lines in any new major common carrier facility project between the United States and all international points that it is authorized to serve on a facilities basis. This paragraph shall not authorize the carrier to engage in any construction or extension of lines that may have a significant effect on the environment as defined in § 1.1307 of this chapter. See § 1.1312 of this chapter. The carrier must seek specific Section 214 authority and comply with the Commission's environmental rules before any such construction or extension.

(f) Except as otherwise ordered by the Commission, the carrier may provide facilities-based service to a market served by an affiliate that terminates U.S. international switched traffic only if that affiliate has in effect a settlement rate with U.S. international carriers that is at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. See FCC 97–280 (rel. Aug. 18, 1997) (available at the FCC's Reference Operations Division, Washington, DC 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov).

(g)(1) Except as provided in paragraph (g)(2) of this section, the carrier may provide switched basic services over its authorized facilities-based private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(2) The carrier may use its authorized private line facilities to provide switched basic services in circumstances where the private line facility is interconnected to the public switched network on only one end—either the U.S. end or the foreign end—and where the carrier is not operating the facility in correspondence with a carrier that directly or indirectly owns the private line facility in the foreign country at the other end of the private line.

(h) The carrier shall file annual international circuit status reports as required by § 43.82 of this chapter.

(i) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See § 63.12.

**§ 63.23 Resale-based international common carriers.**

The following conditions apply to carriers authorized to resell the international services of other authorized carriers:

(a) A carrier authorized under § 63.18(e)(2) may provide resold international services to international points for which the applicant qualifies for non-dominant regulation as set forth in § 63.10, except that the carrier may not provide either of the following services unless it has received specific authority to do so under § 63.18(e)(4):

(i) Switched resold services to a non-WTO Member country where the applicant is or is affiliated with a foreign carrier; and

(ii) Switched or private line services over resold private lines to a destination market where the applicant is or is affiliated with a foreign carrier and the Commission has not determined that the foreign carrier lacks sufficient market power in the destination market to affect competition adversely in the U.S. market (see § 63.10(a)).

(b) The carrier may not resell the international services of an affiliated carrier regulated as dominant on the route to be served unless it has received specific authority to do so under § 63.18(e)(4).

(c) Except as provided in paragraph (b) of this section, the carrier may resell the international services of any authorized common carrier, pursuant to that carrier's tariff or contract duly filed with the Commission, for the provision of international basic switched, private line, data, television and business services to all international points.

(d) The carrier may provide switched basic services over its authorized resold private lines if and only if the country at the foreign end of the private line appears on a Commission list of countries to which the Commission has authorized the provision of switched services over private lines. See § 63.16. If at any time the Commission finds that the country no longer provides equivalent resale opportunities or that market distortion has occurred in the routing of traffic between the United States and that country, the carrier shall comply with enforcement actions taken by the Commission.

(e) Any party certified to provide international resold private lines to a particular geographic market shall report its circuit additions on an annual basis. Circuit additions should indicate the specific services provided (e.g., IMTS or private line) and the country served. This report shall be filed on a consolidated basis not later than March 31 for the preceding calendar year.

(f) The authority granted under this part is subject to all Commission rules and regulations and any conditions or limitations stated in the Commission's public notice or order that serves as the carrier's Section 214 certificate. See §§ 63.12, 63.21.

**§ 63.24 Pro forma assignments and transfers of control.**

(a) *Definition.* An assignment of an authorization granted under this part or a transfer of control of a carrier authorized under this part to provide an international telecommunications service is a *pro forma* assignment or transfer of control if it falls into one of the following categories and, together with all previous *pro forma* transactions, does not result in a change in the carrier's ultimate control:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation;

(5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

(b) A *pro forma* assignment or transfer of control of an authorization to provide international telecommunications service is not subject to the requirements of § 63.18. A *pro forma* assignee or a carrier that is the subject of a *pro forma* transfer of control is not required to seek prior Commission approval for the transaction. A *pro forma* assignee must notify the Commission no later than 30 days after the assignment is consummated. The notification may be in the form of a letter, and it must contain a certification that the assignment was *pro forma* as defined in paragraph (a) of this section and, together with all previous *pro forma* transactions, does not result in a change of the carrier's ultimate control. A single letter may be filed for an assignment of more than one authorization if each authorization is identified by the file number under which it was granted.

**§ 63.25 Special procedures for non-dominant international common carriers.**

(a) Any party that would be a non-dominant international communications common carrier is authorized to provide facilities-based international services, subject to § 63.22, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(b) Any party that would be a non-dominant international communications common carrier is authorized to provide resold international services, subject to § 63.23, between the United States and all international points, except that this paragraph shall not authorize the party to provide service between the United States and any country where an affiliated foreign carrier operates.

(c) Within 30 days of commencing service pursuant to paragraph (a) or (b), the party shall notify the Commission by letter addressed to the Chief, International Bureau, that it has commenced providing service pursuant to § 63.25 of the Commission's rules. Such letter shall include the applicable information and certifications described in § 63.18.

(d) Notwithstanding paragraphs (a) and (b), the Commission reserves the right to condition or revoke the authorization of any entity for a violation of the Commission's rules or policies, and such condition or revocation shall be effective against all successors, transferees, or assigns, as ordered by the Commission.

[FR Doc. 98–19638 Filed 7–23–98; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 3

**[IB Docket No. 98–96, FCC 98–123]**

## 1998 Biennial Regulatory Review of Accounts Settlements in the Maritime and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communication Commission adopted a Notice of

Proposed Rulemaking (NPRM) to streamline further the rules governing the regulation and authorization of private accounting authorities for maritime mobile, maritime satellite, aircraft, and hand-held terminal radio services. The Commission proposes to withdraw from its accounting authority function and instead to rely upon private accounting authorities, require private authorities to deal with the public in a non-discriminatory manner, and designate a new accounting authority of last resort. The Commission believes that its function as an accounting clearinghouse is no longer necessary and that its withdrawal from performing this function will serve the public interest. The proposals will benefit the public because they will promote competition in the settlement of maritime radio accounts.

**DATES:** Comments are due on or before August 24, 1998; and reply comments are due on or before September 9, 1998. Written comments by the public on the proposed information collections are due August 24, 1998.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478. For additional information concerning the information collections contained in this NPRM contact John Copes at (202) 418–1478, or via the Internet at jcopes@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's NPRM, FCC 98–123, adopted on June 18, 1998, and released on July 17, 1998. The full text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. The complete text of this NPRM may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

**Summary of NPRM**

1. The Commission adopted an NPRM (FCC 98–123) proposing to withdraw from performing the functions of an accounting authority and to streamline the rules governing the regulation of private accounting authorities for maritime mobile, maritime satellite, aircraft, and hand-held terminal radio services. The Commission initiated this proceeding in response to section 11 of the Communications Act of 1934, which requires the Commission to review all regulations that apply to operations or activities of providers of telecommunications services and to repeal or modify any regulation that it determines to be no longer necessary in the public interest. Accordingly, the Commission has begun a comprehensive 1998 biennial review of telecommunications and other regulations that are overly burdensome or no longer serve the public interest. The Commission seeks comment on the proposals contained in this NPRM.

2. In this proceeding, the Commission proposes to withdraw from performing the functions of an accounting authority including all services for which the FCC now provides clearinghouse service. The Commission will continue to operate as the administrator of all U.S.-certified accounting authorities and the basic rules and procedures for applications, services, and procedures will continue to govern. Because other federal agencies have relied upon the FCC for settlements on their accounts, the Commission specifically requests the governmental agencies to comment on this proposal as to whether they have any special needs that would require it to continue to serve as a clearinghouse for governmental agencies.

3. The Commission seeks comment on the proposal to amend section 3.10(e) to require private accounting authorities to provide service to anyone making a reasonable request for service, without undue or unjust discrimination, and impose charges that are reasonable and non-discriminatory. The rules already require that applicants for accounting authority certification serve the public on a reasonable and non-discriminatory basis. To make these obligations more explicit, the Commission proposes to amend the first sentence of § 3.10(e) to read as follows:

> Section 3.10(e). Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and charge reasonable and non-discriminatory fees for services.

This change does not alter the substance of the obligation already created by Section 3.10(e) but is intended only as a clarification that private entities have a duty to deal with the public in a non-discriminatory manner.

4. Historically, the FCC has acted as the accounting authority of last resort; that is foreign telecommunications operators have sent to the Commission all accounts where the customer has not designated a specific accounting authority. If the Commission withdraws from acting as an accounting authority, it will be necessary to provide an alternative mechanism. The Commission seeks comment on designating a new accounting authority of last resort. Some of the options include: designating a private accounting authority, requiring customers to pre-subscribe to an accounting authority or to designate an authority on every message, or developing a formula for distributing messages without a designated authority among several private accounting authorities. While a formula would make it easier for the customer, and would yield a fair distribution of messages among authorities, it would require an administrator and could increase the cost of the accounts-settlement function. The Commission seeks comment on this issue as well.

5. The Commission also seeks comment on its proposal to allow ''grandfathered'' entities, those which already held interim certification as accounting authorities, to continue their prior pattern of activities and exempt them from the requirement to deal with the public at large. In its *1996 Report and Order,* 61 FR 20155 (published May 6, 1996), adopting rules for certifying accounting authorities, the Commission created an exemption for one entity that had served as accounting authorities only because it owns and operates the vessels for which it settles charges. The Commission tentatively concludes that maintaining the status of this grandfathered entity and continuing to exempt it from the requirement to deal with the public at large will avoid working an unnecessary hardship on it since it does not seek or derive profit from performing the functions of an accounting authority. However, should all 25 Accounting Authority identification Codes (AAIC), be assigned and new codes become necessary, the Commission reserves the right to require this grandfathered entity to serve the public generally or to surrender its code for reassignment to an entity who will serve the public indiscriminately. The Commission proposes to retain this reservation in the regulation of private

accounting authorities established in this proceeding.

6. The Commission proposes to allow applicants with applications for accounting authority certification pending before it to amend their applications to conform to the new rules. The Commission tentatively concludes that the public interest would be served by giving applicants an opportunity to amend their applications by showing how they propose to fulfill the non-discrimination obligation and allowing the public top address these entities= ability to perform that function.

7. The Commission proposes to amend the ''Application For Certification As An Accounting Authority,'' FCC Form 44 in the Maritime and Maritime Satellite Radio Service Regulations, so as to include a certification term of intent to conduct settlements on a non-discriminatory basis. The FCC also proposes that all applicants with accounting-authority applications pending before the Commission amend their Form 44 submissions within 60 days after the release of a *Report and Order* in this proceeding specifically to affirm that they will serve all customers requesting their services on a non-discriminatory basis.

**Ex Parte**

8. This is a non-restricted (*i.e.*, permit-but-disclose) notice-and-comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206. Persons making oral *ex parte* presentations are reminded that memorandums summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in 1.1206(b) as well.

**Regulatory Flexibility Act**

9. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals contained in the NPRM. The IRFA is set forth in the attached Rule Changes. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administrations in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

**Initial Paperwork Reduction Act of 1995 Analysis**

10. This NPRM contains a proposed information collection. As part of the Commission's continuing effort to reduce paperwork burdens, it invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due August 24, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**Notice and Comment Provision**

11. Pursuant to Section 1.415 of the Commission's Rules, 47 CFR 1.415 (1997), interested persons may become parties to this proceeding by filing comments on these proposals on or before August 24, 1998, and reply comments on or before September 9, 1998. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the Commission's reliance on such information is noted in the Report and Order.

12. Parties in this proceeding may file comments and replies on paper or electronically. Under Section 1.419 of the Commission's Rules, 47 CFR 1.419 those filing comments on paper must file an original and four copies of all comments, reply comments, and supporting documents. If parties want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Persons who wish to participate informally may submit two copies of their comments, stating thereon the docket number of this proceeding. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M St., N.W., Room 222, Washington, D.C. 20554. Additionally, parties must file a copy of their comments, replies and supporting documents with the Commission's copy contractor, International Transcription Service, Inc., 1231 20th St., N.W., Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) at that address. For additional information about this proceeding, please contact John Copes at (202) 418–1478.

13. Pursuant to Section 1.49(f) of the Commission's Rules, 47 CFR 1.49(f), Parties may file their comments, replies and supporting documents in electronic form via the Internet. Such parties should use the Commission's Electronic Comment Filing System, which they can access using the following Internet address: <http://www.fcc.gov/e-file/ecfs.html>. Further information on the process of submitting comments electronically is available at <http://www.fcc.gov/e-file/>. Pursuant to § 1.419(d) of the Commission's Rules, 47 CFR 1.419(d), Parties need file only one copy of an electronic submission. In completing the transmittal screen, a party filing a comment, reply or supporting document should include his or her full name, U.S. Postal Service mailing address and the lead Docket number for this proceeding, which is IB Docket No. 98–96. The Commission will consider electronically filed comments that conform to the guidelines of this section part of the record in this proceeding and accord them the same treatment as comments filed on paper.

14. Parties filing comments, replies and supporting documents on paper must also file their submissions on diskette. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format, using MS DOS and Word Perfect 5.1 for Windows or compatible software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly marked with the party's name, the proceeding to which it is addressed (in this case, IB Docket No. 98–96), the type

of pleading (comment or reply) and the date of submission. The diskette should be accompanied by a cover letter setting forth the same information. Each diskette should contain only one party's pleading, preferably in a single electronnic file. The party should submit one copy of the diskette to John Copes, International Bureau, Telecommunications Division, 2000 M St., N.W., Room 844, Washington, D.C. 20054. The party should file an exact copy of the diskette, identically marked, with the Commission's copy contractor, International Transcription Service, Inc.

15. Persons wishing to comment on the proposed and/or modified information collections should file written comments on or before August 24, 1998. The Office of Management and Budget (OMB) must submit its written comments on the proposed information collections, if any, on or before [insert date 60 days after the date of publication of the summary of this Notice of Proposed Rulemaking in the **Federal Register**]. In addition to filing comments with the Secretary, they should also submit a copy of any comments on the information collections contained herein Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**Conclusion**

16. The Commission is proposing these rules to clarify the public service requirements for all those pending applicants and all future entities who may wish to serve as accounting authorities for the settlement of international radio maritime accounts involving U.S. registered vessels operating in foreign or international waters. By these rules, the Commission seeks to ensure that the public interest is adequately served as the Commission withdraws from its function as an accounting authority for non-governmental users of maritime mobile and maritime mobile-satellite radio services. It seeks comment on the proposed changes to the application procedure and any alternatives interested persons may wish to suggest.

**Ordering Clauses**

17. Accordingly, it is ordered, pursuant to Sections 4(i), 4(j), 11, 201–205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j),161, 201–205 and 303(r), that this NPRM is hereby adopted.

18. It is further ordered that the Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rulemaking,* including the regulatory flexibility certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

Part 3 of the Commission's Rules and Regulations (Chapter 1 of Title 47 of the Code of Federal Regulations) is amended as follows:

## PART 3—AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES

1. The authority citation for part 3 continues to read as follows:

**Authority:** 47 U.S.C. 154(i), 154(j) and 303(r).

2. Section 3.10 is proposed to be amended by revising the first sentence of paragraph (e) to read as follows:

**§ 3.10 Basic qualifications.**

(e) Applicants must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer, and charge reasonable and non-discriminatory fees for service. * * * * * * * * *

[FR Doc. 98–19783 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MM Docket No. 98–130; RM–9297]**

## Radio Broadcasting Services; Saratoga, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Mountain Tower Broadcasting proposing the allotment of Channel 259C at Saratoga, Wyoming, as the community's first local aural transmission service. Channel 259C can be allotted to Saratoga in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers (10.1 miles) northwest to avoid a short-spacing to the construction permit site of Station KRRR(FM), Channel 260C2, Cheyenne, Wyoming. The coordinates for Channel 259C at Saratoga are North Latitude 41–31–38 and West Longitude 106–58–37.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain Tower Broadcasting, 7901 Stoneridge Drive, Cheyenne, Wyoming 82009 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–130, adopted July 8, 1998, and released July 17, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19720 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 98–129, RM–9307]**

### Radio Broadcasting Services; Powers, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Results Broadcasting of Iron Mountain, Inc., proposing the allotment of Channel 262A at Powers, Michigan, as that community's first local broadcast service. Channel 262A can be allotted to Powers, Michigan, without a site restriction at coordinates 45–41–12 and 87–31–30. Canadian concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Patricia M. Chuh, Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, D. C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–129, adopted July 8, 1998, and released July 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19719 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 98–126, RM–9293]**

### Radio Broadcasting Services; Bunker, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Bunker Radio Project, proposing the allotment of Channel 292A to Bunker, Missouri, as that community's first local broadcast service. The channel can be allotted to Bunker without a site restriction at coordinates 37–27–18 and 91–12–48.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John M. Pelkey, Haley Bader & Potts, P.L.C., 4350 North Fairfax Drive, Suite 900, Arlington, VA 22203–1633.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–126, adopted July 8, 1998, and released July 17, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19718 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 98–125, RM–9301]**

### Radio Broadcasting Services; Lufkin, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Russell L. Lindley, proposing the allotment of Channel 230A to Lufkin, Texas. The channel can be allotted to Lufkin without a site restriction at coordinates 31–20–48 and 94–43–30.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Howard J. Barr, Patricia M. Chuh, Lee G. Petro, Pepper & Corazzini, L.L.P., 1176 K Street, N.W., Suite 200, Washington, D. C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–125, adopted July 8, 1998, and released July 17, 1998. The full text of

this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19717 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 98–124, RM–9305]**

### Radio Broadcasting Services; Whitefish, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Whitefish Broadcasting Company proposing the allotment of Channel 286A to Whitefish, Montana, as that community's first local FM broadcast service. The channel can be allotted to Whitefish without a site restriction at coordinates 48–24–42 and 114–20–18. Canadian concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–124, adopted July 8, 1998, and released July 17, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19716 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 98–127, RM–9303]**

### Radio Broadcasting Services; Boulder, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Boulder Broadcasting Company proposing the allotment of Channel 299A to Boulder, Montana, as that community's first local broadcast service. The channel can be allotted to Boulder without a site restriction at coordinates 46–14–18 and 112–07–06. Canadian concurrence will be requested for this allotment.

**DATES:** Comments must be filed on or before September 8, 1998, and reply comments on or before September 23, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–127, adopted July 8, 1998, and released July 17, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98–19784 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 63, No. 142
Friday, July 24, 1998

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

### Office of the Secretary

### Notice and Request for Comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, Chapter 35, Title 44 United States Code, this notice announces the Department of Agriculture's intention to request an extension on the currently approved information collection in support of debt collection.

**DATES:** Comments on this notice must be received by September 22, 1998, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS CONTACT:** Richard M. Guyer, Director, Fiscal Policy Division, Office of the Chief Financial Officer, USDA, Room 3022 South, 1400 Independence Avenue S.W., Washington, D.C. 20250 or FAX (202) 690–1529, telephone: (202) 690–0291, E-mail: DGuyer@cfo.usda.gov.

**SUPPLEMENTARY INFORMATION:** The Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749, as amended by Public Law 98–167, 97 Stat. 1104 and the Debt Collection Improvement Act of 1996, Public Law 104–134 requires that any monies that are payable or may become payable from the United States under contracts and other written agreements to any persons or a legal entity not any agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or a legal entity owes to the United States.

*Title:* Debt Collection.

*OMB Number:* 0505–0007.

*Expiration Date of Approval:* September 30, 1998.

*Type of Request:* Extension on currently approved information collection.

*Abstract:* 31 U.S.C. 3716 of the Debt Collection Act authorizes the collection of debts by administrative offset and the Debt Collection Improvement Act of 1996, expanded the application of administratrive offset to every instance except where a statute explicitly prohibits the use of adminsitrarive offset for collection purposes. Protection is provided to debtors by requiring that an individual debtor be given notice of a debt. The notice provides information to delinquent debtors targeted for administrative offset who want additional information; desire to enter into repayment agreements; or desire to request a review of agencies' determination to offset. Creditor agencies use the collected information to respond to and/or take appropriate action. If the relevant information is not collected, the creditor agencies cannot comply with the due process provision of the Debt Collection Act and the Debt Collection Improvement Act. Collection of information only affects delinquent debtors.

*Estimate of Burden:* A public reporting and record keeping burden for this collection of information is estimated to average 1 hour per response.

*Respondents:* Delinquent Debtors.

*Estimated Number of Respondents:* 20,725.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 41,450 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: July 20, 1998.

**Allan S. Johnson,**

*Acting Chief Financial Officer.*

[FR Doc. 98–19858 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–KS–P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

July 20, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (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 burden including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Food and Nutrition Service

*Title:* National School Lunch Program.

*OMB Control Number:* 0584–0006.

*Summary of Collection:* In conjunction with the Healthy Meals for Children Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Food and Nutrition Service (FNS) proposes amending the information collection requirements for the National School Lunch Program. The revision would add recordkeeping requirements associated with implementing additional menu planning alternatives into the program. Information on menu planning must be reported by school food authorities to State agencies. The plans would include a written description outlining the intended menu planning procedures and how the required elements for alternative menu planning will be met.

*Need and Use of the Information:* The information will be collected to ensure

that the alternatives implemented by the States and the school food authorities adequately meets program requirements and goals. The plans will also ensure a comprehensive review and will be available for monitoring purposes.

*Description of Respondents:* State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

*Number of Respondents:* 114,169.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Quarterly; Semi-annually; Monthly; Annually; Other (daily).

*Total Burden Hours:* 9,434,462.

**Animal and Plant Health Inspection Service**

*Title:* Phytosanitary Export Certification.

*OMB Control Number:* 0579–0052.

*Summary of Collection:* The United States Department of Agriculture (USDA) and the Animal & Plant Health Inspection Service (APHIS) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. The Federal Plant Pest Act authorizes the Department to carry out this mission. APHIS provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of prohibited (or regulated) plant diseases and insect pests. APHIS will collect information using several forms to provide export certification services.

*Need and Use of the Information:* APHIS will use the information collected to locate shipments, guide inspection, and issue a certificate to meet the requirements of the importing country. Lack of the information would make it impossible for APHIS to issue a phytosanitary certificate to meet the importing country's requirements.

*Description of Respondents:* Business or other for-profit; Farm; Individual or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 3,913.

*Frequencey of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 116,181.

**Rural Housing Service**

*Title:* 7 CFR 1822–G, Rural Housing Loans, Policies, Procedures and Authorizations.

*OMB Control Number:* 0575–0071.

*Summary of Collection:* Section 523 of the Housing Act of 1949 as amended (Pub. L. 90–448) authorizes the Secretary of Agriculture to establish the Self-Help Land Development Fund to be used by the Secretary as a revolving fund for making loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of the land as building sites to be subdivided and sold to families, nonprofit organizations and cooperative eligible for assistance. Section 524 authorizes the Secretary to make loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies and cooperative eligible for assistance under any section of this title, or under any other law which provides financial assistance for housing low and moderate income families. Information is collected from non-profit organizations and others wishing to receive loans to determine eligibility for the loan program.

*Need and Use of the Information:* The information required for approval of rural housing site loans is used by RHS field personnel to verify program eligibility requirements. The information is collected at the RHS field office responsible for the processing of the loan application being submitted. The information is also used to insure that the program is administered in a manner consistent with legislative and administrative requirements. The information required for approval of site loans is (a) overall housing need in an area; (b) demographic data to determine that housing is needed for person of low and modest income: (c) eligibility of a public or private nonprofit group. The data is necessary to protect the public from projects being built in areas of low need by applicants that are unable to administer the program properly.

*Description of Respondents:* Not-for-profit institutions: State, Local or Tribal Government.

*Number of Respondents:* 6.

*Frequencey of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 36.

**The Assistant Secretary for Administration, Office of Outreach**

*Title:* Small Farmer Outreach, Training, and Technical Assistance.

*OMB Control Number:* 0560–0163.

*Summary of Collection:* The Food, Agriculture, Conservation and Trade Act of 1990, title XXV, section 2501 and the Department of Agriculture Appropriation Acts provides funding for the ''Small Farmer Outreach Training and Technical Assistance Program,'' and the ''Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program.'' These Acts provide the Office of Outreach with the authority to make grants and enter into contracts, cooperative agreements, and other agreements with entities to provide outreach, training, and technical assistance; to encourage and assist small, limited resource and economically/socially disadvantaged farmers and ranchers to own and operate farms and ranches; and increase their participation and accessibility to agricultural programs. Information is collected from organizations who wish to apply for grants. After a grant is awarded, additional information regarding the status of each project must be supplied to the Office of Outreach.

*Need and Use of the Information:* Information is collected from organizations applying for training and assistance grants to determine eligibility and experience and to evaluate the proposed projects against the goals of the outreach program. Once a grant is awarded, the Office of Outreach uses project reports and other information to ensure that the projects are performing well and achieving the desired goals.

*Description of Respondents:* Not-for-profit institutions; Farms; State, Local, or Tribal Government.

*Number of Respondents:* 150.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

*Total Burden Hours:* 5,888.

**Foreign Agricultural Service**

*Title:* No Form Required—Specialty Sugar—Importer Applies to USDA/ Import Licensing and a Letter (Specialty Certificate) Is Provided.

*OMB Control Number:* 0551–0025.

*Summary of Collection:* Provisions associated with Presidential Proclamation No. 4941 prevented the importation of certain refined sugars used for specialized purposes originating in countries which did not have quota allocations. This led the Secretary of Agriculture to announce a quota system requiring certificates for entering specialty sugar. In order to grant licenses, ensure that imported specialty sugar does not disrupt the current domestic support program, and maintain administrative control over the program, an application with certain specific information must be collected from those who wish to participate in the program established by the regulation. Accordingly, applicants must supply information found in 15

CFR 2011.205 to be considered eligible for a certificate.

*Need And Use of the Information:* Importers are required to supply specific information to the Secretary and the Foreign Agricultural Service, in order to be granted a certificate to import specialty sugar. The information is supplied to U.S. Customs officials in order to certify that the sugar being imported is ''specialty sugar.'' Without the collection of this information the Certifying Authority would not have any basis on which to make a decision on whether a certificate should be granted, and would not have the ability to monitor sugar imports under the program.

*Description of Respondents:* Business or other for-profit; Individual or households.

*Number of Respondents:* 30.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 60.

**Rural Housing Service**

*Title:* 7 CFR 1930–C, Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients.

*OMB Control Number:* 0575–0033.

*Summary of Collection:* The Rural Housing Service (RHS) is authorized under Section 514, 515, 516, and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families having very low to moderate incomes, senior citizens, the handicapped or disabled, and domestic farm laborers. RHS has the responsibility of assuring the public that the housing project financed are managed and operated as mandated by Congress and are operated as economically as possible. To do so, RHS must collect information from borrowers and housing tenants.

*Need And Use of the Information:* RHS collects financial information to identify distressed properties, portfolio management trends, and potential problems before they become loan delinquencies, unpaid operation expenses, or high vacancy rates. In addition, the information provided is intended to verify whether or not the borrower is complying with the terms and conditions of loan, grant, and/or subsidy agreements. This information is used by RHS to monitor the management of the projects and to conduct compliance reviews.

*Description of Respondents:* Business or other for-profit; Individual or households; Farms; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 538,200.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Monthly.

*Total Burden Hours:* 2,128,740.

**National Agricultural Statistics Service**

*Title:* Milk and Milk Products.

*OMB Control Number:* 0535–0020.

*Summary of Collection:* U.S. Code Title 7, Section 2204, statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics and shall distribute them among agriculturists''. The National Agriculture Statistics Service's (NASS) primary function is to prepare and issue current official state and national estimates of crop and livestock production. Estimates of milk production and manufactured dairy products are an integral part of this program. Milk and dairy statistics are used by USDA to help administer price support programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. NASS will collect information from a weekly survey to produce unbiased and statistically defensible butter, dry whey, and nonfat dry milk prices to incorporate into the new price formula following an AMS comparison study with the current Basic Formula Price (BFP).

*Need And Use of the Information:* NASS will collect information on monthly estimates of stocks, shipments, and selling prices for such products as butter, cheese, dry whey, and nonfat dry milk. Cheddar cheese prices are collected weekly and used by USDA to assist in the determination of the fair market value of raw milk. Estimates of number of milk cows, milk production per cow, and total milk production are used by the dairy industry in planning, pricing, and projecting supplies of milk and milk products.

*Description of Respondents:* Farm; Business or other for-profit.

*Number of Respondents:* 44,619.

*Frequency of Responses:* Reporting: Quarterly; Weekly; Monthly; Annually.

*Total Burden Hours:* 21,571.

**Rural Housing Service**

*Title:* Guaranteed Rural Rental Housing Program.

*OMB Control Number:* 0575–NEW

*Summary of Collection:* On March 28, 1996, President Clinton signed the ''Housing Opportunity Program Extension Act of 1996.'' One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. The Secretary is authorized under Section 510 (k) to prescribe regulations to ensure that these federally funded loans are made to eligible applicants for authorized purposes. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

*Need And Use of the Information:* RHS will collect information from lenders to mange, plan, evaluate, and account for Government resources.

*Description of Respondents:* Business or other for-profit; Not-for-profit institutions.

*Number of Respondents:* 50.

*Frequency of Responses:* Reporting: Monthly; Annually.

*Total Burden Hours:* 644.39.

Emergency approval for this information collection has been requested by July 15, 1998.

**Farm Service Agency**

*Title:* American Indian Livestock Feed Program.

*OMB Control Number:* 0560–NEW.

*Summary of Collection:* the Agricultural Act of 1970 (7 U.S.C. 1427a), section 813, gives the Secretary of Agriculture the authority to relieve distress caused by a natural disaster using funds from the sale of commodities held in reserve. The Farm Service Agency (FSA) will make assistance available to eligible livestock owners when as a result of natural disaster occurring on reservations or other land designated for Indian use, significant loss of livestock feed has occurred and a livestock feed emergency exists. Information will be collected to determine eligibility and process program payments using the following three forms: Form CCC–644, Payment Authorization—American Indian Livestock Feed Program, on which it will be necessary to identify the eligible producer by name, address the identification number. As a method to determine the amount of benefits a producer may be entitle to receive, he or she will be asked to report the number of head of livestock, and his or her shares in that livestock, in addition to the type, quantity, cost, date or sale and seller of any livestock feed the producer had to purchase during a designated

feeding period. Form CCC–648, Area Designation and Feed Loss Assessment, it will be necessary for a tribal government to provide the name, address, and phone number of their tribal government for identification purposes, in addition to the name of the tribal contact person who could assist FSA if any questions should arise. Form CCC–453, American Indian Livestock Feed Program Contract to Participant, tribal governments will define the region where the natural disaster has taken place in order to determine if the region meets the requirements of the regulations.

*Need and Use of the Information:* FSA will collect information to determine if the tribal government recommended disaster region meets the criteria set forth and to determine if the conditions, such as eligible payees, meet the criteria and also determine the amount of benefits the applicant may be entitled to receive.

*Description of Respondents:* Individuals or households; State, Local or Tribal Government.

*Number of Respondents:* 45,000.

*Frequency of Responses:* Reporting: On occasion; Other (when losses occur)

*Total Burden Hours:* 22,563

*Emergency approval for this information collection has been requested by July 31, 1998.*

**Farm Service Agency**

*Title:* Tree Assistance Program 7 CFR 783.

*OMB Control Number:* 0560–NEW.

Summary of Collection: Pub. L. 105–174, the 1998 Supplemental Appropriation and Recessions Act of 1998 (the Act), authorizes the Secretary of Agriculture to implement a Tree Assistance Program (TAP) for losses of eligible trees and vines that were lost due to natural disasters during fiscal year 1998. Owners of eligible trees or vines applying for the TAP Program must meet the program requirements as set forth in 7 CFR part 783. Owners will be reimbursed for practice costs which may not exceed 100 percent of the eligible replanting or rehabilitation costs and may be based on average costs or the actual costs for the eligible replanting or rehabilitation practices, as determined by the Farm Service Agency (FSA). The intended effect of this action is to provide assistance to eligible owners to replace or rehabilitate eligible trees and vines damaged by natural disasters occurring in fiscal year 1998. To qualify for this program, owners must certify that each ''person'', as defined by FSA, who is an owner or co-owner of eligible trees or vines had an annual qualifying gross revenue of less than $2.5 million in the 1997 tax year. FSA will use forms CCC–434 and CCC–435 to collect information from the owners.

*Need And Use of The Information:* FSA uses form CCC–434 to collect information on the total number of trees or vines in the individual stand, total number of trees or vines lost or damaged, acres in need of site preparation, and extent of losses requested for payment. Form CCC–435 is used by FSA to collect information on the lost or damaged trees or vines for which replanting or rehabilitation assistance is requested, including species, location, average number planted per acre, total acres in an individual stand, and cause and percentage of mortality.

*Description of Respondents:* Farms; Business or other for-profit; Individuals or households.

*Number of Respondents:* 1,000.

*Frequency of Responses:* Recordkeeping; Reporting: Other (Once).

*Total Burden Hours:* 291.

Emergency approval for this information collection has been requested by July 20, 1998.

**Farm Service Agency**

*Title:* Report of Acreage.

*OMB Control Number:* 0560–0004.

*Summary of Collection:* Land and crop information is the basic foundation upon which many of Farm Service Agency (FSA) programs operate. The report of acreage is conducted on an annual basis and is used by FSA's county offices to determine eligibility for benefits that are available to producers on the farm. The actual number of producers who must supply information varies depending on 1) the type of farming operations, and 2) the mix of crops planted (which has a direct relationship to the type of program the producer is eligible to participate in). In order to establish eligibility annually for these programs a minimal amount of land and crop data about a producer's farming operation is required. The information is subsequently used to ensure compliance with program provisions, to determine actual production histories, and when disaster occurs, to verify crop loss. Producers must provide the information each year because variables such as previous year experiences, weather projections, market demand, new farming techniques and personal preferences affect the amount of land being farmed, the mix of crops planted, and the projected harvest. FSA will collect information verbally from the producers during visit to the county offices and also through the use of postcards.

*Need and Use of the Information:* FSA will collect information on crop planted, planting date, crop's intended use (e.g. fresh or processing), type or variety (e.g. sweet cherries or tart cherries), practice (irrigated or nonirrigated), acres, location of the crop (tract and field), and the producer's percent share in the crop along with the names of other producers having an interest in the crop. Once the information is collected and eligibility established, the information is used throughout the crop year to ensure the producer remains complaint with program provisions. Without a certain level of information provided each crop year by the producer, a significant misues of public funds occurs.

*Description of Respondents:* Farms.

*Number of Respondents:* 639,008.

*Frequency of Responses:* Annually.

*Total Burden Hours:* 479,255.

**Ruth Brown,**

*Acting Departmental Information Clearance Officer.*

[FR Doc. 98–19679 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–01–M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Advisory Committee

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice, establishment, and request for nominations.

**SUMMARY:** The Secretary of Agriculture is establishing an advisory committee, chartered under the Federal Advisory committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region. Nominations of persons to serve on the Committee are invited.

**DATES:** Nominations for membership on the Committee must be received in writing by August 10, 1998.

**ADDRESSES:** Send nominations with telephone numbers for membership on the Committee to: FACA Nomination, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, California 96150.

**FOR FURTHER INFORMATION CONTACT:** Juan Palma, Forest Supervisor, Lake Tahoe Basin Management Unit, telephone (530) 573–2641.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to establish a Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to

the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives.

The Committee will consist of no more than 20 members representing a broad array of interests in the Lake Tahoe Region. Representatives will be selected from the following sectors: (1) gaming; (2) environmental; (3) national environmental organizations; (4) ski resorts; (5) North Shore economic and recreation interests; (6) South Shore economic and recreation interests; (7) resort associations; (8) education; (9) property rights advocates; (10) member-at-large; (11) member-at-large; (12) science and research; (13) local government; (14) Washoe Tribe; (15) State of California; (16) State of Nevada; (17) Tahoe Regional Planning Agency; (18) union/labor interests, and (19) transportation. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee. The Committee Chair will be recommended by the Committee and approved by the Secretary. Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: July 21, 1998.

**G. Lynn Sprague,**

*Regional Forester, Pacific Southwest Region.*

[FR Doc. 98–19926 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Salmon River Canyon Project; Nez Perce National Forest, Payette National Forest, Bitterroot National Forest, Salmon/Challis National Forest, Idaho County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of fuels reduction within the Salmon River Canyon. The area is located between Cottonwood, ID and North Fork, ID. Some activities are proposed within the Gospel Hump and Frank Church—River of No Return Wildernesses. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan, the Bitterroot National Forest Forest Plan, the Land and Resource Management Plan for the Salmon National Forest, and the Payette National Forest Land and Resource Management Plan which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to reduce fuels that have accumulated as a result of fire suppression in areas of historic high frequency, low intensity fires.

**DATES:** Written comments and suggestions should be received by August 24, 1998 to receive timely consideration in the preparation of the Draft EIS.

**ADDRESSES:** Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Coy Jemmett, Forest Supervisor, Nez Perce National Forest, Route 2 Box 475, Grangeville, ID 83530.

**FOR FURTHER INFORMATION CONTACT:** Bill Shields, Planner, Nez Perce National Forest, Route 2 Box 475, Grangeville, ID, 83530, Phone (208) 983–1950.

**SUPPLEMENTARY INFORMATION:** Activities are proposed on the following Ranger Districts: Salmon River and Red River Districts, Nez Perce NF; New Meadows, McCall, and Krassell, Payette NF; West Fork, Bitterroot NF; and North Fork, Salmon NF. Activities are also proposed on the Cottonwood Resource Area of the Bureau of Land Management. The proposed activity is ignition of approximately 210,000 acres through the use of helicopter and hand ignition over a ten-year period. This treatment is expected to reduce fuels in the Salmon River Canyon area. The following goals will be achieved:

1. Reintroduce fire as a primary ecological disturbance process in ponderosa pine and Douglas-fir types, to initiate the restoration of vegetation densities toward historic levels.
2. Increase the opportunities to allow lightning fires to play, as nearly as possible, their natural ecological role within wilderness in accordance with Wilderness Fire Management Plans.
3. Reduce the risk from wildland fire to private land and structures within and adjacent to the Salmon River Canyon .

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the ''no action'' alternative, in which none of the proposed actions will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities, including entry into wilderness areas, to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review

in January 1999. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register.** The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in June 1999. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register.**

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F .2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Coy Jemmett is the responsible official for this environmental impact statement.

Dated: July 17, 1998.

**Philip N. Jahn,**

*Acting Forest Supervisor, Nez Perce National Forest.*

[FR Doc. 98–19725 Filed 7–23–98; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** August 24, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On February 27 and June 12, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 9999, 32189 and 32190) of proposed additions to and deletions from the Procurement List:

### Additions

*The Following Comments Pertain to Kit, Fuel & Oil Filter Element*

Comments were received from a previous contractor in response to a request for sales data. The commenter challenged the capability of the designated nonprofit agency to produce the kit, claiming that the kit is a flight safety item which can only be effectively produced by a filter element manufacturer with special equipment, including testing equipment.

The Government contracting activity which purchases the kit and is familiar with all technical requirements for its production performed a plant facility inspection at the nonprofit agency and concluded that the agency was capable of producing the kit. Production of the kit is an assembly operation, using parts which meet appropriate technical criteria. The Committee's industrial engineer reviewed the Government's capability report and a similar assessment by an industrial engineer at the central nonprofit agency which represents the designated nonprofit agency, and the Committee's determination that the nonprofit agency is capable of producing the kit is based on these assessments.

*The Following Comments Pertain to Mess Attendant, Janitorial/Grounds Maintenance, Naval Station, Everett, Washington*

In response to a Committee request for sales data, comments were received from one of the three contractors for the services consolidated into the service requirement being added to the Procurement List. The existing services are being performed by 8(a) contractors, and the other two have graduated from the 8(a) Program. The commenting contractor indicated that loss of the contract would have a severe adverse impact on its sales if some sort of partnering arrangement with the designated nonprofit agency does not occur.

The contracting activity has indicated that the service requirement would remain in the 8(a) Program if it is not added to the Procurement List. As the other two contractors have graduated from that program, they would not be eligible to receive contracts whether or not the service requirement is added to the Procurement List, so any impact they may suffer would not be caused by the addition.

The designated nonprofit agency has agreed to subcontract the mess attendant portion of the service requirement to the commenting contractor for the duration of its eligibility to participate in the 8(a) Program, if a reasonable price that is consistent with the contracting activity's available resources can be agreed upon. This arrangement will enable the contractor to continue performing the services until it graduates from the 8(a) Program, if its performance continues to be satisfactory. As a consequence, the Committee does not believe that the addition of the service requirement will have a severe adverse impact on that contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small

entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

**Commodity**

*Kit, Fuel & Oil Filter Element*
2945–00–019–0280

**Services**

*Janitorial/Custodial,* Fort Benjamin Harrison, Emmett J. Bean Center, Building 1, Indianapolis, Indiana

*Janitorial/Custodial*
Internal Revenue Service, Pendleton Trade Center, 3849 N. Richard Street, Indianapolis, Indiana

*Mess Attendant, Janitorial/Grounds Maintenance*
Naval Station, Everett, Washington

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

## Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

*Drape, Surgical, Disposable*
6530–01–032–4089

*Pad, Pre-Operative Preparation*
6530–00–457–8193

*Towel Pack, Surgical*
6530–00–110–1854

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 98–19872 Filed 7–23–98; 8:45 am]

BILLING CODE 6353–01–P

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# COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

## Procurement List; Proposed Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletion from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 24, 1998.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

## Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

Impulse Merchandising Program (IMP) Shippers
M.R. 11522—Corn Skewers Shipper
M.R. 11577—Pet Lids & Scoops Shipper
M.R. 11602—Neon Straws Shipper
M.R. 11618—Baking Cups Shipper
M.R. 11640—Party Picks Shipper
M.R. 11668—Egg Poacher Shipper
M.R. 11695—Cheese Cloth Shipper
M.R. 11696—Hot Dogger Shipper
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina

*Services*

Janitorial/Custodial, MacDill Air Force Base, Florida
NPA: The Pinellas Association for Retarded Children, St. Petersburg, Florida

Janitorial/Custodial, U.S. Courthouse, 4th and Lomas,Albuquerque, New Mexico
NPA: RCI, Inc., Albuquerque, New Mexico

Janitorial/Custodial, DLA Warren Depot, Pine Street Extension,Warren, Ohio
NPA: Burdman Group, Inc., Youngstown, Ohio

Laundry Service, Naval Air Station, Galley Building 794, San Diego, California
NPA: Job Options, Inc., San Diego, California

*Mailing Service*

U.S. Patent and Trademark Office, Office of Finance,2011 Crystal Drive, Arlington, Virginia
NPA: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia

*Warehouse Operation*

USDA, U.S. Army Charles Melvin Price Support Center, Rural Development Facility, Warehouse #2, Building 309, Granite City, Illinois

NPA: Physically Challenged Service Industries, Inc., San Antonio, Texas

**Deletion**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any addditional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities has been proposed for deletion from the Procurement List:

Bedspread
7210–00–728–0181
7210–00–728–0184
7210–00–728–0185

**Louis R. Bartalot,**

*Deputy Director (Operations).*

[FR Doc. 98–19873 Filed 7–23–98; 8:45 am]

BILLING CODE 6353–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on August 14, 1998, at the Double Tree—Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714. The purpose of the meeting is to gain information on the status of civil rights in Idaho at the present.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1998.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 98–19729 Filed 7–23–98; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Texas Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 7:00 p.m. on August 13, 1998, at the Holiday Inn—Market Center, 1955 Market Center Boulevard, Dallas, Texas 75207. The purpose of the meeting is to discuss a draft report and for the subcommittee on education, administration of justice and hate crimes to meet. The Committee will reconvene at 9:30 a.m. and adjourn at 2:30 p.m. on August 14, 1998, at the Earl Campbell Federal Building, 1100 Commerce Street, Room I-B51, Dallas, Texas 75224. The purpose of the meeting is to obtain information from State and federal officials on hate crimes investigations that have taken place, and to continue subcommittee work on planning projects on education, hate crimes, and racial tensions.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 1998.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 98–19728 Filed 7–23–98; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070698C]**

### Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

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

**ACTION:** Applications for EFPs; deadline for receipt of EFP applications; request for comments.

**SUMMARY:** NMFS announces the receipt of two applications for EFPs. If granted, these EFPs would authorize, over a period of 1 year, collections for public display of a limited number of sharks from the large coastal and prohibited species groups from Federal waters in the Atlantic Ocean. NMFS also announces a new deadline for receipt of exempted fishing permit applications for the 1998 fishing year.

**DATES:** Written comments on the applications must be received on or before August 10, 1998. Applications for EFPs must be received on or before September 22, 1998.

**ADDRESSES:** Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The applications and related documents and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze, 301–713–2347; fax: 301–713–1917.

**SUPPLEMENTARY INFORMATION:** These EFPs are requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600.745 concerning scientific research activity, exempted fishing, and exempted educational activity. On January 29, 1998 (63 FR 4431), NMFS announced a 90-day deadline for receipt of EFP applications, which expired April 29, 1998. Because NMFS has been informed by members of industry that the announcement of this deadline was not widely distributed and because additional EFP applications have been received since that deadline, NMFS is announcing a second and final deadline for the receipt of EFP applications.

The North Carolina Aquarium Division, on behalf of three North Carolina Aquariums located in Roanoke

Island, Pine Knoll Shores, and Fort Fisher, NC, intends to collect 18 dusky sharks (6 sharks per facility), 18 lemon sharks (6 sharks per facility), 18 sandbar sharks (6 sharks per facility), and 6 sand tiger sharks (2 sharks per facility) for public display and education by hook and line and trawl, fyke, or pound nets. Fishing will occur in the Atlantic Ocean off North Carolina and Florida. Issuance of an EFP is necessary because possession of sand tiger sharks is prohibited and because the commercial fishery for large coastal sharks is closed for extended periods. The applicant also requested that the EFP authorize collection of bonnethead sharks, managed under the small coastal shark management unit; however, as the commercial season for small coastal sharks has not closed to date, this species may be possessed legally by obtaining a Federal commercial shark permit, and an EFP is not required.

The Atlantis Holding Corporation, in Holtsville, NY, intends to collect a maximum of 20 sand tiger sharks for public display and education by rod and reel. Fishing will occur in the Atlantic Ocean along the south shore of Long Island. Issuance of an EFP is necessary because the possession of sand tiger sharks is prohibited.

The proposed collections for public display involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicants require authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

Based on a preliminary review, NMFS finds that these applications warrant further consideration. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

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

Dated: July 17, 1998.

**Gary C. Matlock,**

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

[FR Doc. 98–19877 Filed 7–23–98; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 033198C]**

## Marine Mammals; Stock Assessment Reports; Notice of Availability

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS has revised marine mammal stock assessment reports in accordance with the Marine Mammal Protection Act (MMPA). Draft revised 1998 reports are available for public review and comment.

**DATES:** Comments must be received by October 22, 1998.

**ADDRESSES:** Send comments and requests for copies of reports to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Copies of the reports may also be requested from Douglas DeMaster, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE, BIN 15700, Seattle, WA 98115–0070; Irma Lagomarsino, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213; or Richard Merrick, Northeast Fisheries Science Center, 166 Waters Street, Woods Hole, MA 02543.

**FOR FURTHER INFORMATION CONTACT:** Thomas Eagle, (301) 713–2322; Douglas DeMaster, (206) 526–4045, regarding Alaska regional stock assessments; Irma Lagomarsino, (310) 980–4020, regarding Pacific regional stock assessments; or Richard Merrick, (508) 495–2291, or Steven Swartz, (305) 361–4487, regarding Atlantic regional stock assessments.

**SUPPLEMENTARY INFORMATION:** Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments reports for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA also requires NMFS and FWS to review these reports annually for strategic stocks of marine mammals and, at least, every 3 years for stocks determined to be non-strategic. NMFS, in conjunction with the regional Scientific Review Groups, has reviewed the MMPA status of the Alaska, Pacific, and Atlantic stocks and has revised those reports for which significant new information was available. Table 1 contains a summary of the information included in the reports and also indicates which reports have been revised since the publication of the 1996 stock assessment reports. NMFS solicits public comments on these draft revised marine mammal stock assessment reports.

As required by the MMPA, NMFS has reviewed, and will continue to review, reports for strategic stocks of marine mammals and new information annually. The reports are not necessarily revised annually because revisions are required only when there is significant new information.

NMFS, in conjunction with the Alaska Scientific Review Group, reviewed new information available for all strategic stocks of Alaska marine mammals under its authority, as well as for several other stocks. A total of 15 of the 33 Alaska stock assessment reports were revised for 1998. Most proposed changes to the stock assessment reports incorporate new information into abundance or mortality estimates. The revised stock assessments include all 10 of the strategic stocks: western U.S. Steller sea lion, eastern U.S. Steller sea lion, northern fur seal, Cook Inlet beluga whale, North Pacific sperm whale, western North Pacific humpback whale, central North Pacific humpback whale, northeast Pacific fin whale, North Pacific right whale, and western Arctic bowhead whale. Additionally, five reports of non-strategic stocks were revised: Gulf of Alaska harbor seals, Bering Sea harbor seals, Southeast Alaska harbor seals, Eastern North Pacific transient killer whales, and Northern Pacific resident killer whales (eastern North Pacific transient and Northern resident stocks). The new information on abundance and mortality did not change the status (strategic or not) of any of these 15 Alaska stocks relative to the 1996 reports.

Fishery mortality sections in the revised Alaska reports have been updated to include data from observer programs, fisher self-reporting, and stranding reports through 1996, where possible. Similarly, subsistence harvest information through 1996 has been included for those stocks that are taken by Alaska Natives for subsistence

purposes. New abundance estimates are available and have been included in the revised assessments for nine stocks: western U.S. Steller sea lions, eastern U.S. Steller sea lions, northern fur seals, Cook Inlet beluga whales, western North Pacific humpback whales, central North Pacific humpback whales, Gulf of Alaska harbor seals, and both killer whale stocks. Revised Potential Biological Removal (PBR) levels have been calculated for all Alaska stocks having new abundance estimates. Additionally, habitat concerns have been addressed for all strategic stocks.

NMFS, in conjunction with the Pacific Scientific Review Group, reviewed new information on the MMPA status of all 50 stocks of marine mammals in the Pacific region (predominantly stocks along the coast of California, Oregon, Washington, and Hawaii) that are under its authority. NMFS found that the MMPA status of the California/Oregon/Washington stock of minke whales and the California/Oregon/Washington stock of mesoplodont beaked whales should be changed from ''strategic'' to ''non-strategic'', and these draft reports were revised accordingly. This change was prompted by the greater abundance of these species estimated from a 1996 ship survey that covered California and (for the first time) Oregon and Washington. The review of all other stocks did not indicate any significant new information that would change their status.

An additional five Pacific stock assessment reports were revised for 1998 to incorporate new information, including Oregon/Washington coastal waters harbor seal, Washington inland waters harbor seal, San Miguel Island northern fur seal, Oregon/Washington coast harbor porpoise, and Inland Washington harbor porpoise.

Fishery mortality sections in the revised Pacific reports have been updated to include data from observer programs, fisher self-reporting, and stranding reports through 1996, where possible. New abundance estimates are available and have been included in the revised assessments for the California/Oregon/Washington minke whale, the California/Oregon/Washington mesoplodont beaked whale, the Oregon/Washington coastal waters harbor seal, the Washington inland waters harbor seal, San Miguel Island northern fur seal, and the Inland Washington harbor porpoise stocks. New PBR estimates have been calculated for each stock having a revised abundance estimate.

NMFS, in conjunction with the Atlantic Scientific Review Group, reviewed new information available for all strategic stocks of Atlantic marine mammals under their authority, as well as for several other stocks. A total of 26 of the 57 Atlantic stock assessment reports were revised for 1998. Most proposed changes to the stock assessment reports incorporate new information into abundance or mortality estimates. The revised stock assessments include 14 of the strategic stocks: Gulf of Maine/Bay of Fundy harbor porpoise, Western North Atlantic common dolphin, Western North Atlantic spotted dolphin, Western North Atlantic pantropical spotted dolphin, Western North Atlantic dwarf sperm whale, Western North Atlantic pygmy sperm whale, Western North Atlantic Cuvier's beaked whale, Western North Atlantic Mesplodon beaked whale, Western North Atlantic short-finned pilot whale, Western North Atlantic sperm whale, North Atlantic humpback whale, Western North Atlantic right whale, Western North Atlantic fin whale, and Western North Atlantic blue whale. Additionally, 12 reports of non-strategic stocks were revised: Western North Atlantic harbor seals, Western North Atlantic gray seals, Western North Atlantic harp seals, Western North Atlantic hooded seals, Western North Atlantic Risso's dolphin, Western North Atlantic Atlantic white-sided dolphin, Western North Atlantic striped dolphin, Western North Atlantic spinner dolphin, Western North Atlantic Bottlenose dolphin (offshore), Western North Atlantic Northern bottlenose whale, Western North Atlantic long-finned pilot whale, and Canadian east coast minke whale.

The new information on abundance and mortality changed the status (strategic or non-strategic) of three Atlantic stocks relative to the 1996 reports. NMFS found that the status of Atlantic white-sided dolphins and Atlantic long-finned pilot whales should be changed from non-strategic to strategic, and these draft reports were revised accordingly. This change was prompted by the (1992–1996) average annual mortality estimates. The review of all other stocks and advice from the Atlantic Scientific Review Group indicated that the Western North Atlantic pygmy sperm whale stock should be changed from strategic to non-strategic.

Fishery mortality sections in the revised Atlantic reports have been updated to include data from observer programs and stranding reports through 1996, where possible. New abundance estimates are available and have been included in the revised assessments for four stocks (Western North Atlantic harbor seals, Western North Atlantic gray seals (earlier value revised), Western North Atlantic common dolphins, North Atlantic humpback whales, and Canadian east coast minke whales). PBR levels have been calculated for all Atlantic stocks having new abundance estimates and for Western North Atlantic striped dolphins, for which the recovery factor was revised.

New information may become available during the comment period for these stock assessment reports. This new information may be incorporated into final stock assessment reports without additional public review and comment if incorporation of the new information does not change the status of the affected stock (e.g., strategic to non-strategic).

Dated: July 20, 1998.

**Hilda Diaz-Soltero,**

*Director, Office of Protected Resources, MFS.*

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Steller sea lion. | Western U.S | AKA | AKC | 38,893 | 0.12 | 0.15 | 350 | 443 | 31 | Y | Y |
| Steller sea lion. | Eastern U.S .. | AKA | AKC | 30,403 | 0.12 | 0.75 | 1,368 | 18 | 14 | Y | Y |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Northern fur seal. | Eastern Pacific. | AKA | AKC | 848,539 | 0.086 | 0.5 | 18,244 | 1,722 | 14 | Y | Y |
| Harbor seal ... | Southeast Alaska. | AKA | AKC | 35,226 | 0.12 | 1.0 | 2,114 | 1,778 | 29 | N | Y |
| Harbor seal ... | Gulf of Alaska | AKA | AKC | 28,917 | 0.12 | 0.5 | 868 | 824 | 33 | N | Y |
| Harbor seal ... | Bering Sea ... | AKA | AKC | 12,648 | 0.12 | 0.5 | 379 | 187 | 26 | N | Y |
| Spotted seal | Alaska ..... | AKA | AKC | [1] N/A | 0.12 | 0.5 | N/A | N/A | 2 | N | |
| Bearded seal | Alaska ..... | AKA | AKC | N/A | 0.12 | 0.5 | N/A | N/A | 2 | N | |
| Ringed seal .. | Alaska ..... | AKA | AKC | N/A | 0.12 | 0.5 | N/A | N/A | 1 | N | |
| Ribbon seal .. | Alaska ..... | AKA | AKC | N/A | 0.12 | 0.5 | N/A | N/A | 1 | N | |
| Beluga ..... | Beaufort Sea | AKA | AKC | 32,453 | 0.04 | 1.0 | 649 | 160 | 0 | N | |
| Beluga ..... | Eastern Chukchi Sea. | AKA | AKC | 3,710 | 0.04 | 1.0 | 74 | 54 | 0 | N | |
| Beluga ..... | Eastern Bering Sea. | AKA | AKC | 6,439 | 0.04 | 1.0 | 129 | 127 | 0 | N | |
| Beluga ..... | Bristol Bay .... | AKA | AKC | 1,316 | 0.04 | 1.0 | 26 | 20 | 1 | N | |
| Beluga ..... | Cook Inlet ..... | AKA | AKC | 712 | 0.04 | 1.0 | 14 | 71 | 0 | Y | Y |
| Killer whale ... | Eastern North Pacific, Northern Resident. | AKA | AKC | 642 | 0.04 | 0.5 | 6.4 | 0.8 | 0.8 | N | Y |
| Killer whale ... | Eastern North Pacific, Transient. | AKA | AKC | 197 | 0.04 | 0.5 | 2.0 | 0.8 | 0.8 | N | Y |
| Pacific white-sided dolphin. | Central North Pacific. | AKA | AKC | 486,719 | 0.04 | 0.5 | 4,867 | 4 | 4 | N | |
| Harbor porpoise. | Southeast Alaska. | AKA | AKC | 8,156 | 0.04 | 0.5 | 82 | 4 | 4 | N | |
| Harbor porpoise. | Gulf of Alaska | AKA | AKC | 7,085 | 0.04 | 0.5 | 71 | 25 | 25 | N | |
| Harbor porpoise. | Bering Sea ... | AKA | AKC | 8,549 | 0.04 | 0.5 | 86 | 2 | 2 | N | |
| Dall's porpoise. | Alaska ..... | AKA | AKC | 76,874 | 0.04 | 1.0 | 1,537 | 42 | 42 | N | |
| Sperm whale | North Pacific | AKA | AKC | N/A | 0.04 | 0.1 | N/A | 0.0 | 0.0 | Y | Y |
| Baird's beaked whale. | Alaska ..... | AKA | AKC | N/A | 0.04 | 0.5 | N/A | 0.0 | 0.0 | N | |
| Cuvier's beaked whale. | Alaska ..... | AKA | AKC | N/A | 0.04 | 0.5 | N/A | 0.0 | 0.0 | N | |
| Stejneger's beaked whale. | Alaska ..... | AKA | AKC | N/A | 0.04 | 0.5 | N/A | 0.0 | 0.0 | N | |
| Gray whale ... | Eastern North Pacific. | AKA | AKC | 21,597 | 0.04 | 1.0 | 432 | 48 | 4 | N | |
| Humpback whale. | Western North Pacific. | AKA | AKC | 367 | 0.04 | 0.1 | 0.7 | 0.0 | 0.0 | Y | Y |
| Humpback whale. | Central North Pacific. | AKA | AKC | 3,698 | 0.04 | 0.1 | 7.4 | 1.2 | 1.0 | Y | Y |
| Fin whale ..... | Northeast Pacific. | AKA | AKC | N/A | 0.04 | 0.1 | N/A | 0.0 | 0.0 | Y | Y |
| Minke whale | Alaska ..... | AKA | AKC | N/A | 0.04 | 0.5 | N/A | 0.0 | 0.0 | N | |
| Northern right whale. | North Pacific | AKA | AKC | N/A | 0.04 | 0.1 | N/A | 0.0 | 0.0 | Y | Y |
| Bowhead whale. | Western Arctic. | AKA | AKC | 7,738 | 0.04 | 0.5 | [2] 77 | 49 | 0.00 | Y | Y |
| Harbor seal ... | Western North Atlantic. | ATL | NEC | 30,990 | 0.12 | 1.0 | 1,859 | 893 | 893 | N | Y |
| Gray seal ..... | Northwest North Atlantic. | ATL | NEC | 2,010 | 0.12 | 1.0 | 120 | 35 | 35 | N | Y |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Harp seal ..... | Northwest North Atlantic. | ATL | NEC | N/A | N/A | N/A | N/A | 325.00 | 325.00 | N | Y |
| Hooded seal | Northwest North Atlantic. | ATL | NEC | N/A | N/A | N/A | N/A | 5.60 | 5.60 | N | Y |
| Harbor porpoise. | Gulf of Maine/ Bay of Fundy. | ATL | NEC | 48,289 | 0.04 | 0.5 | 483 | 1,667 | 1,667 | Y | Y |
| Risso's dolphin. | Western North Atlantic. | ATL | NEC | 11,140 | 0.04 | 0.5 | 111 | 18 | 18 | N | Y |
| Atlantic white-sided dolphin. | Western North Atlantic. | ATL | NEC | 19,196 | 0.04 | 0.5 | 192 | 217 | 217 | Y | Y |
| White-beaked dolphin. | Western North Atlantic. | ATL | NEC | N/A | 0.04 | N/A | N/A | 0.0 | 0.0 | N | N |
| Common dolphin. | Western North Atlantic. | ATL | NEC | 15,470 | 0.04 | 0.5 | 155 | [3] 221 | [3] 221 | Y | Y |
| Atlantic spotted dolphin. | Western North Atlantic. | ATL | NEC | [4] 1,617 | 0.04 | 0.5 | 16 | [4] 20 | [4] 20 | Y | Y |
| Pantropical spotted dolphin. | Western North Atlantic. | ATL | NEC | [4] 1,617 | 0.04 | 0.5 | 16 | [4] 20 | [4] 20 | Y | Y |
| Striped dolphin. | Western North Atlantic. | ATL | NEC | 18,220 | 0.04 | 0.5 | 182 | 11 | 11 | N | Y |
| Spinner dolphin. | Western North Atlantic. | ATL | NEC | N/A | N/A | N/A | N/A | 0.31 | 0.31 | N | Y |
| Bottlenose dolphin. | Western North Atlantic, offshore. | ATL | NEC | [5] 8,794 | 0.04 | 0.5 | 88 | 58 | 58 | N | Y |
| Bottlenose dolphin. | Western North Atlantic, coastal. | ATL | SEC | 2,482 | 0.04 | 0.5 | 25 | 29 | [6] 29 | Y | |
| Dwarf sperm whale. | Western North Atlantic. | ATL | NEC | N/A | 0.04 | N/A | N/A | 0.2 | 0.2 | Y | Y |
| Pygmy sperm whale. | Western North Atlantic. | ATL | NEC | N/A | 0.04 | N/A | N/A | N/A | N/A | N | Y |
| Killer whale ... | Western North Atlantic. | ATL | NEC | N/A | 0.04 | N/A | N/A | 0.0 | 0.0 | N | |
| Pygmy killer whale. | Western North Atlantic. | ATL | SEC | 6 | 0.04 | 0.5 | 0.1 | 0.0 | 0.0 | N | |
| Northern bottlenose whale. | Western North Atlantic. | ATL | NEC | N/A | 0.04 | N/A | N/A | 0.0 | 0.0 | N | Y |
| Cuvier's beaked whale. | Western North Atlantic. | ATL | NEC | [7] 895 | 0.04 | 0.5 | 8.9 | 9.7 | [8] 9.7 | Y | Y |
| Mesoplodon beaked whale. | Western North Atlantic. | ATL | NEC | [7] 895 | 0.04 | 0.5 | 8.9 | 9.7 | [8] 9.7 | Y | Y |
| Pilot whale, long-finned (*Globicephala* spp.). | Western North Atlantic. | ATL | NEC | [9] 49,685 | 0.04 | 0.5 | 50 | 32 | [9] 32 | [10] Y | Y |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pilot whale, short-finned. | Western North Atlantic. | ATL | NEC | 457 | 0.04 | 0.5 | 4.6 | 32 | [9] 32 | Y | Y |
| Sperm whale | Western North Atlantic. | ATL | NEC | 1,617 | 0.04 | 0.1 | 3.2 | 0.0 | 0.0 | N | Y |
| North Atlantic right whale. | Western North Atlantic. | ATL | NEC | 295 | 0.025 | 0.1 | 0.4 | 2.3 | [11] 1.0 | Y | Y |
| Humpback whale. | Western North Atlantic. | ATL | NEC | 10,019 | 0.065 | 0.1 | 32.6 | 5.8 | [12] 4.5 | Y | Y |
| Fin whale ..... | Western North Atlantic. | ATL | NEC | 1,704 | 0.04 | 0.1 | 3.4 | 0.0 | 0.0 | Y | Y |
| Sei whale ..... | Western North Atlantic. | ATL | NEC | N/A | 0.04 | 0.1 | N/A | 0.0 | 0.0 | Y | |
| Minke whale | Canadian east coast. | ATL | NEC | 2,145 | 0.04 | 0.45 | 17 | 0.8 | 0.8 | N | Y |
| Blue whale .... | Western North Atlantic. | ATL | NEC | N/A | 0.04 | 0.1 | N/A | 0.0 | 0.0 | Y | Y |
| Bottlenose dolphin. | Gulf of Mexico, outer continental shelf. | ATL | SEC | 43,233 | 0.04 | 0.5 | 432 | 2.8 | [13] 2.8 | N | |
| Bottlenose dolphin. | Gulf of Mexico, continental shelf edge and slope. | ATL | SEC | 4,530 | 0.04 | 0.5 | 45 | 2.8 | [13] 2.8 | N | |
| Bottlenose dolphin. | Western Gulf of Mexico coastal. | ATL | SEC | 2,938 | 0.04 | 0.5 | 29 | 13 | [14,15] 13 | N | |
| Bottlenose dolphin. | Northern Gulf of Mexico coastal. | ATL | SEC | 3,518 | 0.04 | 0.5 | 35 | 10 | [15] 10 | N | |
| Bottlenose dolphin. | Eastern Gulf of Mexico coastal. | ATL | SEC | 8,963 | 0.04 | 0.5 | 90 | 8 | [15] 8 | N | |
| Bottlenose dolphin. | Gulf of Mexico bay, sound, and estuarine [10]. | ATL | SEC | 3,933 | 0.04 | 0.5 | 39.7 | 30 | [15] 30 | Y | |
| Atlantic spotted dolphi. | Northern Gulf of Mexico. | ATL | SEC | 2,255 | 0.04 | 0.5 | 23 | [4] 1.5 | [4] 1.5 | N | |
| Pantropical spotted dolphin. | Northern Gulf of Mexico. | ATL | SEC | 26,510 | 0.04 | 0.5 | 265 | [4] 1.5 | [4] 1.5 | N | |
| Striped dolphin. | Northern Gulf of Mexico. | ATL | SEC | 3,409 | 0.04 | 0.5 | 34 | 0.0 | 0.0 | N | |
| Spinner dolphin. | Northern Gulf of Mexico. | ATL | SEC | 4,465 | 0.04 | 0.5 | 45 | 0.0 | 0.0 | N | |
| Rough-toothed dolphin. | Northern Gulf of Mexico. | ATL | SEC | 660 | 0.04 | 0.5 | 6.6 | 0.0 | 0.0 | N | |
| Clymene dolphin. | Northern Gulf of Mexico. | ATL | SEC | 4,120 | 0.04 | 0.5 | 41 | 0.0 | 0.0 | N | |
| Fraser's dolphin. | Northern Gulf of Mexico. | ATL | SEC | 66 | 0.04 | 0.5 | 0.7 | 0.0 | 0.0 | N | |
| Killer whale ... | Northern Gulf of Mexico. | ATL | SEC | 197 | 0.04 | 0.5 | 2.0 | 0.0 | 0.0 | N | |
| False killer whale. | Northern Gulf of Mexico. | ATL | SEC | 236 | 0.04 | 0.5 | 2.4 | 0.0 | 0.0 | N | |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pygmy killer whale. | Northern Gulf of Mexico. | ATL | NEC | 285 | 0.04 | 0.05 | 2.8 | 0.0 | 0.0 | N | |
| Dwarf sperm whale. | Northern Gulf of Mexico. | ATL | SEC | N/A | 0.04 | N/A | N/A | 0.0 | 0.0 | Y | |
| Pygmy sperm whale. | Northern Gulf of Mexico. | ATL | SEC | N/A | 0.04 | N/A | N/A | 0.0 | 0.0 | Y | |
| Melon-headed whale. | Northern Gulf of Mexico. | ATL | SEC | 2,888 | 0.04 | 0.5 | 29 | 0.0 | 0.0 | N | |
| Risso's dolphin. | Northern Gulf of Mexico. | ATL | SEC | 2,199 | 0.04 | 0.5 | 22 | 19 | 19 | N | |
| Cuvier's beaked whale. | Northern Gulf of Mexico. | ATL | SEC | 20 | 0.04 | 0.5 | 0.2 | 0.0 | 0.0 | N | |
| Blainville's beaked whale. | Northern Gulf of Mexico. | ATL | SEC | N/A | N/A | N/A | N/A | 0.0 | 0.0 | N | |
| Gervais' beaked whale. | Northern Gulf of Mexico. | ATL | SEC | N/A | N/A | N/A | N/A | 0.0 | 0.0 | N | |
| Pilot whale, short-finned. | Northern Gulf of Mexico. | ATL | SEC | 186 | 0.04 | 0.5 | 1.9 | 0.3 | 0.3 | Y | |
| Sperm whale | Northern Gulf of Mexico. | ATL | SEC | 411 | 0.04 | 0.1 | 0.8 | 0.0 | 0.0 | Y | |
| Bryde's whale | Northern Gulf of Mexico. | ATL | SEC | 17 | 0.04 | 0.5 | 0.2 | 0.0 | 0.0 | N | |
| California sea lion. | U.S ..... | PAC | SWC | 111,339 | 0.12 | 1.0 | 6,680 | 974 | 915 | N | |
| Harbor seal ... | California ..... | PAC | SWC | 27,962 | 0.12 | 1.0 | 1,678 | 243 | 234 | N | |
| Harbor seal ... | Oregon/ Washington coast. | PAC | AKC | 24,733 | 0.12 | 1.0 | 1,484 | 18 | 16 | N | Y |
| Harbor seal ... | Washington inland waters. | PAC | AKC | 16,104 | 0.12 | 1.0 | 966 | 41 | 36 | N | Y |
| Northern elephant seal. | California breeding. | PAC | SWC | 51,625 | 0.083 | 1.0 | 2,142 | 145 | 145 | N | |
| Guadalupe fur seal. | Mexico to California. | PAC | SWC | 3,028 | 0.137 | 0.5 | 104 | 0.0 | 0.0 | Y | |
| Northern fur seal. | San Miguel Island. | PAC | AKC | 6,720 | 0.086 | 1.0 | 270 | 0.0 | 0.0 | N | Y |
| Hawaiian monk seal. | Hawaii ..... | PAC | SWC | 1,366 | 0.07 | 0.1 | [17] 4.8 | N/A | N/A | Y | |
| Harbor porpoise. | Central California. | PAC | SWC | 3,431 | 0.04 | 0.48 | 33 | 14 | 14 | N | |
| Harbor porpoise. | Northern California. | PAC | SWC | 7,640 | 0.04 | 0.5 | 76 | 0.0 | 0.0 | N | |
| Harbor porpoise. | Oregon/ Washington coast. | PAC | AKC | 22,046 | 0.04 | 0.5 | 220 | 17 | 17 | N | Y |
| Harbor porpoise. | Inland Washington PAC. | AKC | 2,545 | 0.04 | 0.4 | 20 | 16 | 16 | N | Y | |
| Dall's porpoise. | California/Oregon/ Washington. | PAC | SWC | 34,393 | 0.04 | 0.48 | 330 | 22 | 22 | N | |
| Pacific white-sided dolphin. | California/Oregon/ Washington. | PAC | SWC | 82,939 | 0.04 | 0.48 | 796 | 22 | 22 | N | |
| Risso's dolphin. | California/Oregon/ Washington. | PAC | SWC | 22,388 | 0.04 | 0.5 | 224 | 37 | 37 | N | |
| Bottlenose dolphin. | California coastal. | PAC | SWC | 134 | 0.04 | 0.5 | 1.3 | 0.0 | 0.0 | N | |
| Bottlenose dolphin. | California/Oregon/ Washington offshore. | PAC | SWC | 1,904 | 0.04 | 0.4 | 15 | 4.4 | 4.4 | N | |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Striped dolphin. | California/Oregon/Washington. | PAC | SWC | 19,248 | 0.04 | 0.4 | 154 | 1.2 | 1.2 | N | |
| Common dolphin, short-beaked. | California/Oregon/Washington. | PAC | SWC | 309,717 | 0.04 | 0.5 | 3,097 | 272 | 272 | N | |
| Common dolphin, long-beaked. | California ..... | PAC | SWC | 5,504 | 0.04 | 0.48 | 53 | 14 | 14 | N | |
| Northern right whale dolphin. | California/Oregon/Washington. | PAC | SWC | 15,080 | 0.04 | 0.5 | 151 | 47 | 47 | N | |
| Killer whale ... | California/Oregon/Washington. | PAC | SWC | 436 | 0.04 | 0.4 | 3.5 | 1.2 | 1.2 | N | |
| Killer whale ... | Southern Resident Stock. | PAC | AKC | 96 | 0.04 | 1.0 | 1.9 | 0.0 | 0.0 | N | |
| Pilot whale, short-finned. | California/Oregon/Washington. | PAC | SWC | 741 | 0.04 | 0.4 | 5.9 | 13 | 13 | Y | |
| Baird's beaked whale. | California/Oregon/Washington. | PAC | SWC | 252 | 0.04 | 0.4 | 2.0 | 1.2 | 1.2 | N | |
| Mesoplodont beaked whales. | California/Oregon/Washington. | PAC | SWC | [18] 2,840 | 0.04 | 0.45 | [19] 26 | 9.2–13 | 9.2–13 | N | Y |
| Cuvier's beaked whale. | California/Oregon/Washington. | PAC | SWC | 6,070 | 0.04 | 0.5 | 61 | 28 | 28 | N | |
| Pygmy sperm whale. | California/Oregon/Washington. | PAC | SWC | 2,059 | 0.04 | 0.45 | 19 | 2.8 | 2.8 | N | |
| Dwarf sperm whale. | California/Oregon/Washington. | PAC | SWC | N/A | 0.04 | 0.5 | N/A | 0.0 | 0.0 | N | |
| Sperm whale | California to Washington. | PAC | SWC | 896 | 0.04 | 0.1 | 1.8 | 4.5 | 4.5 | Y | |
| Humpback whale. | California/Mexico. | PAC | SWC | 563 | 0.04 | 0.1 | 0.5 | 1.8 | 1.2 | Y | |
| Blue whale .... | California/Mexico. | PAC | SWC | 1,463 | 0.04 | 0.1 | 1.5 | 0.2 | 0.0 | Y | |
| Fin whale ..... | California to Washington. | PAC | SWC | 747 | 0.04 | 0.1 | 1.5 | <1 | 0.0 | Y | |
| Bryde's whale | Eastern Tropical pacific. | PAC | SWC | 11,163 | 0.04 | 0.5 | [20] 0.2 | 0.0 | 0.0 | N | |
| Sei whale ..... | Eastern North Pacific. | PAC | SWC | N/A | 0.04 | 0.1 | N/A | N/A | 0.0 | Y | |
| Minke whale | California/Oregon/Washington. | PAC | SWC | 440 | 0.04 | 0.45 | 4.0 | 3.6 | 3.6 | N | Y |
| Rough-Toothed dolphin. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Risso's dolphin. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Bottlenose dolphin. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Pantropical spotted dolphin. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Spinner dolphin. | Hawaii ..... | PAC | SWC | 677 | 0.04 | 0.5 | 6.8 | N/A | N/A | N | |
| Striped dolphin. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |

TABLE 1.—SUMMARY OF ALASKA AND PACIFIC (INCLUDING HAWAII) MARINE MAMMAL STOCK ASSESSMENT REPORTS FOR STOCKS OF MARINE MAMMALS UNDER NMFS AUTHORITY THAT OCCUPY WATERS UNDER U.S. JURISDICTION. A ''Y'' UNDER THE HEADING ''SAR REVISED?'' INDICATES THAT THE 1998 STOCK ASSESSMENT REPORT HAS BEEN REVISED RELATIVE TO THE 1996 REPORT—Continued

| Species | Stock area | SRG region | NMFS center | Nmin | Rmax | Fr | PBR | Total annual mort. | Annual fish. mort. | Strategic status | SAR revised ? |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Melon-headed whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Pygmy killer whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| False killer whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Killer whale ... | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Pilot whale, short-finned. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Blainville's beaked whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Cuvier's beaked whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Pygmy sperm whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Dwarf sperm whale. | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |
| Sperm whale | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.1 | N/A | N/A | N/A | Y | |
| Blue whale .... | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.1 | N/A | N/A | N/A | Y | |
| Fin whale ..... | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.1 | N/A | N/A | N/A | Y | |
| Bryde's whale | Hawaii ..... | PAC | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | |

[1] N/A means that an estimate for the affected value is not available.
[2] The IWC subsistence quota is not affected by the calculation of PBR using the formula specified in the MMPA.
[3] Effort data for the 1995–1996 mid-Atlantic coastal sink gillnet and 1996 Atlantic squid, mackerel, butterfish trawl fisheries are currently under review. The estimated mortalities attributed to these fisheries will be included in the final 1998 SAR.
[4] This value includes either or both of *Stenella frontalis* or *Stenella attenuata*.
[5] Estimates may include sightings of the coastal form.
[6] Effort data for the 1995–1996 mid-Atlantic coastal sink gillnet fishery is currently under review. The estimated mortalities will be available in the final 1998 SAR.
[7] This estimate includes Cuvier's beaked whales and mesoplodon beaked whales.
[8] This is the average mortality of beaked whales (*Mesoplodon* sp.) based on 5 years of observer data. This annual mortality rate includes an unknown number of Cuvier's beaked whales.
[9] This estimate includes both long-finned and short-finned pilot whales.
[10] Effort data for the Atlantic squid, mackeral, butterfish trawl fishery are currently under review; it is likely that the additional estimated mortality from this fishery will cause the 1992–1996 average total mortality to exceed PBR.
[11] This is the average mortality of right whales based on 5 years of observer data (0.0) and additional fishery impact records (1.0).
[12] This is the average mortality of humpback whales based on 5 years of observer data (0.7) and additional fishery impact records (3.8).
[13] This value may include either or both of the Gulf of Mexico, continental shelf edge and slope and the outer continental shelf stocks of bottlenose dolphins.
[14] Low levels of bottlenose dolphin mortality (0–4 per year) incidental to commercial fisheries have been reported. It is unknown to which stock this mortality can be attributed.
[15] Estimates derived from stranded animals with signs of fishery interactions, and these could be either coastal or estuary stocks.
[16] This entry encompasses 33 stocks of bottlenose dolphins. All stocks are considered strategic; see the full report for information on individual stocks. The listed estimates for abundance, PBR and mortality are sums across all bays, sounds, and estuaries.
[17] Although the calculated PBR is 4.8, the allowable take is zero due to findings under the ESA.
[18] This value includes a species-specific minimum abundance estimate of 123 Blainville's beaked whales, *Mesoplodon densirostris*.
[19] This PBR includes 2.2 Blainville's beaked whales.
[20] This PBR has been adjusted because only 0.2 percent of this stock is estimated to be in U.S. waters.

[FR Doc. 98–19876 Filed 7–23–98; 8:45 am]
BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Public Search Room

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before September 22, 1998.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Catherine Hollan, Acting Manager, at the Public Search Services Division, Information Dissemination Organizations, Crystal Plaza 3 Rm2C04, 2021 South Clark Place, Arlington, Va. 22202, by telephone at (703) 306–2608 or by facsimile transmission to (703) 308–0876.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

The Patent and Trademark Office (PTO) is required by 35 USC 41(I)(1) to maintain a Public Search Facility to provide patent and trademark collections for the public to search and retrieve information. The Public Search Facilities are maintained for public use with paper and automated search files and trained staff to assist searchers. The Public Search Facilities are available to everyone.

In order to maintain and control the patent and trademark collections so that the information is available to the public, the PTO issues Public User ID badges to users who wish to use the Public Search Facilities. For many years, the PTO issued paper User IDs, but the PTO is developing an electronic badging database for the issuance of plastic ID badges.

The new plastic ID badge will show a color photograph of the user, a bar-coded user number, and an expiration date. The new badging system will allow the PTO to electronically store the information, which can be updated periodically. The ID system (current and proposed) is designed to enable the PTO to (a) identify users of patent and trademark documents, (b) confine user access to public areas, (c) locate and control access to patent and trademark documents, and (d) identify users of PTO services.

The User badge enables the PTO to accurately track use of the documents and to identify any misusers of the search facilities. The PTO uses the ID badges to identify, counsel, and sanction users who destroy, misfile, or remove documents from its collections, or who mishandle its equipment. The Public User ID also grants to the public limited access to the non-public parts of the PTO, such as the Examiner's areas. Access to these areas requires that users wear a visible PTO employee ID, a contractor ID, or a Public User ID. (The proposed Public User ID badges will enable the PTO to immediately confirm a user's identity via an on-the-spot comparison with the badges' color photograph.)

For its ID system, the PTO collects the following mandatory identifying information: name and mailing address (as verified on a picture ID such as a driver's license), and signature. (The future system will require a digital photograph of users.) Optional information includes telephone number, PTO Attorney Registration Number, and company affiliations, if any.

## II. Method of Collection

The written application for the Public User ID is completed on site and handed to a staff member to enter into the system.

## III. Data

*OMB Number:* None.

*Type of Review:* Existing collection in use without OMB control number.

*Affected Public:* Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government.

*Estimated Number of Respondents:* 1,713 respondents per year after the first year. For the first year, it is estimated that there will be 571 fewer respondents because the PTO does not expect to renew any Public User ID Badges the first year.

*Estimated Time Per Response:* Approximately five minutes to complete the application for a Public User ID and renew the Public User ID Badge, and approximately ten minutes to issue the Public User ID Badge.

*Estimated Total Annual Respondent Burden Hours:* 188 hours per year after the first year. For the first year, it is estimated that the burden will only be 141 hours because the PTO does not expect to renew any Public User ID Badges the first year.

*Estimated Total Annual Respondent Cost Burden:* $14,714.76 per year after the first year. It is estimated that the annual respondent cost burden will be only $11,036.07 for the first year because the PTO does not expect to renew any Public User ID Badges the first year. No capital expenditures are required—the estimate is for the time it takes for applicants to provide the information.

| Title of form | Form number(s) | Estimated time for response (mins) | Estimated annual burden hours | Estimated annual responses |
|---|---|---|---|---|
| Issue Public User ID Badge | No Forms Associated | 10 | 94 | 571 |
| Renew Public User ID Badge (subsequent years) | No Forms Associated | 5 | 47 | 571 |
| Application for Public User ID | New Form ##### | 5 | 47 | 571 |
| Totals | | | 188 | 1,713 |

**Note:** The total estimated annual burden hours and estimated annual responses shown in this table include the figures for renewing the Public User ID Badge. The PTO does not expect to renew any Public User ID Badges in the first year. The PTO estimates the annual burden hours for the first year without the renewals to be 141 and the estimated annual responses to be 1,142.

## IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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; (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, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice shall be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 20, 1998.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 98–19781 Filed 7–23–98; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Deputy to the Under Secretary of Defense (Policy) for Policy Support.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy to the USD(P) for Policy Support/Policy Automation Directorate announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by September 22, 1998.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense for Policy, 2000 Defense Pentagon, ATTN: Ronnie R. Larson, Washington, DC 20301–2000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection, please write to the above address, or call the Policy Automation Directorate, Office of the Deputy Under Secretary, at (703) 697–5495.

*Title, Associated Forms and OMB Number:* Request for Visit Authorization; DD Forms 1823 and 1823–C; OMB Number 0704–0221.

*Needs and Uses:* This information requirement is necessary for the Department of Defense to coordinate the approval/disapproval of requests from foreign countries and international organizations for their personnel to visit DoD activities on official business.

*Affected Public:* Individuals (representing foreign governments and international organizations).

*Annual Burden Hours:* 6,805.

*Number of Respondents:* 64.

*Responses Per Respondent:* 638.

*Average Burden Per Response:* 10 Minutes.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:** Respondents are employees of foreign governments or international organizations requesting approval to visit Defense installations or Defense contractors on official business. The information collected provides the DoD approving authority with the data necessary to evaluate visit requests. It is also used to coordinate these visits and release information necessary to satisfy the visit purpose. Each request is limited to a visit to one location for multiple visitors on a specified subject. The visit request must be approved before the visitors are allowed to conduct business with their Defense counterparts. The transfer of this information and response has been automated and is currently 99 percent electronic from the point of origination in foreign embassies to locations throughout DoD.

Dated: July 16, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–19787 Filed 7–23–98; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–46]**

### 36(B)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–46, with attached transmittal, policy justification and sensitivity of technology.

Dated: July 20, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 3000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

14 JUL 1998
In reply refer to:
I-04083/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-46, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $22 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Diana L. Blundell
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

**Transmittal No. 98-46**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

(i) **Prospective Purchaser:** Japan

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $16 million |
| Other | $ 6 million |
| TOTAL | $22 million |

(iii) **Description of Articles or Services Offered:** Eighteen SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, and other related elements of logistics support.

(iv) **Military Department:** Navy (ANU)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 14 JUL 1998

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Japan - SM-2 Block III STANDARD Missiles

The Government of Japan has requested a possible sale of 18 SM-2 Block III STANDARD missiles, containers, canisters, spare and repair parts, supply support, and other related elements of logistics support. The estimated cost is $22 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Asia.

Japan will use these missiles to update older or less reliable missiles currently in the Japanese Maritime Self Defense Force fleet. Japan, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Standard Missile Company, McLean, Virginia. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 98-46**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

**Annex**
**Item No. vi**

**(vi) Sensitivity of Technology:**

**1. The sale of STANDARD SM-2 missiles will result in the transfer of sensitive technology and information as well as classified and unclassified equipment and technical data. The STANDARD missile guidance section, Target Detecting Device (TDD), warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Secret. Certain operating frequencies and performance characteristics are classified Secret. STANDARD missile documentation to be provided will include:**

| | | |
|---|---|---|
| a. | Parametric documents | (C) |
| b. | Missile Handling Procedures | (U) |
| c. | General Performance Data | (C) |
| d. | Firing Guidance | (C) |
| e. | Dynamics Information | (C) |
| f. | Flight Analysis Procedures | (C) |

**2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.**

**3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.**

[FR Doc. 98–19788 Filed 7–23–98; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of Secretary

**[Transmittal No. 98–41]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:**

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–41, with attached transmittal and policy justification.

Dated: July 20, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 5000–04–M**

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

14 JUL 1998
In reply refer to:
I-67301/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-41 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $22 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Diana L. Blundell
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

**Transmittal No. 98-41**

**Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act**

(i) **Prospective Purchaser:** Japan

(ii) **Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $ 19 million |
| Other | $ 3 million |
| TOTAL | $ 22 million |

(iii) **Description of Articles or Services Offered:** Forty AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and software support, publications and technical documentation, management integration, technical assistance and other related elements of logistics and program support.

(iv) **Military Department:** Air Force (YCJ)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** None

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 14 JUL 1998

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### Japan - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Japan has requested a possible sale of 40 AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, management integration, technical assistance and other related elements of logistics and program support. The estimated cost is $22 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Asia.

Japan needs these missiles to enhance the air-to-air defense capability and provide for an increase in interoperability with U.S. forces. Japan will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–19789 Filed 7–23–98; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–48]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:**

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–48, with attached transmittal and policy justification.

Dated: July 20, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer Department of Defense.*

**BILLING CODE 5000–04–M**

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

14 JUL 1998
In reply refer to:
I-69055/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-48 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Spain for defense articles and services estimated to cost $52 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Diana L. Blundell
Acting Director

Attachments

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-48

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Spain

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 41 million |
| Other | $ 11 million |
| TOTAL | $ 52 million |

(iii) Description of Articles or Services Offered:
One hundred AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), 48 launchers, missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, management integration and support, technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (YAF)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex under separate cover.

(vii) Date Report Delivered to Congress: 14 JUL 1998

* as defined in Section 47(6) of the Arms Export Control Act.

## MILITARY JUSTIFICATION

### Spain - AIM-120B Advanced Medium Range Air-to-Air Missiles

The Government of Spain has requested a possible sale of 100 AIM-120B Advanced Medium-Range Air-to-Air Missiles (AMRAAM), 48 launchers, missile containers, spare and repair parts, support and test equipment, maintenance and pilot training, software support, publications and technical documentation, management integration and support, technical assistance and other related elements of logistics and program support. The estimated cost is $52 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.

Spain needs these additional missiles to enhance its air-to-air defense capability and provide for an increase in interoperability with U.S. forces. Spain will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Systems Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 98–19790 Filed 7–23–98; 8:45 am]
BILLING CODE 5000–04–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the President's Security Policy Advisory Board Action Notice

**SUMMARY:** The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act.''

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 14 September 1998, at 1330 hours at the Dallas Convention Center in Dallas Texas. The meeting will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terence Thompson, telephone: 703–602–1098.

Dated: July 20, 1998.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 98–19785 Filed 7–23–98; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF ENERGY

### Agency Information Collection Under Review by the Office of Management and Budget (OMB)

**AGENCY:** Department of Energy.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Department of Energy (DOE) has submitted an information collection package to the OMB for renewal under the Paperwork Reduction Act of 1995. The package covers collections of information concerning the public and the management and administration of DOE's Government-owned/contractor-operated facilities (GOCOs), offsite contractors, and grantees. The information is used by Departmental management to exercise management oversight with respect to the implementation of applicable statutory and contractual requirements and obligations. The collection of this information is critical to ensure that the Government has sufficient information to judge the degree to which contractors and grantees meet contractual requirements; that public funds are being spent in the manner intended; and that fraud, waste, and abuse are immediately detected and eliminated.

**DATES AND ADDRESSES:** Comments regarding the information collection package should be submitted to the OMB Desk Officer at the following address no later than August 24, 1998. DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also notify the DOE contact listed in this notice.)

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Smith, Office of Procurement and Assistance Policy (HR–51), Department of Energy, Washington, DC 20585, (202) 586–8189.

**SUPPLEMENTARY INFORMATION:** The package contains the following information: (1) title of the information collection package; (2) current OMB control number; (3) type of respondents; (4) estimated number of responses annually; (5) estimated annual total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

*Package Title:* Procurement.

*Current OMB No.:* 1910–4100.

*Type of Respondents:* DOE management and operating contractors, offsite contractors, grantees, and the public.

*Estimated Number of Responses:* 4,331.

*Estimated Total Burden Hours:* 1,234,692.

*Purpose:* This information is required by the Department to ensure that programmatic and administrative management requirements and resources are managed efficiently and effectively and to exercise management oversight of DOE contractors and grantees. The package contains 27 information and/or recordkeeping requirements.

**Statutory Authority:** Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, on July 17, 1998.

**Gwendolyn S. Cowan,**

*Acting Director, Office of Procurement and Assistance Policy.*

[FR Doc. 98–19812 Filed 7–23–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Draft Environmental Impact Statement (EIS) for the Advanced Mixed Waste Treatment Project (AMWTP) at the Idaho National Engineering and Environmental Laboratory (INEEL), Idaho Falls, Idaho

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability and public meetings.

**SUMMARY:** The Department of Energy (DOE) announces the availability of the Draft EIS for the AMWTP (DOE/EIS–0290D), at INEEL, Idaho Falls, Idaho. The Draft EIS evaluates the potential environmental impacts of DOE's proposed action as well as reasonable alternatives. The proposed action (preferred alternative) is to implement the remaining phases of a contract with BNFL Inc. to construct and operate the AMWTP. The AMWTP would sort, characterize, treat, and package for disposal 65,000 cubic meters of transuranic (TRU) waste, alpha-contaminated low-level mixed waste (alpha LLMW), and low-level mixed waste (LLMW) currently stored at the INEEL's Radioactive Waste Management Complex (RWMC).

An additional 120,000 cubic meters of similar waste from the INEEL and other DOE sites could be treated at the proposed AMWTP, depending on future DOE decisions.

**DATES:** The public comment period begins on July 24, 1998, and extends through September 11, 1998. DOE will consider comments postmarked or submitted after September 11, 1998, to the extent practicable. Oral and written comments will be received at public meetings on the dates and at the locations given below:

1. Idaho Falls, Idaho, on Tuesday, August 18, 1998, from 7:00 p.m. to 9:30 p.m. at Eastern Idaho Technical College, Multipurpose Building Cafeteria, 1600 South 2500 East.

2. Twin Falls, Idaho, on Thursday, August 20, 1998, from 6:30 p.m. to 9:00 p.m. at the College of Southern Idaho, Student Union Building, 315 Falls Avenue.

**ADDRESSES:** Written comments, requests for further information on the Draft EIS or public meetings, and requests for copies of the document should be directed to Mr. John Medema, DOE AMWTP EIS NEPA Document Manager, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1117, Idaho Falls, ID 83401, 1–800–320–4549. Requests for copies of the Draft EIS can also be made using the Internet at whitakkb@id.doe.gov. Additionally, the Draft EIS is available for review on the Internet at http://dev/scientech.com/amwtp. Addresses of locations where the Draft EIS will be available for public review are listed in this notice under ''Availability of Copies of the Draft EIS.''

General information on the DOE National Environmental Policy Act (NEPA) process may be requested from Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Ms. Borgstrom may be contacted by telephone at (202) 586-4600, or by leaving a message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

## Background

From 1970 through the early 1980s, the INEEL accepted approximately 65,000 cubic meters of TRU waste and alpha LLMW from other DOE sites. The wastes are primarily laboratory and processing wastes of various solid materials, including paper, cloth, plastics, rubber, glass, graphite, bricks, concrete, metals, nitrate salts, and absorbed liquids. All 65,000 cubic meters were managed by DOE as TRU waste when first placed in storage at the INEEL. The wastes were placed on an asphalt pad at the RWMC in their original containers and covered with plywood, sheets of plastic, and soil, forming an earthen-covered berm. The wastes have been in the berm since the early 1970s.

Approximately 95% of this waste is classified as mixed waste which, because it contains both radioactive and chemically hazardous constituents, is regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA). Some of the wastes also contain polychlorinated biphenyls, which are regulated under the Toxic Substances Control Act. These wastes are intermingled in common containers. DOE needs to place these wastes in a configuration that will allow for their disposal at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, NM or another appropriate facility, in a manner consistent with Federal and State laws and with the schedule contained in the October 17, 1995 Settlement Agreement/Consent Order in the case of *Public Service Co. of Colorado* v. *Batt*.

Initial plans for dealing with these wastes were developed in the early 1990s, when studies indicated that significant cost and schedule savings could be realized if the treatment were privatized. In 1993 and 1994, DOE sought and received feasibility studies for treatment services from various private sector teams. After careful evaluation, DOE decided to pursue procurement of treatment, assay and characterization services for TRU waste, alpha LLMW, and LLMW from the private sector. During 1995 and 1996, DOE carried out a competitive procurement process, resulting in the award of a phased contract to BNFL Inc. Because the proposed waste treatment project was subjected to competitive procurement, DOE conducted an environmental evaluation of each of the proposals submitted (see DOE's NEPA Implementation Procedures at 10 CFR 1021.216 for a description of this process), the results of which were summarized in an Environmental Synopsis. Following the selection of BNFL Inc., in December 1996, for this project, DOE requested more detailed data regarding the proposed process for managing these wastes in order to prepare the analyses reflected in the Draft EIS. If, after completing this EIS, DOE decides not to proceed with Phases II and III (construction and operation) of the project, the contract will be terminated.

## Alternatives Considered

The Draft EIS analyzes four alternatives:

*No Action* (required under the Council on Environmental Quality and DOE NEPA regulations)—existing waste management operations, facilities, and projects would continue for TRU waste, alpha LLMW, and LLMW at the INEEL. Retrieval of waste from the berm would proceed, and the untreated retrieved waste would be stored in facilities otherwise complying with RCRA requirements. Shipments to WIPP would occur to the extent that such shipments could be supported by existing facilities at the INEEL. Waste that could not meet waste acceptance criteria for WIPP would be returned to RCRA-permitted storage facilities at the RWMC.

*Proposed Action* (preferred alternative)—the BNFL treatment facility would be built and operated using the currently proposed treatment technologies of supercompaction, macroencapsulation, incineration, and vitrification. Waste would be treated to meet the WIPP waste acceptance criteria and the RCRA Land Disposal Restriction requirements. The facility would treat the approximately 65,000 cubic meters of INEEL waste by 2015, and would have the capacity to treat up to 120,000 cubic meters of additional waste by 2033.

*Non-Thermal Treatment Alternative*—a modified AMWTP facility would be constructed and operated by BNFL Inc., but the thermal treatment process would not be a part of the system. Those wastes that do not require thermal treatment would be stabilized to meet WIPP waste acceptance criteria and RCRA Land Disposal Restriction requirements; wastes that require thermal treatment for disposal would be returned to storage at the RWMC.

*Treatment and Storage Alternative*—construction and operation of the AMWTP facility would proceed as proposed by BNFL Inc. However, once treated, the waste would be returned to the RWMC for long-term storage in RCRA-permitted storage facilities, some of which may need to be constructed to accommodate this waste.

DOE has also considered but not analyzed in detail other alternatives (i.e., treatment at other DOE sites, other treatment technologies—thermal and non-thermal), because they were technically infeasible; were not capable of processing the existing waste types; or were not available on the schedule necessary to accommodate DOE's agreement with the State of Idaho.

## Availability of Copies of the Draft EIS

Copies of the Draft EIS are being distributed to Federal, State and local officials and agencies; Tribes; and organizations and individuals who have indicated an interest in the INEEL or the Draft EIS. Addresses of DOE Public Reading Rooms and libraries where the Draft EIS will be available for public review are listed below:

University of Idaho Library, Rayburn Street, Moscow, Idaho 83844

Boise Outreach Office, INEEL, Boise City National Bank Building, 805 West Idaho Street, Boise, Idaho 83706

Boise Public Library, 715 Capital Boulevard, Boise, Idaho 83706

Twin Falls Public Library, 434 2nd Street E, Twin Falls, Idaho 83301

Idaho State University Public Library, 741 South 7th Avenue, Pocatello, Idaho 83209

Shoshone-Bannock Library, Bannock and Pema Streets, PO Box 306, Fort Hall, Idaho 83203

INEEL Technical Library/DOE Public Reading Room, 2525 North Fremont Avenue, University Place, Idaho Falls, Idaho 83402

Idaho Falls Public Library, 457 Broadway, Idaho Falls, Idaho 83402

Boise State University Library, Albertson Library, 1910 University Drive, Boise, Idaho 83705
Lewis-Clark State College, The Library, 500 8th Avenue, Lewiston, Idaho 83501
Gooding Public Library, 306 5th Avenue West, Gooding, Idaho 83330–1205
Wallace Public Library, 415 River Street, Wallace, Idaho 83873–2260
New Mexico State Library, 325 Don Gaspar, Santa Fe, NM 87503
Carlsbad Public Library, 101 S. Halagueno St., Carlsbad, NM 88220
Zimmerman Library Government Publications Department University of New Mexico, Albuquerque, NM 87131
DOE/Forrestal Building Freedom of Information Reading Room 1000 Independence Ave., SW Washington, DC 20585

Issued in Washington, DC this 21st day of July 1998.

**James A. Turi,**

*Acting Associate Deputy Assistant Secretary for Waste Management, Environmental Management.*

[FR Doc. 98–19880 Filed 7–23–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–303–001]**

## Caprock Pipeline Company; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 14, 1998, Caprock Pipeline Company (Caprock Pipeline), tendered for filing to be part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 29A, to be effective August 1, 1998.

Caprock Pipeline states that the purpose of the filing is to correct inadvertent errors made in the July 1, 1998, filing in this proceeding.

Caprock Pipeline states that copies of the filing are being mailed to its transportation customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19766 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–355–000]**

## Chandeleur Pipe Line Company; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 16, 1998, Chandeleur Pipe Line Company (Chandeleur), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1988:

Second Revised Sheet No. 43
Original Sheet No. 43A
Third Revised Sheet No. 69
First Revised Sheet No. 69A

Chandeleur states that revised tariff sheets are being filed in compliance with the Commission's Order No. 597–G, issued April 16, 1998 in the above-referenced docket. Chandeleur states that the tariff sheets are being made effective August 1, 1998, in order to implement the GISB Standards adopted under Order No. 587–G.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19769 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT98–84–000]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1998.

Take notice that on July 15, 1998, El Paso Natural Gas Company (El Paso), tendered for filing a firm Transportation Service Agreement (TSA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Ninth Revised Sheet No. 1, to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains payment provisions which differ from El Paso's Volume No. 1–A General Terms and Conditions. The tariff sheet, which references the TSA, is proposed to become effective on August 14, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19762 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP98–300–001]**

## KN Interstate Pipeline Company; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 14, 1998, KN Interstate Pipeline Company (KNI), tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–B, Substitute Third Revised Sheet No.

89A and First Revised Volume No. 1–D, Substitute Third Revised Sheet No. 71A, to be effective August 1, 1998.

KNI states that the purpose of the filing is to correct inadvertent errors made in the July 1, 1998, filing in this proceeding.

KNI states that copies of the filing are being mailed to its transportation customers and interest state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19764 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP–98–302–001]**

### KN Wattenberg Transmission Limited Liability Company; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 14, 1998, KN Wattenberg Transmission Limited LIability Company (KN Wattenberg), tendered for filing to be par tof its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 67, to be effective August 1, 1998.

KN Wattenberg states that the purpose of the filing is to correct inadvertent errors made in the July 1, 1998, filing in this proceedings.

KN Wattenberg states that copies of the filing are being mailed to its transportation customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19765 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–145–002]**

### Natural Gas Pipeline Company of America; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 15, 1998, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective July 1, 1998, pursuant to the order of the Federal Energy Regulatory Commission issued herein on June 20, 1998 (June 30th Order).

Natural states that the purpose of the filing is to reflect changes to Natural's Tariff to comply with the June 30th Order related to Natural's Rate Schedule PALS under which Natural would provide a fully interruptible Park and Loan Service.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP98–145.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effectively July 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19763 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT98–82–000]**

### Northwest Pipeline Corporation; Notice of Service Agreement Filing

July 20, 1998.

Take notice that on July 15, 1998, Northwest Pipeline Corporation (Northwest), tendered for filing and acceptance two certificated service agreements to be effective February 1, 1998.

Northwest states that it is filing a Rate Schedule SGS–1 service agreement and a Rate Schedule LS–1, service agreement, both between Northwest and Puget Sound Energy, Inc., and both dated February 1, 1998. These service agreements reflect a shipper name change from Washington Natural Gas Company to Puget Sound Energy, Inc.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 27, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19761 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–248–000]**

### Northwest Pipeline Corporation; Notice Establishing Technical Conferences

July 20, 1998.

On July 10, 1998, the Commission issued an order [1] in Docket No. RP98–248–000 the captioned docket requiring, among other things, a technical conference on Northwest Pipeline Corporation's proposal to institute an auction procedure to award various types of capacity and to reserve capacity for expansion under certain circumstances. The technical conference required by the July 10, 1998, order will be held at the time and place discussed below.

The technical conferences will convene at 10:00 a.m. on August 26, 1998, 888 First Street, N.E., Washington, D.C., in a room to be designated at that time. If necessary, the conference will continue through 5:30 p.m. of the same day.

Any questions concerning the conferences should be directed to John M. Robinson (202) 208–0808.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19770 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Northwest Pipeline Corporation, 84 FERC ¶ 61,012 (1998).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–306–002]**

### TCP Gathering Company; Notice of Compliance Filing

July 20, 1998.

Take notice that on July 14, 1998, TCP Gathering Company (TCP Gathering), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 103A to be effective August 1, 1998.

TCP Gathering states that the purpose of the filing is to correct inadvertent errors made in the July 1, 1998, filing in this proceeding.

TCP Gathering states that copies of the filing are being mailed to its transportation customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19767 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–669–000]**

### Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

July 20, 1998.

Take notice that on July 14, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–669–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate a delivery tap in Jefferson Davis Parish, Louisiana, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate a delivery tap on its Eunice-Roanoke No. 1, Line in Jefferson Davis Parish to enable Evangeline Gas Company, Inc. (Evangeline), a local distribution company, to serve a non-right of-way grantor. It is stated that the end-user has obtained permission from an adjacent landowner to install and maintain a pipeline across that landowner's property in order to connect to Evangeline's facilities. It is explained that the facilities. It is explained that the facilities would consist of a 1-inch valve and small diameter connector line. It is asserted that Texas Gas will be reimbursed by Evangeline for the $190 cost of installing the facilities. It is further asserted that Texas Gas will use the facilities to deliver up to 2 MMBtu equivalent of natural gas on a peak day and up to 730 MMBtu equivalent on an annual basis. It is explained that the volume of gas delivered to Evangeline will be within Evangeline's existing contract quantity and that the proposal will not have a significant effect on Texas Gas' peak day and annual deliveries. It is asserted that Texas Gas has sufficient capacity to accomplish the deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19760 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–354–000]**

### Western Gas Interstate Company; Notice of Proposed Changes in FERC Gas Tariff

July 20, 1998.

Take notice that on July 14, 1998, Western Gas Interstate Company (WGI), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective August 1, 1998:

Third Revised Sheet No. 247
Second Revised Sheet No. 248

WGI states that the filing was made in compliance with the Commission's Order No. 587–G. The tariff sheets reflect the adoption of the Gas Industry Standards Board's Version 1.2 standards adopted by the Commission in Order No. 587–G.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19768 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG98–63–000, et al.]**

## Bridgeport Energy LLC, et al.; Electric Rate and Corporate Regulation Filings

July 16, 1998.

Take notice that the following filings have been made with the Commission:

### 1. Bridgeport Energy LLC

[Docket No. EG98–63–000]

On July 14, 1998 Bridgeport Energy LLC (Bridgeport Energy or the Applicant), c/o Duke Energy Power Services, 5400 Westheimer Court, Mail Code 4H20, Houston, Texas 77056–5310, filed with the Federal Energy Regulatory Commission a second amendment to an application for determination of exempt wholesale generator status that was filed pursuant to part 365 of the Commission's regulations on April 6, 1998.

Bridgeport Energy files this Second Amendment at the request of Commission staff to list the specific ancillary and interconnected operations services that Bridgeport Energy desires to sell exclusively at wholesale. Such services will be incidental to, and by-products of, Bridgeport Energy's wholesale electric sales.

Bridgeport Energy also clarifies that it will not engage in any transactions covered by Section 32(k) of the Public Utility Holding Company Act of 1935 (PUHCA) unless it obtains the necessary authorizations required by such Section of PUHCA.

*Comment date:* August 7, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. Ormond Beach Power Generation, L.L.C.

[Docket No. EG98–93–000]

On July 6, 1998, Ormond Beach Power Generation, L.L.C. (Ormond Beach), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston, TX 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Ormond Beach is an indirect wholly-owned subsidiary of Houston Industries Power Generation, Inc. (HIPG) and an indirect subsidiary of Houston Industries Incorporated. HIPG was the successful bidder for the Ormond Beach generating station located in Oxnard, California at auction from Southern California Edison Company and has assigned to Ormond Beach the contract for the purchase of that plant. Ormond Beach states that it will be engaged directly, or indirectly through one or more affiliates, as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

*Comment date:* August 7, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to that concern the adequacy or accuracy of the application.

### 3. Geddes II Corp.

[Docket No. EG98–95–000]

On July 10, 1998, Geddes II Corp. (Geddes) of One Upper Pond Road, Parsippany, New Jersey, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant is a Delaware corporation which is a limited partner of Onondaga Cogeneration Limited Partnership, a New York limited partnership which owns a topping-cycle cogeneration facility (the Facility). All electricity produced by the Facility is sold at wholesale to Niagara Mohawk Power Corporation.

*Comment date:* August 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 4. Wisconsin Public Service Corporation

[Docket Nos. ER95–1528–004, ER95–1528–003, ER96–1088–000, ER96–1088–002, OA96–79–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing a compliance report for refunds required due to settlement of transmission tariffs.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. FirstEnergy System

[Docket No. ER98–3567–000, ER98–3572–000]

Take notice that on July 9, 1998, FirstEnergy System tendered for filing a Firm Point-To-Point Service Agreement with VTEC Energy, Inc., and a revised Attachment E.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 6. Public Service Company of New Mexico

[Docket No. ER97–4663–000]

Take notice that on July 13, 1998, Tucson Electric Power Company (TEP), on behalf of itself and Public Service Company of New Mexico, tendered for filing a response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation on January 28, 1998 in Docket No. ER97–4663–000, and an Amendment No. 1 to the Amended Interconnection Agreement between Public Service Company of New Mexico and Tucson Electric Power Company.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 7. Shamrock Trading, LLC

[Docket No. ER98–3700–000]

Take notice that on July 10, 1998, Shamrock Trading, LLC (Shamrock), petitioned the Commission for acceptance of Shamrock Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations; and that on June 17, 1998, Shamrock filed an amended petition amending the original petition effective as of June 17, 1998.

Shamrock intends to engage in wholesale electric power and energy purchases and sales as a marketer. Shamrock is not in the business of generating or transmitting electric

power. Shamrock is wholly owned by Michael P. FitzPatrick. Neither Michael P. Fitzpatrick nor Shamrock is currently affiliated with any other company, nor do they engage in any other business activities. Shamrock expects that most of its business (approximately 90%) will involve the trading of electricity. Natural gas and coal trading will constitute a lesser portion of Shamrock's business (approximately 10%).

*Comment date:* July 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. California Independent System Operator Corporation**

[Docket No. ER98–3708–000]

Take notice that on July 13, 1998, the California Independent System Operator Corporation (ISO), tendered for filing an Interconnected Control Area Operating Agreement (ICAOA) between the ISO and the Western Area Power Administration Desert Southwest Region for acceptance by the Commission.

The ISO requests waiver of the Commission's notice requirements to allow the agreement to take effect as of June 30, 1998.

The ISO states that this filing has been served on the Western Area Power Administration and the California Public Utilities Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. Mid-Continent Area Power Pool**

[Docket No. ER98–3709–000]

Take notice that on July 10, 1998, the Mid-Continent Area Power Pool (MAPP), on behalf of its Members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed MAPP's Line Loading Relief procedure (LLR). LLR establishes procedures for curtailment of scheduled transactions in the MAPP region under individual Member transmission tariffs and MAPP's Schedule F.

*Comment date:* July 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation**

[Docket No. ER98–3710–000]

Take notice that on July 13, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated June 5, 1998 (the ''Service Agreement'') between Western Resources (WESTERN) and OVEC. OVEC proposes an effective date of June 15, 1998 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to WESTERN.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

Copies of this filing were served upon the Kansas State Corporation Commission, the Oklahoma Corporation Commission and WESTERN.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Otter Tail Power Company**

[Docket No. ER98–3711–000]

Take notice that on July 13, 1998, Otter Tail Power Company (OTP) tendered for filing a Service Agreement between OTP and Western Resources. The Service Agreement allows Western Resources to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Virginia Electric and Power Company**

[Docket No. ER98–3712–000]

Take notice that on July 13, 1998, Virginia Electric and Power Company tendered for filing a letter agreement with North Carolina Electric Membership Corporation providing for generator imbalance service. Virginia Power requests that the Commission waive its notice of filing requirements to allow the agreement to take effect on July 13, 1998, the day on which it was filed.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Carolina Power & Light Company**

[Docket No. ER98–3713–000]

Take notice that on July 13, 1998, Carolina Power & Light Company (CP&L) tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with the following customers: Aquila Power Corporation, PG&E Energy Trading—Power, L.P., and Electric Clearinghouse, Inc.; and a Service Agreement for Non-Firm Point-to-Point Transmission Service with PG&E Energy Trading—Power, L.P. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Ameren Services Company**

[Docket No. ER98–3714–000]

Take notice that on July 13, 1998, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and e prime, inc. and Tractebel Energy Marketing, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Ameren Services Company**

[Docket No. ER98–3715–000]

Take notice that on July 13, 1998, Ameren Services Company (ASC) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and the City of Columbia, Missouri, e prime, inc. and Tractebel Energy Marketing, Inc. ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER98–3716–000]

Take notice that on July 13, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Pacific Gas and Electric Company**

[Docket No. ER98–3717–000]

Take notice that on July 13, 1998, Pacific Gas and Electric Company

(PG&E), tendered for filing three agreements, each entitled Expedited Service Agreement and dated as of June 30, 1998, by and between PG&E and the following parties: Duke Energy Oakland LLC; Duke Energy Moss Landing LLC; and Duke Energy Morro Bay LLC (collectively, the Connecting Parties). The Expedited Service Agreements were entered into for the purpose of coordination of the generating facilities that are owned by the Connecting Parties and connected to PG&E's transmission system, under the terms of the PG&E Transmission Owner Tariff and the California Independent System Operator Corporation (ISO), Tariff in a manner that maintains the safe, reliable and economic operation of PG&E's transmission facilities and the ISO controlled grid.

Copies of this filing have been served upon Duke Energy Oakland LLC, Duke Energy Moss Landing LLC, Duke Energy Morro Bay LLC, the California Independent System Operator Corporation, and the California Public Utilities Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. Arizona Public Service Company**

[Docket No. ER98–3718–000]

Take notice that on July 13, 1998, Arizona Public Service Company (APS), tendered for filing an Umbrella Service Agreement to provide Firm Point-to-Point Transmission Service under APS'' Open Access Transmission Tariff with Southern Company Energy Marketing L.P., Electric Clearinghouse, Inc., and Equitable Power Services Co.

A copy of this filing has been served on Southern Company Energy Marketing L.P., Electric Clearinghouse, Inc., Equitable Power Services Co., and the Arizona Corporation Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Peoples Electric Corporation**

[Docket No. ER98–3719–000]

Take notice that on July 13, 1998, Peoples Electric Corporation (PEC), tendered for filing a petition to the Commission for acceptance of PEC Rate Schedule FERC No. 1; the granting of certain blanket approvals including the authority to sell electricity at market-based rates; and the waiver if certain Commission Regulations.

PEC intends to engage in wholesale electric power and energy purchases and sales as a marketer. PEC is not in the business of generating or transmitting electric power. PEC is a wholly-owned subsidiary of People's Electric cooperative, which supplies electric power and energy.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. New York State Electric & Gas Corporation**

[Docket No. ER98–3720–000]

Take notice that on July 13, 1998, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and H.Q. Energy Services (U.S.) Inc., and Southern Company Energy Marketing L.P.,(Customers). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of July 13, 1998 for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**21. Consolidated Edison Company Of New York, Inc.**

[Docket No. ER98–3721–000]

Take notice that on July 13, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**22. Wisconsin Power & Light Co.**

[Docket No. ER98–3722–000]

Take notice that on July 13, 1998, Wisconsin Power & Light Company (WPL), tendered for filing Notice of Withdrawal of WPL's application for acceptance of Service Agreement No. 1, under its FERC Electric Tariff, Original Volume No. 11 between WPL and Wisconsin Public Power, Inc., dated April 29, 1998. The Agreement was accepted for filing effective as of May 1, 1998, in Docket No. ER98–2752–000. Wisconsin Power & Light Co., 83 FERC ¶ 61,239 (June 26, 1998). In the alternative, WPL seeks cancellation of Service Agreement No. 1 as of May 1, 1998, but in no event later than September 11, 1998.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**23. Commonwealth Electric Company Cambridge Electric Light Company**

[Docket No. ER98–3723–000]

Take notice that on July 13, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff, Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff, Original Volume No. 9) for the period of April 1, 1998, to June 30, 1998.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**24. Salvatore H. Alfiero**

[Docket No. ID–3203–000]

Take notice that on June 29, 1998, Salvatore H. Alfiero (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director: Niagara Mohawk Power Corporation
Director: Phoenix Home Mutual Insurance Co.
Director: Marine Midland Bank.
Director: Southwire Company

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**25. PP&L, Inc.**

[Docket No. SC97–1–002]

Take notice that on June 25, 1998, PP&L, Inc. tendered for filing its refund report in the above-referenced docket.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**26. Village of Lakewood New York**

[Docket No. SC98–2–000]

Take notice that on June 25, 1998, the Village of Lakewood, New York tendered for filing a Petition for expedited Declaratory order in the above-referenced docket.

*Comment date:* August 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19753 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–746–001, et al.]**

## Cinergy Services, Inc., et al. Electric Rate and Corporate Regulation Filings

July 10, 1998.

Take notice that the following filings have been made with the Commission:

### 1. Cinergy Services, Inc.

[Docket Nos. ER98–746–001, R98–747–001, R98–748–001, R98–749–001, ER98–750–001, ER98–751–001, and ER98–752–001

Take notice that on July 7, 1998, Cinergy Services, Inc. (Cinergy), tendered a filing revised unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Town of Bremen, Indiana, Town of Brookston, Indiana, Town of Chalmers, Indiana, Town of Etna Green, Indiana, Town of Kingsford Heights, Indiana, Town of Walkerton, Indiana, Town of Winamac, Indiana, the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 2. Cinergy Services, Inc.

[Docket No. ER98–1481–000]

Take notice that on July 7, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing revised unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon the Board of Public Utilities of Kansas City, Kansas, the Kansas State Corporation Commission, the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor, the Kentucky Public Service Commission and the Public Utilities Commission of Ohio.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 3. Cinergy Services, Inc.

[Docket No. ER98–1711–000]

Take notice that on July 7, 1998, Cinergy Services, Inc., (Cinergy), tendered a filing providing revised unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Edgar Electric Cooperative Association and Illinois Commerce Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 4. Cinergy Services, Inc.

[Docket No. ER98–1781–000]

Take notice that on July 7, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing revised unbundled pricing in the above-referenced docket.

Copies of the filing have been served upon Nordic Electric and Michigan Public Service Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. NGE Generation, Inc.

[Docket No. ER98–2234–000]

Take notice that on July 7, 1998, NGE Generation, Inc., (NGE Gen), tendered for filing an amendment to its March 18, 1998, filing in the above-referenced docket.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 6. Consolidated Edison Company Of New York, Inc.

[Docket No. ER98–2720–000]

Take notice that on July 7, 1998, Consolidated Edison Company of New York, Inc. (CECONY), tendered for filing pursuant to its FERC Electric Tariff Rate Schedule No. 2, a fully executed Service Agreement with Consolidated Edison Solutions, Inc., to purchase electric capacity and energy pursuant at negotiated rates, terms, and conditions. This Service Agreement is to replace the Service Agreement filed on June 19, 1998.

CECONY states that a copy of this filing has been served by mail upon Consolidated Edison Solutions, Inc.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 7. American Premier Energy Corp.

[Docket No. ER98–3451–000]

Take notice that on July 7, 1998, American Premier Energy Corp. (APE), amended its petition to the Commission for acceptance of APE Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

APE intends to engage in wholesale electric power and energy purchases and sales as a marketer. APE is not in the business of generating or transmitting electric power.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 8. San Diego Gas & Electric Company

[Docket No. ER98–3499–000]

Take notice that on July 6, 1998, San Diego Gas & Electric Company tendered for filing a letter informing the Commission that the merger of Enova Corporation and Pacific Enterprises was consummated on June 26, 1998.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 9. Kentucky Utilities Company

[Docket No. ER98–3637–000]

Take notice that on July 7, 1998, Kentucky Utilities Company (KU), tendered for filing Supplement No. 9, to the Interconnection Agreement between KU and East Kentucky Power Cooperative.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 10. Duquesne Light Company

[Docket No. ER98–3638–000]

Take notice that on June 25, 1998, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated June 25, 1998 with Columbia Energy under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Columbia Energy as a customer under the Tariff.

DLC requests an effective date of June 25, 1998, for the Service Agreement.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 11. Ohio Edison Company

[Docket No. ER98–3639–000]

Take notice that on July 7, 1998, Ohio Edison Company filed a revision to

FERC Electric Tariff, Second Revised Volume No. 2, to extend the time for establishing a second delivery point to Cuyahoga Falls until January 1, 2003.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Florida Power Corporation**

[Docket No. ER98–3640–000]

Take notice that on July 7, 1998, Florida Power Corporation (Florida Power), tendered for filing a Service Agreement providing for Firm Point-To-Point Transmission Service to Tennessee Valley Authority (Transmission Customer), pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on July 8, 1998.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Florida Power Corporation**

[Docket No. ER98–3641–000]

Take notice that on July 7, 1998, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for Non-Firm Point-To-Point Transmission Service and a service agreement providing for Firm Point-To-Point Transmission Service to Tractebel Energy Marketing, Inc. (Transmission Customer), pursuant to Florida Power's open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on July 8, 1998.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Wisconsin Electric Power Company**

[Docket No. ER98–3642–000]

Take notice that on July 7, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an Electric Service Agreements under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) and its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2) with OGE Energy Resources, Inc., (OGE).

Wisconsin Electric requests an effective date of July 7, 1998, to allow for economic transactions.

Copies of the filing have been served on OGE, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Commonwealth Edison Company**

[Docket No. ER98–3643–000]

Take notice that on July 7, 1998, Commonwealth Edison Company (ComEd), submitted for filing an amended Page 3 to the executed Service Agreement, dated August 9, 1996, with Wisconsin Electric Power Company (WEPCO), providing for Firm Point-To-Point Transmission Service to WEPCO under the terms of ComEd's Open Access Transmission Tariff (OATT). The amendment changes the point of delivery under the Service Agreement.

ComEd requests an effective date of June 9, 1998, for the amended page to the Service Agreement and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon WEPCO and the Illinois Commerce Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Pacific Gas and Electric Company**

[Docket No. ER98–3644–000]

Take notice that on July 7, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an Errata to its filing of Amendment No. 6 to the Comprehensive Agreement between the State of California Department of Water Resources and Pacific Gas and Electric Company (Agreement).

The Agreement and its appendices were originally accepted for filing by the Commission in FERC Docket No. ER83–142–000 and designated as PG&E Rate Schedule FERC No. 77.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Entergy Services, Inc.**

[Docket No. ER98–3645–000]

Take notice that on July 7, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Southwestern Public Service Company.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. Kentucky Utilities Company**

[Docket No. ER98–3646–000]

Take notice that on July 7, 1998, Kentucky Utilities Company (KU), tendered for filing Supplement No. 1 to the Interconnection Agreement between KU and East Kentucky Power Cooperative.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Entergy Services, Inc.**

[Docket No. ER98–3647–000]

Take notice that on July 7, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Koch Energy Trading, Inc.

Entergy Services requests that the Transmission Service Agreement be made effective no later than June 16, 1998.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)**

[Docket No. ER98–3648–000]

Take notice that on July 7, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Saskatchewan Power Corporation (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Company's Electric Services Tariff, Original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on June 11, 1998.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**21. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)**

[Docket No. ER98–3649–000]

Take notice that on July 7, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Southern Company Energy Marketing, L.P. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on June 11, 1998.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**22. PP&L, Inc.**

[Docket No. ER98–3650–000]

Take notice that on July 7, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated July 1, 1998 with PacifiCorp Power Marketing, Inc. (PacifiCorp), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds PacifiCorp as an eligible customer under the Tariff.

PP&L requests an effective date of July 7, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to PacifiCorp and to the Pennsylvania Public Utility Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**23. PP&L, Inc.**

[Docket No. ER98–3651–000]

Take Notice that on July 7, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated June 29, 1998, with Con Edison Solutions, Inc. (ConEd), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds ConEd as an eligible customer under the Tariff.

PP&L requests an effective date of July 7, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ConEd and to the Pennsylvania Public Utility Commission.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**24. Kentucky Utilities Company**

[Docket No. ER98–3652–000]

Take notice that on July 7, 1998, Kentucky Utilities Company (KU), tendered for filing an executed Power Services Agreement between KU and Amoco Energy Trading Corporation under KU's Power Services Tariff, Rate PS.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**25. Louisville Gas and Electric Company**

[Docket No. ER98–3653–0000]

Take notice that on July 7, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing Supplement No. 1 to the Transmission Lease Agreement between LG&E and East Kentucky Power Cooperative.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**26. Louisville Gas and Electric Company**

[Docket No. ER98–3658–000]

Take notice that on July 7, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an Executed Purchase and Sales Agreement between LG&E and Engage Energy US, L.P., under LG&E's Rate Schedule GSS.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**27. Louisville Gas and Electric Company**

[Docket No. ER98–3659–000]

Take notice that on July 7, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an Executed Purchase and Sales Agreement between LG&E and ConAgra Energy Services, Inc., under LG&E's Rate Schedule GSS.

*Comment date:* July 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

**28. Cinergy Services, Inc.**

[Docket No. ER98–3673–000]

Take notice that on July 6, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E) and PSI Energy, Inc. (PSI), changes to its open access transmission tariff rates to become effective July 6, 1998.

Copies of the filing were served on parties to FERC Docket Nos. ER94–1637–000 and OA96–169–00, wholesale transmission customers after March 29, 1995, the public service commissions of Indiana, Ohio and Kentucky.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19757 Filed 7–23–98; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL98–57–000, et al.]**

## New Energy Ventures, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 17, 1998.

Take notice that the following filings have been made with the Commission:

**1. New Energy Ventures, L.L.C.**

[Docket Nos. EL98–57–000 And ER98–3556–000]

Take notice that on July 10, 1998, New Energy Ventures, L.L.C. tendered for filing an amendment to its June 30, 1998 filing in the above-docketed proceeding.

*Comment date:* August 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

**2. Southern Indiana Gas and Electric Company**

[Docket Nos. EL98–58–000 and ER98–3552–000]

Take notice that on June 30, 1998, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing a notice of termination, emergency

request for waiver of notice, and alternative request for relief to SIEGCO's termination of wholesales sales service to Federal Sales Inc. (Federal Energy) under a transaction scheduled dated April 27, 1998, providing for the delivery of 50 MW from July 1 to July 30, 1998.

On July 9, 1998, SIGECO amended its June 30, 1998 to include a second transaction schedule with Federal Energy, also dated April 27, 1998, and providing for the sale of 50 MW from August 1, to August 31, 1998 in the above-referenced dockets.

*Comment date:* August 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

**3. Louisville Gas and Electric Company**

[Docket No. ER92–533–005]

On July 14, 1998, Louisville Gas and Electric Company (LG&E), 220 West Main Street, P.O. Box 32010, Louisville, Kentucky 40232, filed a notification of a change in status to reflect certain structural changes to a proposed transaction between affiliates of LG&E and Big Rivers Electric Corporation.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**4. LG&E Energy Marketing Inc.**

[Docket Nos. ER94–1188–023]

On July 14, 1998, LG&E Energy Marketing Inc. (LEM), 220 West Main Street, P.O. Box 32010, Louisville, Kentucky, 40232 filed a notification of a change in status to reflect certain structural changes to a proposed transaction between LEM, certain of its affiliates and Big Rivers Electric Corporation.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**5. Washington Water Power Company**

[Docket No. ER98–852–001]

Take notice that on July 13, 1998, Avista Energy, Inc. (Avista) submitted for filing a Compliance Report as ordered by the Commission in a June 11, 1998, Order on Responses to Show Cause Order. The Compliance Report describes Avista's compliance with the Order's requirement that Avista disgorge certain profits and that Avista limit its use of Washington Water Power Company's transmission system for 180 days.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**6. WKE Station Two Inc.**

[Docket No. ER98–1278–001]

On July 13, 1998, WKE Station Two Inc. (Station Two Subsidiary), 220 West Main Street, P.O. Box 32010, Louisville, Kentucky, 40232 filed a notification of a change in status and a revised market analysis reflecting Station Two Subsidiary's affiliation with Kentucky Utilities Company (KU) as a result of the consummation of the indirect merger between KU and Louisville Gas and Electric Company.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**7. Western Kentucky Energy Corp**

[Docket No. ER98–1279–001]

On July 13, 1998, Western Kentucky Energy Corp. (WKEC), 220 West Main Street, P.O. Box 32010, Louisville, Kentucky, 40232 filed a notification of a change in status and a revised market analysis reflecting WKEC's affiliation with Kentucky Utilities Company (KU) as a result of the consummation of the indirect merger between KU and Louisville Gas and Electric Company.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**8. Wisconsin Power & Light Company**

[Docket No. ER98–3724–000]

Take notice that on July 14, 1998, Wisconsin Power & Light Company (WP&L), tendered for filing an amended Wholesale Power Contract dated February 11, 1997, between the City of Princeton and WP&L. WP&L states that this amended Wholesale Power Contract revises the previous agreement between the two parties dated August 4, 1990, and designated Rate Schedule No. 159 by the Commission.

The parties have amended the Wholesale Power Contract to change the electric service's delivery voltage. Service under this amended Wholesale Power Contract will be in accordance with standard WP&L Rate Schedule W–3.

WP&L requests that an effective date of July 22, 1997 be assigned. WP&L indicates that copies of the filing have been provided to the City of Princeton and to the Public Service Commission of Wisconsin.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**9. New Century Services, Inc.**

[Docket No. ER98–3725–000]

Take notice that on July 14, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Tractebel Energy Marketing, Inc.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**10. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corp.**

[Docket No. ER98–3726–000]

Take notice that on July 14, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated June 15, 1998 (the Service Agreement) between Tenaska Power Services Co. (TENASKA) and OVEC. OVEC proposes an effective date of June 15, 1998 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to TENASKA.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon TENASKA.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corp.**

[Docket No. ER98–3727–000]

Take notice that on July 14, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated June 17, 1998 (the Service Agreement) between ConAgra Energy Services, Incorporated (CONAGRA) and OVEC. OVEC proposes an effective date of June 17, 1998 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to CONAGRA.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set

forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon CONAGRA.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Consolidated Edison Solutions, Inc.**

[Docket No. ER98–3729–000]

Take notice that on July 14, 1998, Consolidated Edison Solutions, Inc. (Solutions) tendered for filing a service agreement enabling it to make sales of capacity and/or energy to its regulated electric utility affiliates under Solutions' market-based rate tariff. Solutions requests an effective date of August 1, 1998.

Solutions states that a copy of this filing has been served by mail upon the New York State Public Service Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company**

[Docket No. ER98–3730–000]

Take notice that on July 14, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing service agreements establishing Western Resources, Inc. (WRI), OGE Energy Resources (OGE), PacifiCorp Power Marketing, Inc. (PacifiCorp), Aquila Power (Aquila), Coral Power, LLC (Coral), ConAgra Energy Services, Inc. (ConAgra), Amoco Energy Trading Corp. (Amoco), Associated Electric Cooperative, Inc. (AECI), and Tenaska Power Services Co. (Tenaska) as customers under the CSW Operating Companies' market-based rate power sales tariff. The CSW Operating Companies request an effective date of June 18, 1998, for the service agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on WRI, OGE, PacifiCorp, Aquila, Coral, ConAgra, Amoco, AECI, and Tenaska.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Citizens Utilities Company**

[Docket No. ER98–3731–000]

Take notice that on July 14, 1998, Citizens Utilities Company filed a revised Attachment E, Index of Point-to-Point Transmission Service Customers to update the Open Access Transmission Tariff of the Vermont Electric Division of Citizens Utilities Company.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Citizens Utilities Company**

[Docket No. ER98–3732–000]

Take notice that on July 14, 1998, Citizens Utilities Company, tendered for filing on behalf of itself and ConAgra Energy Services, Inc., a Service Agreement for Non-Firm Point-to-Point Transmission Service under Citizens' Open Access Transmission Tariff.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. New Century Services, Inc.**

[Docket No. ER98–3733–000]

Take notice that on July 14, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Northern/AES Energy LLC.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Virginia Electric and Power Company**

[Docket No. ER98–3734–000]

Take notice that on July 14, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing the Notice of Cancellation of the Executed Power Sales Service Agreement with Federal Energy Sales, Inc. (Federal Energy). The canceled service agreement has been designated as Service Agreement No. 98 under FERC Electric Tariff First Revised Volume No. 4.

Copies of the filing were served upon Federal Energy Sales, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* July 31, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. American REF-Fuel Company of Essex County**

[Docket No. ES98–38–000]

Take notice that on June 30, 1998, American REF-Fuel Company of Essex County (ARC Essex) filed an application in this proceeding, under Section 204 of the Federal Power Act. The application seeks authorization from the Commission for blanket prior approval of all future issuances of securities and assumptions of liabilities by the Company.

*Comment date:* August 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. SEMASS Partnership**

[Docket No. ES98–39–000]

Take notice that on June 30, 1998, SEMASS Partnership (SEMASS) filed an application in this proceeding, under Section 204 of the Federal Power Act. The application seeks authorization from the Commission for blanket prior approval of all future issuances of securities and assumptions of liabilities by the Partnership.

*Comment date:* August 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

**20. American REF-Fuel Company of Hempstead**

[Docket No. ES98–40–000]

Take notice that on June 30, 1998, American REF-Fuel Company of Hempstead (ARC Hempstead) filed an application in this proceeding, under Section 204 of the Federal Power Act. The application seeks authorization from the Commission for blanket prior approval of all future issuances of securities and assumptions of liabilities by the Company.

*Comment date:* August 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19754 Filed 7–23–98; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER98–2107–001, et al.]**

## Oklahoma Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

July 13, 1998.

Take notice that the following filings have been made with the Commission:

### 1. Oklahoma Gas and Electric Company

[Docket No. ER98–2107–001]

Take notice that on July 8, 1998, Oklahoma Gas and Electric Company (OG&E), tendered for filing a change to it's Open Access Tariff in compliance with Commission's order in this docket issued on June 10, 1998.

Copies of this filing have been served on the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 2. Paul T. Phillips

[Docket No. ER98–2567–000]

Take notice that on July 8, 1998, Paul T. Phillips tendered for filing notice of withdrawal of its April 15, 1998, filing in Docket No. ER98–2567–000.

A copy of the notice is being served upon Public Service Company of New Hampshire and the New Hampshire Public Utilities Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 3. Consolidated Edison Company

[Docket No. ER98–3178–000]

Take notice that on July 8, 1998, Consolidated Edison Company of New York Inc. (Con Edison), tendered for filing a response to the Commission's deficiency letter in the above-listed docket. Under the terms of the service agreement in this docket, Con Edison provides non-form transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 4. Sempra Energy Trading Corporation

[Docket No. ER98–3513–000]

Take notice that on July 6, 1998, Sempra Energy Trading Corporation tendered for filing a letter informing the Commission that the merger of Enova Corporation and Pacific Enterprises was consummated on June 26, 1998.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. Enova Energy, Inc.

[Docket No. ER98–3515–000]

Take notice that on June 26, 1998, Enova Energy, Inc. (Enova Energy), tendered for filing its compliance filing in the above-referenced docket a revised code of conduct. The revised code would supplement Enova Energy's market-based rate schedule.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 6. Commonwealth Edison Company

[Docket No. ER98–3654–000]

Take notice that on July 8, 1998, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing GPU Energy (GPU), OGE Energy Resources, Inc. (OGE), PECO Energy (PECO) and Western Resources Inc. (WRI), as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of June 2, 1998, for the agreement with WRI and requests an effective date of July 1, 1998, for the agreements with GPU, OGE and PECO. Accordingly, ComEd seeks waiver of the Commission's notice requirements.

ComEd states that a copy of the filing was served on the Illinois Commerce Commission and an abbreviated copy of the filing was served on each affected customer.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 7. Carolina Power & Light Company

[Docket No. ER98–3655–000]

Take notice that on July 8, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: SETI (Statoil Energy Trading, Inc.) and Public Service Electric and Gas; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with SETI. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 8. Public Service Electric and Gas Company

[Docket No. ER98–3660–000]

Take notice that on July 8, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Tosco Power Inc. (Tosco), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations to permit the agreement to become effective as of June 9, 1998.

Copies of the filing have been served upon Tosco and the New Jersey Board of Public Utilities.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 9. Central Illinois Light Company

[Docket No. ER98–3661–000]

Take notice that on July 8, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and four service agreements for four new customers, AES Power, Inc., Coral Power, L.L.C., Merchant Energy Group of the Americas, Inc. and Wisconsin Electric Power Company.

CILCO requested an effective date of June 22, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 10. Central Illinois Light Company

[Docket No. ER98–3662–000]

Take notice that on July 8, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff

and four service agreements for eight new customers, AYP Energy, Inc., CNG Power Services Corporation, Commonwealth Edison Company, Griffin Energy Marketing, L.L.C., NorAm Energy Services, Inc., Rainbow Energy Marketing Corporation, Tennessee Power Company and Tractebel Energy Marketing, Inc.

CILCO requested an effective date of June 25, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. MidAmerican Energy Company**

[Docket No. ER98–3663–000]

Take notice that on July 8, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303 submitted for filing with the Commission a Service Agreement dated May 5, 1998, with Chillicothe Municipal Utilities (Chillicothe), entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of June 9, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Chillicothe, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Carolina Power & Light Company**

[Docket No. ER98–3664–000]

Take notice that on July 8, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: SETI (Statoil Energy Trading, Inc.) and Public Service Electric and Gas; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with SETI. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. Wisconsin Public Service Corporation**

[Docket No. ER98–3665–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with e′prime, Inc., for Short Term Market Rate (MR Tariff) Sales under its Market-Based Rate Tariff.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Wisconsin Public Service Corporation**

[Docket No. ER98–3666–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Cargill-Alliant, LLC, providing transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Western Resources, Inc.**

[Docket No. ER98–3667–000]

Take notice that on July 8, 1998, Western Resources, Inc., tendered for filing agreements between Western Resources and WestPlains Energy; Duquesne Light; Southwestern Public Service Co.; e' prime; and PacifiCorp. Western Resources states that the purpose of the agreements is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission. The agreements are proposed to become effective June 10, 1998.

Copies of the filing were served upon WestPlains Energy; Duquesne Light; Southwestern Public Service Co.; e' prime; and PacifiCorp, and the Kansas Corporation Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Wisconsin Public Service Corporation**

[Docket No. ER98–3668–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Northern/AES Energy, LLC, provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Wisconsin Public Service Corporation**

[Docket No. ER98–3669–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Cargill-Alliant, LLC, providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. Wisconsin Public Service Corporation**

[Docket No. ER98–3670–000]

Take notice that on July 8, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Short Term Firm Transmission Service Agreement between WPSC and Northern/AES Energy, LLC, providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Portland General Electric Company**

[Docket No. ER98–3671–000]

Take notice that on July 8, 1998, Portland General Electric Company (PGE), tendered for filing an Application for Order Accepting Umbrella Market-Based Rate Schedule and Granting Waivers and Blanket Authority, to become effective August 1, 1998.

The proposed tariff (Portland General Electric Company, FERC Electric Tariff, Original Volume No. 11) provides the terms and conditions pursuant to which PGE will sell electric capacity and/or energy at market-based rates, including sales to its power marketing affiliates.

Copies of this filing were served upon the Oregon Public Utility Commission.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19755 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER95–430–015, et al.]**

## Phibro, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 14, 1998.

Take notice that the following filings have been made with the Commission:

### 1. Phibro, Inc.

[Docket No. ER95–430–015]

Take notice that on June 25, 1998, Phibro, Inc., tendered for filing a report in compliance with letter order issued on June 9, 1995 in Docket No. ER95–430–000.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 2. Western Resources, Inc.

[Docket No. ER98–1776–001]

Take notice that on July 8, 1998, Western Resources, Inc., tendered for filing a change to its FERC Electric Tariff, First Revised Volume No. 5, in compliance with the Commission's order in this order issued on June 10, 1998.

Copies of this filing were served upon all parties listed on the Commission's official service list in this docket.

*Comment date:* July 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 3. PJM Interconnection, L.L.C.

[Docket No. ER98–3487–000]

Take notice that on June 24, 1998, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership application of Statoil Energy Services, Inc. PJM requests an effective date on the day after this Notice of Filing is received by FERC.

*Comment date:* July 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 4. New England Power Company

[Docket No. ER98–3542–000]

Take notice that on July 9, 1998, New England Power Company (NEP), tendered for filing amendments to its service agreements with the Municipal Light Department of the Town of Groveland, Massachusetts (Groveland) and the Municipal Light Department of the Town of Merrimac, Massachusetts (Merrimac).

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 5. Onondaga Cogeneration Limited Partnership

[Docket No. ER98–3672–000]

Take notice that on July 9, 1998, Onondaga Cogeneration Limited Partnership tendered for filing a Power Put Agreement with Niagara Mohawk Power Corporation. This initial rate schedule will enable the parties to purchase and sell energy in accordance with the terms of the Power Put Agreement.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 6. PP&L, Inc.

[Docket No. ER98–3674–000]

Take notice that on July 9, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated July 1, 1998, with ConAgra Energy Services, Inc. (ConAgra), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds ConAgra as an eligible customer under the Tariff.

PP&L requests an effective date of July 9, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ConAgra and to the Pennsylvania Public Utility Commission.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 7. The Dayton Power and Light Company

[Docket No. ER98–3675–000]

Take notice that on July 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing with Allegheny Power Service Corporation, Tractebel Energy Marketing, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon with Allegheny Power Service Corporation, Tractebel Energy Marketing, Inc., and the Public Utilities Commission of Ohio.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 8. Portland General Electric Company

[Docket No. ER98–3676–000]

Take notice that on July 9, 1998, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff, Original Volume No. 8), executed Service Agreements for Short-Term and Non-Firm Point-to-Point Transmission Service with Tractebel Energy Marketing, Inc.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreements to become effective June 15, 1998.

A copy of this filing was caused to be served upon Tractebel Energy Marketing, Inc., as noted in the filing letter.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 9. Wisconsin Public Service Corporation

[Docket No. ER98–3677–000]

Take notice that on July 9, 1998, Wisconsin Public Service Corporation tendered for filing an executed service agreement with Northern States Power Company under its Market-Based Rate Tariff.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

### 10. Central Illinois Light Company

[Docket No. ER98–3678–000]

Take notice that on July 9, 1998, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement for one new customer, Tractebel Energy Marketing, Inc.

CILCO requested an effective date of July 2, 1998.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**11. The Dayton Power and Light Company**

[Docket No. ER98–3679–000]

Take notice that on July 9, 1998, The Dayton Power and Light Company (Dayton), submitted service agreements establishing Tractebel Energy Marketing, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served Tractebel Energy Marketing, Inc., and the Public Utilities Commission of Ohio.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**12. Duke Power, a division of Duke Energy Corporation**

[Docket No. ER98–3680–000]

Take notice that on July 9, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, with Carolina Power & Light Co.; Electric Clearinghouse, Inc.; The Energy Authority, Inc.; Sonat Power Marketing, Inc.; and Tractebel Energy Marketing, Inc.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**13. FirstEnergy Trading & Power Marketing, Inc.**

[Docket No. ER98–3681–000]

Take notice that on July 9, 1998, FirstEnergy Trading & Power Marketing, Inc. (FTPM), filed a Service Agreement between FirstEnergy Trading & Power Marketing, Inc., for Power Sales to the FirstEnergy Operating Companies under FTPM's Market Based Rate Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

FTPM requests waiver of the Commission's notice requirements and also requests that the Service Agreement become effective on July 1, 1998.

Copies of this filing have been served upon FirstEnergy Trading & Power Marketing, Inc., and FirstEnegy Corp., as agent for The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**14. Ohio Edison Company and Pennsylvania Power Company**

[Docket No. ER98–3682–000]

Take notice that on July 9, 1998, Ohio Edison Company (Ohio Edison), tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreement between Ohio Edison Company and Pennsylvania Power Company for Power Sales to FirstEnergy Trading & Power Marketing, Inc., under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Ohio Edison requests waiver of the Commission's notice requirements and requests that the Service become effective on July 1, 1998.

Copies of this filing have been served upon Ohio Edison Company, Pennsylvania Power Company and FirstEnergy Trading & Power Marketing, Inc.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**15. Niagara Mohawk Power Corporation**

[Docket No. ER98–3683–000]

Take notice that on July 9, 1998, Niagara Mohawk Power Corporation (ANMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Tractabel Energy Marketing, Inc. This Transmission Service Agreement specifies that Tractabel Energy Marketing, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Tractabel Energy Marketing, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Tractabel Energy Marketing, Inc., as the parties may mutually agree.

NMPC requests an effective date of July 2, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Tractabel Energy Marketing, Inc.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**16. Enron Energy Services, Inc.**

[Docket No. ER98–3685–000]

Take notice that on July 9, 1998, Enron Energy Services, Inc., filed an amendment to its Rate Schedule No. 1, pursuant to Section 205 of the Federal Power Act to become effective August 1, 1998. The proposed amendment provides the terms and conditions pursuant to which Enron Energy Services will sell capacity and/or energy to and purchase capacity and/or energy from its affiliate, Portland General Electric Capacity, under its market-based rate authority.

Copies of this filing were served upon the Oregon Public Utility Commission.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**17. Enron Power Marketing, Inc.**

[Docket No. ER98–3686–000]

Take notice that on July 9, 1998, Enron Power Marketing, Inc. (EPMI), filed an amendment to its FERC Electric Rate Schedule No. 1, pursuant to Section 205 of the Federal Power Act to become effective August 1, 1998.

The proposed amendment provides the terms and conditions pursuant to which EPMI will sell power to and purchase power from its affiliate Portland General Electric Company under its market-based rate authority.

EPMI requests that the Commission waive its notice requirements to allow the amended Rate Schedule No. 1, to become effective on August 1, 1998.

Copies of this filing were served upon the Oregon Public Utility Commission.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**18. Niagara Mohawk Power Corporation**

[Docket No. ER98–3687–000]

Take notice that on July 9, 1998, Niagara Mohawk Power Corporation (ANMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Tractabel Energy Marketing, Inc. This Transmission Service Agreement specifies that Tractabel Energy Marketing, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Tractabel Energy Marketing, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Tractabel Energy Marketing, Inc., as the parties may mutually agree.

NMPC requests an effective date of July 2, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Tractabel Energy Marketing, Inc.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**19. Texas Utilities Electric Company**

[Docket No. ER98–3688–000]

Take notice that on July 9, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing an executed transmission service agreement (TSA), with Amoco Energy Trading Corporation for certain Unplanned Service transactions under TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TU Electric requests an effective date for the TSA that will permit it to become effective on or before the service commencement date under the TSA.

TU Electric seeks waiver of the Commission's notice requirements to allow the service commencement date of June 10, 1998.

Copies of the filing were served on Amoco Energy Trading Corporation as well as the Public Utility Commission of Texas.

*Comment date:* July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19756 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission

July 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* Major License.

*b. Project No.:* P–2588–004.

*c. Dated Filed:* July 10, 1998.

*d. Applicant:* City of Kaukauna.

*e. Name of Project:* Little Chute Hydroelectric Project.

*f. Location:* On the Fox River in the Village of Combined Locks, Outagamie County, Wisconsin.

*g. Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

*h. Applicant Contact:* Peter D. Prast, P.E., General Manager, Kaukauna Electric & Water Department, 777 Island Street, P.O. Box 1777, Kaukauna, Wisconsin 54130–7077.

*i. FERC Contact:* Steve Kartalia (202) 219–2942.

*j. Comment Date:* 60 days from the filing date shown in paragraph (c).

*k. Description of Project:* The existing, operating project consists of: (1) An integral intake powerhouse, located at the right abutment of the United States Army Corps of Engineers' Little Chute Dam, containing three units with a total installed capacity of 3,300 kW; (2) connections to three 2.4/12-kV single phase transformers and a 122-kV transmission line 1.25 miles long; and (3) appurtenant facilities.

*l.* With this notice, we are initiating consultation with the *WISCONSIN STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

*m.* Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19758 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission

July 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

*a. Type of Application:* New License.

*b. Project No.:* 2737–002.

*c. Date Filed:* June 25, 1998.

*d. Applicant:* Central Vermont Public Service Corporation.

*e. Name of Project:* Middlebury Lower Hydroelectric Project.

*f. Location:* On Otter Creek, which discharges into Lake Champlain, in the towns of Middlebury and Weybridge, Addison County, Vermont.

*g. Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

*h. Applicant Contact:* Timothy J. Oakes, Kleinschmidt Associates, 33 West Main Street, Strasburg, PA 17579, (717) 687–2711.

*i. FERC Contact:* Jack Duckworth (202) 219–2818.

*j. Comment Date:* 60 days from the issuance date of this notice.

*k. Description of Project:* The existing project consists of: (1) A 30-foot-high, 478-foot-long concrete gravity dam consisting of: (a) two ogee spillway sections, a 123-foot-long western spillway section with two stoplog sections, each 6 feet wide and 8 feet high, and a 260-foot-long eastern spillway section with a sluice gate adjacent to the canal intake structure, used to sluice debris away from the canal; (2) a canal intake structure, which is 49.5 feet long, 34.5 feet high, and about 9 feet wide, and extends from the northeast end of the eastern spillway to the eastern bank of otter creek (3) a 1-mile-long, 16-acre impoundment with a normal water surface elevation of 314.5 feet; (3) a powerhouse containing three turbine generator sets with a total installed capacity of 1.8 MW; (4) transmission facilities; and (5) appurtenant facilities.

The applicant states that the average annual generation is approximately 8,300 megawatt-hours. The applicant is not proposing any changes to the existing project works.

*l.* With this notice, we are initiating consultation with the VERMONT STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by 106, National Historic Preservation Act, as the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

*m*. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

**David P. Boergers,**

*Acting Secretary.*

[FR Doc. 98–19759 Filed 7–23–98; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

### Notice of Cases Filed During the Week of May 18 Through May 22, 1998

During the Week of May 18 through May 22, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: July 16, 1998.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 18 through May 22, 1998]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 5/18/98 | Florida, Tallahassee, Florida | VEG–0004 | Petition for Special Redress. If granted: The Office of Hearings and Appeals would review the State of Florida's Revised Amendment #2 to its Thirteenth Stripper Well Plan to determine whether it is consistent with the Stripper Well Settlement Agreement. |
| 5/22/98 | Goodell, Stratton, Edmonds, Palme, Topeka, Kansas. | VFA–0420 | Appeal of an Information Request Denial. If granted: The April 21, 1998 Freedom of Information Request Denial issued by the Southwestern Power Administration would be rescinded, and Goodell, Stratton, Edmonds & Palmer, L.L.P. would receive access to certain DOE information. |

[FR Doc. 98–19814 Filed 7–23–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

### Notice of Issuance of Decisions and Orders During the Week of June 15 Through June 19, 1998

During the week of June 15 through June 19, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: July 16, 1998.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

### Decision List No. 90

*Appeals*

*Godell, Stratton, Edmonds & Palmer, L.L.P.,* 6/17/98, *VFA–0420*

DOE denied an appeal of a determination issued by the Southwestern Power Administration. OHA found that the search conducted was reasonably calculated to uncover material responsive to the request.

*Lee M. Graham,* 6/17/98, *VFA–0236*

Lee M. Graham appealed a denial by the Albuquerque Operations Office of a request for information that he filed under the Freedom of Information Act. Albuquerque responded by stating that it could neither confirm nor deny the existence of records responsive to Mr. Graham's request. Based on its review of the nature of the request, the DOE determined that Albuquerque's *Glomar* response was appropriate. Accordingly, the Appeal was denied.

*Personnel Security Hearing*

*Personnel Security Hearing,* 6/18/98, *VSO–0197*

A hearing officer determined that an individual had not mitigated security concerns concerning a diagnosis of narcissistic personality disorder, and a conviction for illegally intercepting oral communication. Accordingly, the hearing officer recommended that the individual's access authorization should not be restored.

*Refund Applications*

*Enron Corp./Moon Scott Joint Venture,* 6/19/98, *RF340–00007*

The DOE granted a refund to the Moon Scott Joint Venture (the Joint Venture) for product purchased by NGL Supply, Inc. (NGL Supply) in the Enron Corporation (Enron) special refund proceeding. The DOE found that the Joint Venture possessed the right to refund of NGL Supply. The DOE found that NGL Supply's butane purchases from Enron were spot purchases and not eligible for a refund. DOE also excluded its 1973 natural gasoline purchases because they were made pursuant to a fixed price contract that was established prior to price controls. The DOE then found that NGL Supply had shown that it was injured by its purchases of natural gasoline from Enron from 1975 through 1979 and was entitled to a full volumetric refund. However, it limited the firm's refund for its Enron propane

purchases to volumes of propane that it purchased from Enron at above market prices.

*Howard Cab, Inc. Hoquiam Plywood Company, INC.*, 6/18/98, *RJ272–00061, RJ272–00062, RJ272–04818, RJ272–04819*

The DOE rescinded two Applications for Supplemental Refund filed by Federal Action, a private filing service, in the crude oil overcharge refund proceeding. The DOE found that Federal Action violated its Escrow Certification in its handling of the two supplemental refunds. Federal Action was ordered to repay the refund amounts to the DOE and the supplemental refunds were reissued directly to the Applicants.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| FARMLAND COOPERATIVE, INC | RF272–95739 | 6/17/98 |

**Dismissals**

The following submissions were dismissed.

| Name | Case No. |
|---|---|
| FLORIDA | VEG–0004 |
| PERSONNEL SECURITY REVIEW | VSA–0176 |

[FR Doc. 98–19813 Filed 7–23–98; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

### Notice of Issuance of Decisions and Orders During the Week of June 8 Through June 12, 1998

During the week of June 8 through June 12, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C., Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: July 16, 1998.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

**Decision List No. 89**

*Appeals*

*Jones, Walker, Waechter, Poitevent Carrère and Denègre,* 6/8/98, *VFA–0419*

Jones, Walker, Waechter, Poitevent Carrre & Dengre, L.L.P., appealed a determination issued to it by the Federal Energy Technology Center (FETC) in response to a Request for Information submitted under the Freedom of Information Act. The law firm sought records of a never-issued contract for the Mound Site Plume Treatment System at the Rocky Flat Environmental Technology Site. FETC withheld all responsive documents in full under the competitive harm standard of Exemption 4 because the Rocky Flats Field Office (RFFO) was in the process of finalizing a contract for similar work. During the course of the Appeal, the DOE determined that RFFO had issued the Mound Site Plume Treatment System contract. Because the factual predicate for the FETC determination no longer existed, the DOE remanded the matter for FETC to issue a new determination.

*The National Security Archive,* 6/11/98, *VFA–0327, VFA–0365*

The National Security Archive filed Appeals from denials by the Department of the Air Force of a request for information that it filed under the Freedom of Information Act (FOIA). Because the withheld information was classified under the Atomic Energy Act, the Air Force withheld it as the direction of the DOE under Exemption 3. The DOE determined on appeal that the information must continue to be withheld under Exemption 3. Accordingly, the Appeals were denied.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| ENRON CORPORATION/WALLACE OIL RECLAIMING COMPANY | RF340–173 | 6/11/98 |
| GARY VOGT | RJ272–00060 | 6/11/98 |
| GULF OIL CORPORATION/REEDY CREEK UTILITIES CO., INC | RF300–17085 | 6/11/98 |
| SHIELDALLOY METALLURGICAL CORP. ET AL | RF272–94619 | 6/11/98 |
| SPRINGFIELD COLLEGE | RK272–04816 | 6/10/98 |
| ST. JOHN PARISH SCHOOL BOARD ET AL | RF272–80644 | 6/11/98 |

**Dismissals**

The following submissions were dismissed.

| Name | Case No. |
|---|---|
| COBLE DAIRY PRODUCTS, INC. | RF272–98951 |

| Name | Case No. |
|---|---|
| WATCHTOWER BIBLE & TRACT SOCIETY OF NY | RF272–98962 |

[FR Doc. 98–19815 Filed 7–23–98; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6130–5]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental Impact Assessment of Nongovernmental Activities in Antarctica

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Environmental Impact Assessment of Nongovernmental Activities in Antarctica, OMB Control No. 2020–0007, expiring August 8, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1808.02.

**SUPPLEMENTARY INFORMATION:**

*Title:* Environmental Impact Assessment of Nongovernmental Activities in Antarctica, EPA ICR No. 1808.02, OMB Control No. 2020–0007, expiring August 31, 1998. This is a request for extension of a currently approved collection.

*Abstract:* The EPA promulgated an Interim Final Rule for Environmental Impact Assessment of Nongovernmental Activities in Antarctica, 40 CFR part 8, in accordance with the Antarctic Science, Tourism, and Conservation Act (Act) of 1996, 16 U.S.C. 2401 *et seq.*, as amended 16 U.S.C. 2403a, which implements the Protocol on Environmental Protection (Protocol) to the Antarctic Treaty of 1959 (Treaty). The Interim Final Rule provides for assessment of the environmental impacts of nongovernmental activities in Antarctica, including tourism, and for coordination of the review of information regarding environmental impact assessments received from other Parties under the Protocol. The requirements of the Interim Final Rule apply to operators of nongovernmental expeditions organized in or proceeding from the territory of the United States to Antarctica and include commercial and noncommercial expeditions. The Interim Final Rule does not apply to individual U.S. citizens or groups of citizens planning to travel to Antarctica on an expedition for which they are not acting as an operator.

Persons subject to the Interim Final Rule at 40 CFR part 8 must prepare environmental documentation, as appropriate to support the operator's determination regarding the level of environmental impact of the proposed expedition. Environmental documentation includes a Preliminary Environmental Review Memorandum (PERM), an Initial Environmental Evaluation (IEE), or a Comprehensive Environmental Evaluation (CEE). The environmental documentation must be submitted to the Office of Federal Activities (OFA) in accordance with the schedule for the level of environmental documentation as provided in the Interim Final Rule.

The Protocol and the Interim Final Rule also require an operator to employ procedures to assess and provide a regular and verifiable record of the actual impacts of an activity which proceeds on the basis of an IEE or a CEE, including monitoring of key environmental indicators for an activity proceeding on the basis of a CEE, or, if necessary, an IEE.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on April 22, 1998 (63 FR 19912). Four comment letters were received. Responses to comments are included in the ICR document.

*Burden Statement:* For the initial year no PERMs or CEEs were submitted; four IEEs were submitted on behalf of nine operators with an estimated average burden of 216 hours per IEE, or 96 hours per operator, including assessment and verification procedures. For each of the subsequent years, four IEEs that fully incorporate paperwork reduction provisions of the Interim Final Rule are anticipated on behalf of eleven operators with an estimated annual average burden of 25 hours per operator, including assessment and verification procedures. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Commercial tour operators and all other nongovernmental entities including privately funded research expeditions.

*Estimated Number of Respondents:* 11.

*Frequency of Response:* Once per year.

*Estimated Total Annual Hour Burden:* 1415 hours.

*Estimated Total Annualized Cost Burden:* 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1808.02, and OMB Control No. 2020–0007 in any correspondence.

Ms. Sandy Farmer, .S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 20, 1998.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 98–19840 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6128–5]**

## Notice of Availability; Alternatives for New Source Review (NSR) Applicability for Major Modifications; Solicitation of Comment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** The EPA is soliciting comments on a specific alternative for determining the applicability of NSR to modifications of major stationary sources, under the Prevention of Significant Deterioration (PSD) and the nonattainment provisions of the Clean Air Act (Act). This alternative would allow any source to legally avoid major NSR review for a physical or operational change to an existing emissions unit by taking an enforceable temporary limit on emissions from that unit for a period of at least 10 years after the change. In addition, the Agency is seeking comment upon when and under what circumstances permitting authorities should have to revise the emissions level set under a plantwide applicability limitation (PAL) for any given source.

**DATES:** Written comments must be received on or before August 24, 1998.

**ADDRESSES:** Comments must be identified by the docket number [A–90–37], and should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–90–36, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Comments may also be submitted electronically by sending electronic mail (e-mail) to: a-and-r-docket@epamail.epa.gov. Submit comments as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on a diskette in WordPerfect 5.1 or 6.1 or ASCII file format. Identify all comments and data in electronic form by docket number A–90–37. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document 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 comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

**FOR FURTHER INFORMATION CONTACT:** By mail: David Solomon, Integrated Implementation Group, Information Transfer and Program Integration Division, (MD–12), Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone 919–541–5375, facsimile 919–541–5509, or e-mail solomon.david@epamail.epa.gov. For information on the section of this notice addressing PAL's, contact Mike Sewell at the above address, telephone 919–541–0873, facsimile 919-541–5509, or e-mail sewell.mike@epamail.epa.gov.

### Electronic Availability: Internet

Electronic copies of this document also are available from the EPA home page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/) or from the Office of Air and Radiation home page at http://www.epa.gov.ttn/oarpg.

### I. Purpose

The first purpose of this notice is to solicit comment from the interested public on a specific policy option for determining the applicability of NSR to modifications at existing major stationary sources. Although this option was one of many proposed in an earlier Notice of Proposed Rulemaking, EPA now seeks comment on a single alternative in order to ensure that the public has full opportunity to evaluate its merit. Second, the Agency is seeking comment on a specific approach with regard to PAL's. Previously EPA solicited and received several hundred comments on its NSR reform package proposed in July 1996. The EPA has reviewed and is duly considering these comments. For purposes of this Notice of Availability, commenters should limit their remarks to the issues discussed below. Because of the opportunity provided previously for comment on the NSR Reform items, comments relating to issues other than those set forth in this Notice will not be considered.

### II. Background

On July 23, 1996, EPA proposed to make significant changes to the existing major NSR program (''NSR Reform'') [See 61 FR 38249]. In large part, these proposed changes concern the applicability of the major NSR requirements to modifications at existing stationary sources. The Agency solicited comment on a number of methodologies for determining NSR applicability when a source undergoes a modification [See id. at 38266–70]. As a result of comments received, changed circumstances, and further review of the issues by the Agency, EPA is seeking further comment on one particular methodology.

In the same earlier notice, EPA proposed to authorize permitting authorities to establish facility-specific PAL's based on the source's historic actual emissions. The Agency solicited public comment on what circumstances would necessitate revision of PAL limits. Several commenters suggested that PAL's must be periodically changed to reflect recent actual emissions. The EPA is also concerned that legal considerations may require a periodic evaluation of the PAL limit.

### III. Applicability Methodology for Modifications to Existing Major Sources

*A. Current NSR Applicability Test for Major Modifications*

1. In General

Major NSR—that is, PSD or nonattainment NSR—applies to all ''major modifications.'' A ''major modification'' is ''any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.'' In other words, major NSR applies if, as a result of the change, the total emissions from new and existing emission units at the source, which are otherwise affected by or part of the change, exceed the current actual emissions of those units by a significant amount (as defined in the regulations). [1]

[1] When post-change emissions from a changed unit and all other affected units are significant, the proposed change at the source may nevertheless avoid review if, when considering any other contemporaneous emission increases and decreases at the source, the net emissions increase is less than significant. The summing of increases and deceases at a source that are contemporaneous with, but not resulting from, a proposed change for the purpose

Continued

Vital, then, to determining NSR applicability is evaluating a source's ''actual emissions'' both before and after a physical or operational change to determine whether it constitutes a major modification. Pre-change actual emissions for the various emissions units at the source constitute the ''baseline'' for this evaluation. Under current regulations, the baseline is calculated based on the average annual emissions during the 2-year period preceding the change (or, where the permitting authority determines that another period is more representative of normal source operations, it uses that period). *Eg.*, 40 CFR 52.21(b)(21)(ii).

Once the baseline is determined it must be compared to emissions after the change. Since NSR applicability is determined prior to construction, some projection of post-change emissions must be made for the comparison. Existing emissions units that are not undergoing, or otherwise affected by, a physical or operational change are deemed to have ''begun normal operations,'' and baseline actual emissions are simply projected forward to the post-change timeframe; thus, these units fall out of the applicability calculus. Under EPA's current regulations, post-change actual emissions for units which have ''not begun normal operations * * * equal the potential to emit (PTE) of the unit on that date.'' *Eg.*, 40 CFR 52.21(b)(21)(iv). For new units, which obviously have not begun normal operations, the pre-change baseline is zero, and the post-change emissions equal the units' PTE. Determining post-change emissions for existing units that *are* modified or otherwise affected by the change can be more complex. The regulatory test for these situations has come to be known as the ''actual-to-potential'' methodology.

In brief, under the current regulations, changes to a unit at a major stationary source that are non-routine or not subject to one of the other major source NSR exemptions are deemed to be of such significance that pre-change emissions for the affected units should not be relied on in projecting post-change emissions. For such units, ''normal operations'' are deemed not to have begun following the change, and are treated like new units. Put another way, the regulatory provision for units which have ''not begun normal operations'' reflects an initial presumption that a unit that has undergone a non-routine physical or operational change will operate at its full capacity year-round. A source owner or operator may rebut the presumption that the unit will operate at its full potential by agreeing to limit its PTE through enforceable restrictions that limit the units' ability to emit more than their pre-modification actual emissions (plus an amount that is less than significant'').[2]

The term ''actual-to-potential'' is somewhat of a misnomer, because in practice, this methodology involves a determination of future *actual* emissions to the atmosphere. That is, source owners and operators contemplating a modification project assess the likely utilization of the affected units following the change. If those levels of utilization, when combined with the hourly emissions rates (and contemporaneous emissions increases and decreases elsewhere at the plant), would result in future actual emissions significantly higher than the pre-change baseline, the owner or operator must obtain a major NSR permit. If the owner or operator projects that future actual emissions will not significantly exceed the baseline, the owner or operator instead obtains a *minor* NSR permit or other device that legally limits the affected units' emissions to a level that is not significantly above baseline. The end result under this second scenario are individual limits on the emissions of the new, modified, and affected units which assures that net emissions at the plant will not significantly increase as a result of the change. Nevertheless, the owner or operator is always free to change plans in the future. If, for example, a new assessment indicates that it would be economically useful to utilize the affected units at levels that would exceed the established limits, the owner or operator may obtain a major NSR permit at that future time. *See* e.g., 40 CFR 52.21(r)(4).

The practical workings of the current regulations, as described above, have long been controversial. Industry representatives maintain that the ''actual-to-potential'' methodology results in ''confiscation'' of unused plant capacity following a modification project. Environmental groups respond that plant capacity unaffected by the modification project can continue to be used at any desired level of utilization (subject to any prior limits on that use), and that any constraints are imposed appropriately, i.e., only where the utilization of pre-existing plant capacity is likely to be affected by the modification project in a way that will significantly increase actual emissions over baseline emissions.

2. Litigation Over the Actual-to-Potential Test

Because the presumption discussed above forces sources whose post-change potential emissions exceed their pre-change actual emissions to undergo NSR or take a limit on the affected units' potential emissions, industry has, as noted, long objected to the Agency's use of the ''actual-to-potential'' methodology for existing units undergoing a non-routine change. The EPA's interpretation of its regulations consequently has been at issue in two cases, *Puerto Rican Cement Co.* v. *EPA*, 889 F.2d 292 (1st Cir. 1989), and *Wisconsin Electric Power Co.* v. *Reilly*, 893 F.2d 901 (7th Cir. 1990) (''*WEPCO*''). Specifically, each of these cases addressed whether the Agency acted reasonably in treating units which had undergone a non-routine physical or operational change as not having ''begun normal operations.''

In *Puerto Rican Cement*, the court found reasonable EPA's presumption that a physical or operational change (in this case, the conversion of a cement plant from a wet process to a more efficient dry process) could enable a modified unit to be used at a higher capacity than prior to the change, and endorsed the Agency's use of the actual-to-potential test in such circumstances. See 889 F.2d at 297. In particular, the court noted that the company ''operated its old kilns at low levels in the past; its new, more efficient kiln might give it the economic ability to increase production; consequently, EPA could plausibly fear an increase in actual emissions. * * *'' *Id.* at 298.

By contrast, in *WEPCO*, the court held that EPA acted unreasonably in applying the actual-to-potential methodology in the case of WEPCO's

of avoiding NSR is commonly referred to as a ''netting'' analysis. The alternative discussed in this notice only involves modifications that do not trigger a netting analysis.

[2] The ''PTE'' is currently defined as the ''maximum capacity of a stationary source to emit a pollutant under its physical and operational design.'' Any physical or operational limitation on the capacity of the source to emit a pollutant, including a permit limitation, is treated as part of its design provided the limitation or its effect on emissions is federally enforceable (e.g., *see* existing sections 51.165(a)(1)(iii) and 51.166(b)(4)).

In recent decisions, *National Mining Ass'n* v. *EPA*, 59 F.3d 1351 (D.C. Cir. 1995) and *Chemical Manufacturers Ass'n* v. *EPA*, No. 89–1514, slip op. (D.C. Cir. Sept. 15, 1995), the District of Columbia Circuit court addressed challenges related to EPA's requirement that a source which wishes to limit its PTE must obtain a federally enforceable limit. The EPA is currently reviewing its Federal enforceability requirements in light of these court decisions, and has not yet decided how it will address this issue. Once EPA has completed its review of the Federal enforceability requirements in all relevant programs including NSR, the Agency will make available in a **Federal Register** notice its response to the court decisions.

life-extension project, in which WEPCO sought to replace numerous components of the steam generating units at the facility. The court objected to EPA's refusal to consider the past operating conditions of a source in evaluating the likely post-change emissions. It coined the term ''like-kind replacement,'' and ruled that the application of the actual-to-potential test to like-kind replacements of components of an existing emissions unit was not a reasonable interpretation of the regulations. Accordingly, upon remand from the court, EPA assessed the changes at WEPCO based on a comparison of its pre-change actual emissions and its predicted post-change actual emissions. This approach has come to be known as the ''actual-to-future-actual'' methodology.

3. Electric Utility Steam Generating Units

In July 1992, the Agency promulgated limited amendments to the existing major NSR regulations, in part to respond to the *WEPCO* decision. The ''WEPCO rule'' extended a different applicability test—an actual-to-future-actual approach—solely to electric utility steam generating units.[3] Under this new system, a utility unit's pre-change actual emissions are compared to its post-change ''representative actual emissions,'' defined as ''the average rate, in tons per year, at which the source is projected to emit a pollutant for the 2-year period after a physical change or change in the method of operation of a unit. * * *'' To guard against the possibility that significant unreviewed increases in actual emissions would occur under this methodology, the regulations provide that sources with utility units using the actual-to-future-actual approach must submit to the permitting authority sufficient records annually for 5 years after the change which demonstrate that the change has not resulted in an increase above the baseline levels.

Under EPA's regulations, unless a change ''results in'' an increase in actual emissions, it need not undergo major NSR. In the WEPCO rule, the Agency attempted to define a situation in which EPA would assume that there was no causal link between a post-change emissions increase and a particular physical change or change in the method of operation for electric utility steam generating units. The EPA reasoned that increased utilization due to demand growth at a utility unit did not result from particular physical or operational changes, but rather from market forces unrelated to the change. Consequently, the regulations now provide that, in projecting future actual emissions, electric utility steam generating units may exclude from the estimate any emission increase which results from increased capacity utilization as a consequence of ''independent factors,'' such as demand growth.

The WEPCO rule applies only to the modification of existing electric utility steam generating units for several reasons. The Agency noted that local public utility commissions (PUC) require utility sources to make reliable estimates of future capacity utilization, and that utilities' historic experience in doing so would make the application of an actual-to-future-actual methodology reasonable for utility units. In addition, EPA concluded that its past regulatory experience with the electric utility industry, especially the requirement from title IV of the Act that generators install highly accurate monitoring, made units in the electric power industry more amenable to the sophisticated tracking essential to make sure that the future actual emission predictions of a source are accurate. The Agency committed to consider in a different rulemaking the propriety of extending the actual-to-future-actual methodology to other source categories.

4. Proposal to Change NSR Applicability

In the July 1996 NSR Reform package, EPA proposed, among other things, to expand the use of the actual-to-future-actual approach. The Agency noted that, in general, sources potentially subject to major NSR would be required to install highly accurate monitoring devices under other provisions of the Act. Consequently, such sources could be similar to the utility units that currently are permitted to use an actual-to-future-actual test. Nonetheless, other industries also differ from the electric power sector insofar as electric utilities are the only sources whose estimates of demand and capacity utilization are subjected to independent review and have been historically limited to a clearly defined local market area. The Agency reasoned that permitting authorities, thus, could rely upon the predictions of post-change utilization in the electric power sector more comfortably than in other industries. To ensure the reliability of future predictions for non-utility units, EPA solicited comment on the adequacy of the current 5-year tracking requirement (which requires sources to report annually their emissions to the permitting authority for 5 years) and sought suggestions for improving it.[4]

*B. Comments Received and Changed Circumstances*

In weighing the desirability of expanding the actual-to-future-actual test to other source categories, EPA has considered a number of issues. First, are there principled reasons for treating non-electric utility sources differently? Second, have intervening events or further reflection called into question any of the bases upon which the Agency relied in adopting the test, and are changes therefore necessary?

In the prior NPRM, the Agency specifically solicited comment on whether sufficient safeguards exist such that other industries should be able to take advantage of the actual-to-future-actual methodology. The EPA received several public comments (see EPA Air Docket A–90–37) claiming that non-utility units are situated similarly enough to utility units that it makes sense to extend the actual-to-future-actual test beyond the limited scope of electric steam generating units to other sectors. These commenters observed that the Act's monitoring requirements, as embodied in the Compliance Assurance Monitoring rule and its title V reporting and recordkeeping requirements, both would ensure that sources' future actual emission predictions would be verifiable. See,

[3] For NSR purposes, the definition of ''electric utility steam generating unit'' means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility. See e.g., 40 CFR 52.21(b)(31). References in this notice to utility units is meant to include all units covered by this definition.

[4] As a result of the NSR Reform proposal, the Agency received comment from certain non-utility industrial stakeholders who claimed that the flexibility given to utilities in the WEPCO rule was not limited to the utility sector. Specifically, these commenters argued that sources generally were entitled to employ the actual-to-future-actual methodology for many physical or operational changes, because the changes were not of such significance (such as ''like-kind'' replacements) that it could reasonably be claimed that the source had ''not begun normal operations.'' The EPA disagrees with the commenters.

The NSR regulations contain only two applicability tests for modified units. One of these, the actual-to-future-actual approach, is limited to electric utility steam generating units. See, e.g., 40 CFR section 51.165(a)(1)(xii)(E). The other alternative is the actual-to-potential methodology, applicable when the source has ''not begun normal operations.'' This approach applies to all changes at major sources that are not otherwise excluded from being considered a physical or operational change, such as routine maintenance, repair, and replacement. Under the current rules, therefore, it is improper for a non-utility source to employ anything but an actual-to-potential test for examining physical or operational changes.

e.g., comments IV–D–112 and –121. In addition, commenters noted that other industry sectors routinely project market demand and, consequently, capacity utilization, and these commenters argued that such predictions are as reliable as those submitted to PUCs by electric companies. See, e.g., comment IV–D–146. Taken together, these comments suggest to EPA that the actual-to-future-actual test should be expanded beyond utility units. However, the Agency also received a number of comments that recommended limiting the methodology to utility units, reasoning that there still exists a disparity between utility and non-utility units in terms of their ability to predict and track their future emissions accurately. See, e.g., comments IV–D–109 and –125. Given these divergent views, EPA again requests comment upon the adequacy of existing emission projection and tracking capabilities at non-utility industrial sources for purposes of applying the actual-to-future-actual test.

Notwithstanding strong support from industry for the expansion of the actual-to-future-actual test, EPA believes that its experience with the methodology gives cause for caution in continuing this test *in its present form*. The regulations provide that sources with utility units employing the actual-to-future-actual approach must maintain and submit to the permitting authority ''information demonstrating that the physical or operational change did not result in an emissions increase'' for a 5-year period. However, the rules do not specifically detail either the means for conducting such verification or the consequences of a source's failure to meet its projected emissions level. For example, since the issuance of the WEPCO rule, it appears that although there are a substantial number of changes to existing units, as well as an increase in the amount of electricity being generated for use outside of the local service district, changes to utility units as well as post-change emissions estimates are not being reported to permitting agencies.

Moreover, the Agency is concerned that a 5-year overview of emissions is too short a period to encompass all increases in capacity utilization that could result from a particular change. As EPA noted in the NSR Reform proposal's discussion of the baseline for establishing pre-change actual emissions, see 61 FR at 38258, numerous industry commenters claim that 10 years is a fair and representative time period for encompassing a source's normal business cycle, and in the Reform proposal EPA has proposed to adopt a 10-year lookback period for establishing pre-change baseline emissions. If EPA ultimately promulgates a 10-year period for baseline purposes, the rationale for doing so would suggest that 10 years is likewise appropriate for tracking future actual emissions after a change. Accordingly, the Agency requested comment on extending and/or strengthening the existing 5-year tracking requirement for future actual emissions. See *id.* at 38268.

One particular circumstance where EPA has been dissatisfied with the WEPCO rule is in the exclusion of demand growth from predictions of utility units' future actual emissions. The Agency's promulgation of the WEPCO rule represented a departure from longstanding practice under which emissions increases that followed non-routine and otherwise nonexempt changes at a source were presumed to result from the change. At the time, EPA believed that there was a way to disassociate utility units' post-change emission increases which would have otherwise occurred due to demand growth as a purely independent factor from those that resulted directly from the physical or operational change. The EPA has reconsidered that departure, and has tentatively concluded that its 1992 departure is not appropriate and should not be continued, both as a general matter and especially in view of recent developments in the electric power sector.

The EPA's experience leads to the conclusion that sources generally make non-routine physical or operational changes which are substantial enough that they might trigger NSR in order to increase reliability, lower operating costs, or improve operational characteristics of the unit and do so in order that they may improve their market position. A proximate cause for making such changes may be to respond to increased demand, or to more efficiently compete for share of a market that has flat, or even decreasing, demand. For these reasons, EPA now seriously questions whether market demand should ever be viewed as a significant factor in answering the relevant regulatory question of whether an emissions increase results from a physical or operational change at an existing source, since in a market economy, all changes in utilization—and hence, emissions—might be characterized as a response to market demand. Accordingly, a conclusion that an emissions increase at a plant is in response to market demand does little to determine whether the increase results from a change at the plant; an affirmative answer to the first question is consistent with an affirmative answer to the latter.

The generation of electricity is currently being transformed from a highly regulated monopoly to a competitive market. More than a dozen states are implementing retail electricity competition where consumers may choose their electricity supplier, and most remaining states have such policies under consideration. Moreover, the Administration in March 1998 proposed a Comprehensive Electricity Competition Plan in order to facilitate more competitive electricity markets and several similar proposals have been introduced in Congress.

As the electricity industry is restructured, generation planning decisions will be made not by state public utility commissions, but by the forces of a competitive market. State utility regulators are therefore eliminating requirements for electric companies to report generation-related information such as projections of future capacity utilization. Consequently, with respect to the electric power industry in particular, even accepting the viability of the 1992 decisionmaking framework, attempting to discern whether increased utilization and emissions should be attributed to physical or operational changes versus purely independent demand-satisfying increased capacity utilization will be much more difficult in the future, as restructuring in the electric power industry allows electric generating companies to compete for retail customers. As a result, the marketplace will drive electric generators to function as any other consumer-driven industry, that is, to ensure their ability to supply the market and collaterally to increase their revenues. In addition, as utilities respond to a competitive market for the generation of electric power they can no longer be expected to accurately predict their level of operations and post-change emissions. Each physical or operational change that makes it possible for a source to efficiently increase its level of utilization, then, will likely be pursued and turned into electricity for sale. One can therefore predict that any physical or operational change will result in an emissions increase to the extent that there is market demand for additional power.

For the same reason that the demand growth exclusion would ignore the realities of a deregulated electric power sector, EPA believes that it should not be extended to non-utility units. For consumer-driven industries, demand is inextricably intertwined with changes that improve a source's ability to utilize

its capacity; thus, it cannot be said that demand growth is an ''independent factor,'' separable from a given physical or operational change. Modifications which affect operational characteristics of a unit are not made without reason, and the most likely reason for an economically competitive source to undertake such changes is to enable it to create or respond to increased demand.[5] In short, there is a direct causal link between most physical or operational changes that enable a source to use existing capacity and the use of such capacity.

In addition, the demand growth exclusion is problematic because it is self-implementing and self-policing. Because there is no specific test available for determining whether an emissions increase indeed results from an independent factor such as demand growth, versus factors relating to the change at the unit, each company with a utility unit presently adopts its own interpretation. Interpretations may vary from source to source, as well as from what a permitting agency would accept as appropriate. Moreover, such companies are not necessarily required to provide their interpretation of demand growth-related emissions to the permitting agency. Thus, with minimal, if any, explanation, a source may merely deduct the emissions increases it believes are attributable to demand growth from the total emissions data its supplies to the permitting agency demonstrating that it is below its projected future actuals. Vesting such unrestricted discretion in the regulated entity inevitably leads to enforcement problems.

Finally, the demand growth exclusion may make less sense in the near future in view of the fact that, as proposed in the NSR Reform package, the Agency is considering adopting a regulatory provision that bases the calculation of pre-change actual emissions upon a source's highest capacity utilization in the past ten years. If an emission unit undergoes a physical or operational change, or is affected by such change, and the source projects utilization in excess of its historical high in the preceding ten years, such utilization is likely not attributable to market variability (which is accounted for by a 10-year baseline), but rather results from the change itself.

*C. NSR Applicability Test for All Major Modifications*

1. In General

The EPA is presently considering, and by this Notice is seeking comment upon, amending the current applicability test for modifications of electric steam generating units and extending it to all source categories. Specifically, the major modification applicability methodology would be to retain the actual-to-future-actual component for utility units and apply it to all source categories, to make enforceable for a 10-year period emissions levels used by the source in projecting future actual emissions for all source categories, and eliminate the demand growth exclusion for all source categories.

The way that the methodology would work in practice is that owners or operators of units which undergo a non-routine physical or operational change will determine the applicability of NSR solely by reference to actual emissions. First, owners or operators must determine which emissions units are being changed or may be affected by the change, then calculate each unit's baseline actual emissions (EPA has proposed at 61 FR 38258–60 to allow sources generally to set their baseline in reliance on the highest emissions in the past ten years adjusted to reflect current emission factors). Second, post-change actual emissions from the affected units must be forecast. The sum of the pre-change actual emissions is then compared to the sum of the post-change actual emissions. If the difference between these two figures exceeds the significance threshold for a pollutant, major NSR is triggered (unless the source is otherwise able to net the change out of review).[6] If the difference is less than significant, the source avoids major NSR. In the latter case, for each unit that is changed or affected by the change, the source must incorporate that unit's future emissions projection into a temporary, practically and legally enforceable condition of a preconstruction permit (most likely a minor NSR permit). The limit must apply for at least 10 years after the source recommences normal operation of the affected unit.[7] EPA believes that a source would not purposefully modify a unit and then not use it at its intended capacity for 10 years merely to avoid major NSR permitting. Therefore, EPA believes 10 years represents a realistic period for applying an enforceable temporary emission limit. By adhering to such a limit, the source demonstrates to the permitting authority that the physical or operational change did not result in a significant emission increase. Consequently, subsequent to the expiration of the limit, EPA will presume that any increases in capacity utilization and emissions are not the result of the physical or operational change that necessitated the temporary limit.[8] Finally, source owners or operators may not exclude predicted capacity utilization increases due to demand growth from their predictions of future emissions.

Underlying this new approach is an attempt to mitigate the concerns raised by industry that the actual-to-potential methodology unfairly ignores past operation of a unit and assumes that it will operate at full capacity following a non-routine change. At the same time, the methodology addresses environmental groups' legitimate claims that sources who seek to avoid review based on projected actual emissions must also be prepared to be accountable for adhering to those projections. Finally, the test recognizes that in a market economy, sources often make physical or operational changes in order to respond to market forces and, consequently, there is no plausible distinction between emissions increases due solely to demand growth as an independent factor and those changes at a source that respond to, or create new, demand growth which then result in increased capacity utilization.

This temporary emissions cap approach also address certain compliance assurance and enforcement concerns. Specifically, under the current regulations, a company need not discuss its determination that projected future emissions from a utility unit will be below a certain level with a permitting agency prior to undertaking

[5] The EPA believes that the rulemaking record for NSR Reform supports the conclusion that market demand and source modifications are highly intertwined. Industrial commenters generally were strongly supportive, for instance, of the concept of PAL's. Many industrial interests argued that PAL's, because they allow changes at existing facilities to occur without NSR so long as an emission cap is maintained, are needed in order to give companies flexibility to make physical or operational changes quickly to maintain or acquire a competitive advantage in an ever changing global marketplace. The Agency believes that these claims regarding PAL's do not support the argument that changes at facilities are independent from market demand. Rather, they illustrate that sources frequently undertake modifications to enable them better to compete in an open market.

[6] Although the source may still avoid major NSR by netting out of review, the actual-to-enforceable-future-actual test would not apply in calculating the increase from the proposed change or any other emissions level for use in the netting analysis. Post change emissions for netting purposes would continue to equal potential emissions.

[7] Units that have a temporary limit may subsequently undergo or be affected by a modification. In such cases a new temporary limit of at least 10 years will need to be established.

[8] This limit is solely for the purpose of demonstrating that the physical change or change in the method of operation did not result in a significant emission increase. The imposition or expiration of this limit does not relieve the source of its obligation to comply with all requirements otherwise applicable to the unit.

the modification. Rather, it merely needs to supply ''information'' demonstrating that the future actual emissions did not exceed the significance level for the 5-year period following the modification. Thus, a permitting agency is unable to determine if the change will result in an emissions increase and require a major NSR permit before construction at the utility unit; it can only examine data submitted after-the-fact by the source. The NSR program, however, is a *pre*-construction program that requires an applicability determination prior to commencing construction to avoid equity-in-the-ground issues and retroactive control technology costs.

2. Limitations on Methodology and Solicitation of Comments

It is important to recognize the limited nature of the proposed methodology. The actual-to-enforceable-future-actual test would not apply when determining an emission level (i.e., increase or decrease) for use in a netting analysis or for the purpose of complying with any major NSR permitting requirement, such as BACT, LAER, offsets or an ambient air impact analysis. Specifically, the test would apply only to modifications to existing units for the sole purpose of determining if a proposed change to that unit, or a change at the facility which otherwise would affect the unit, will result in an emissions increase at the source. New units have no operating history upon which a reliable prediction of future utilization can be made. Thus, under the regulations, such units have not ''begun normal operations,'' and permitting authorities must assess NSR applicability based on the new unit's potential emissions. In addition, the Agency seeks comment on the appropriateness of applying an actual-to-enforceable-future-actual test where a physical or operational change increases the design capacity or PTE of a given unit. Such changes result in alternative modes of operation (and emissions levels) which are not currently achievable in practice for the unit. In such circumstances, the unit's past utilization arguably is a poor proxy for its future operation and, therefore, ''normal operations'' are impossible to identify. Furthermore, emissions levels which can not be achieved in practice but for a physical or operation change are clearly connected to the change. Consequently, the Agency is seeking comment on whether any increase in emissions resulting from a mode of operation which could only have been achieved through a physical or operational change must be presumed to have resulted from the change, even if such increase were to occur later than ten years after the change.

## IV. Adjustments of PAL's

### *A. Background*

1. Introduction

In the July 23, 1996 Reform package, EPA proposed a new method for determining major NSR applicability for existing sources in attainment or unclassifiable areas and existing and proposed sources in nonattainment areas. Under this proposal, an existing major source, if the State's SIP provides, may apply for a permit which bases the source's major NSR applicability on a pollutant-specific plantwide emissions cap, termed a PAL. The EPA proposed that a facility's allowable emissions under a PAL would generally be based on plantwide ''actual emissions'', as that term would be defined under the proposal, plus an additional amount of emissions less than the applicable significant emissions rate. The voluntary [9] source-specific PAL is a straightforward, flexible approach to determining whether changes at existing major stationary sources result in emissions increases which trigger major NSR. So long as source activities do not result in emissions above the cap level, the source will not be subject to major NSR. It also contains proposed regulatory language for PAL's for the PSD rules at 40 CFR 51.166 and 52.21, and the nonattainment NSR rules at 51.165. The July 23, 1996 proposal contains a thorough discussion of the proposed PAL concept and the background information used to develop the proposal.

### *B. PAL Advantages*

The EPA has determined that the voluntary source-specific PAL is a practical method to provide both flexibility and regulatory certainty to many existing sources, as well as benefits to permitting authorities, while maintaining air quality. For example, PAL's provide the ability to make timely changes to react to market demand, certainty regarding the level of emissions at which a stationary source will be required to undergo major NSR, and a decreased permitting burden for the source and the permitting authority. In addition, because a source with a PAL will have more flexibility to make reductions to create room for growth, PAL's should lead to innovative control technologies, pollution prevention and emissions reductions concurrent with economic expansion.

### *C. PAL Adjustment Issues*

The EPA proposed that PAL's, once included in a permit, may be adjusted for a number of reasons. In particular, the Agency solicited ''comment on why, how, and when a PAL should be lowered or increased without being subject to major NSR.'' 61 FR at 38266. Moreover, the rule language permitting PAL's provides for periodic adjustment to reflect, among other things, ''appropriate considerations.'' See *id.* at 38327.

The need for adjustments would arise in a number of scenarios: (1) Where technical errors have been made; (2) when new requirements apply to the PAL pollutant, such as RACT, NSPS or SIP-required reductions; [10] (3) where emissions reductions below PAL levels are used for offsets; (4) for permanent shutdowns where the State has the authority to remove permanent shutdowns from the emissions inventory after a certain time period; and (5) when any changes (though consistent with the PAL) might cause or contribute to a violation of any NAAQS or PSD increment or would have an adverse impact on air quality related values.

The EPA received many comments regarding the appropriate considerations for PAL adjustment. Based on these comments and further deliberation, EPA is considering whether it is appropriate to reevaluate PAL levels and adjust them to reflect actual emissions to address legal concerns associated with the Court's decision in *Alabama Power Co.* v *Costle*, 636 F.2d 323 (D.C. Cir. 1979) and because of environmental policy reasons.

1. Legal Concerns

As stated, where a facility with a PAL adds a new emitting unit or modifies an

[9] This Notice uses the term ''voluntary'' to mean not required by the regulations or a SIP, rather than not enforceable by a State, local, or Federal agency or the public.

[10] In the July 1996 NSR Reform package, EPA proposed that emissions reductions of HAP to meet MACT at emissions units under a PAL would generally not necessitate a downward adjustment to the PAL because the PAL is not designed to limit HAP. However, if MACT reductions are relied on in the SIP (e.g., VOC reductions in nonattainment areas used for RFP or attainment demonstrations) then the PAL rules would require adjustment downward. This position is consistent with EPA's policy that emissions reductions from meeting MACT requirements are generally not precluded from being creditable for NSR netting provided the reductions are otherwise creditable under major NSR. The EPA is concerned that the benefits of HAP reductions to meet MACT at units under the PAL may be diminished since the HAP reduction may be used indefinitely, rather than for a shorter contemporaneous time period, to add new or modified units under the PAL. Therefore, EPA is seeking additional comment on the proposal to not adjust PAL's for MACT purposes.

existing unit, the unit would not undergo major NSR (nonattainment or PSD) if the PAL is not exceeded. That is, if the source generates sufficient emission reductions, it may add equivalent emission increases up to the PAL level without triggering NSR.

Under present regulations, a source that adds or modifies a unit that would result in a significant emissions increase may ''net'' that particular change out of review if the new emission increase plus the sum of all other contemporaneous increases and decreases elsewhere at the source are less than significant. When the netting calculus is triggered (that is, there is a significant emission increase as a result of the addition of a new unit or the modification of an existing unit), the source must also consider those emission increases and decreases that have occurred at the facility during a ''contemporaneous'' period. In the federal PSD regulations, this period is 5 years. See 40 CFR section 52.21(b)(3)(ii). States implementing the PSD program or the nonattainment program under an EPA-approved SIP may define a different reasonable contemporaneous period.

The current regulations' requirement of contemporaneity derives from the interpretation of the Act's provisions governing modifications set forth in *Alabama Power Co.* v. *Costle*. In that case, the court held that EPA's 1978 regulations limiting netting to a less than plantwide scope conflicted with the language and purpose of the Act and ruled that EPA must permit sources to net on a plantwide basis. According to the court, plantwide netting was implicit in the statutory term ''modification'' and the purposes of the Act. At the same time that it required EPA to expand the scope of the netting concept, the court also interpreted the statute as imposing a limit on plantwide netting: contemporaneity. The court stated, ''[t]he Agency retains substantial discretion in applying the bubble concept. First, any offset changes claimed by industry must be substantially contemporaneous. The Agency has discretion, within reason, to define which changes are substantially contemporaneous.'' *Id*. at 402; see also *id*. at 403 (''Where there is no net increase from contemporaneous changes within a source, we hold that PSD review, whether procedural or substantive, cannot apply.''). Thereafter, EPA codified contemporaneity as a regulatory requirement. *See* 45 FR 52676, 52700–02 (August 7, 1980).

As stated, EPA solicited comment on what ''appropriate considerations'' might necessitate revisions to the PAL allowable level. Having again reviewed *Alabama Power* and the Agency's subsequent interpretations of the case, the Agency is concerned that, because PAL's may be characterized as a form of netting and result in the avoidance of major NSR, the contemporaneity requirement for netting set forth in *Alabama Power* may also need to be applied to PAL's. Therefore, EPA is soliciting comment on whether and when to provide for subsequent adjustment of PAL's to address contemporaneity issues associated with *Alabama Power*.

2. Environmental Concerns

Several commenters encouraged the Agency to provide for periodic revision to the PAL allowable level to reflect a source's actual emissions in recent years. In the main, these commenters represented State pollution control agencies, the entities which will be charged with implementing individual PAL's. See, e.g., comments IV-D–52 and -137. Based on these comments and internal deliberations, the Agency is considering several options that would provide for periodic reevaluation of PAL levels to ensure that they reflect actual emissions and maintain or enhance environmental protection.

Under the current major NSR regulations, emissions decreases are creditable only if they are contemporaneous with a prospective modification project that would, standing alone, increase emissions at the source. The EPA is soliciting comment on whether the PAL alternative to traditional major NSR applicability can achieve equivalent or better environmental results, while employing a different approach.

The EPA believes that there are a number of policy reasons why the final PAL rules might provide for periodic reassessment and adjustment of PAL levels. First, as a general matter, a PAL operates as a form of allowable-to-allowable test, insofar as a source may avoid major NSR review if its emissions after a particular construction activity do not exceed the pre-change allowables. Of course, under the proposed rules PAL's would ensure that the allowable emissions are based on historic actual emissions. Nevertheless, as an allowable-to-allowable scheme, PAL's raise some of the same concerns as did the CMA Exhibit B test discussed in the NSR Reform preamble. Specifically, absent a requirement for periodic adjustment the PAL would allow a source to indefinitely keep, rather than eventually forfeit to the environment, emission reductions at the source, such as those achieved by the replacement of existing, and often higher-polluting, equipment with more efficient, and thus lower-polluting, equipment.

Second, a rule which provides for the periodic review of PAL's may ensure that individual sources do not indefinitely retain unused emissions credits to the detriment of other sources in the area wishing to use them. For example, where a State treats sources' PAL allowable levels as ''actual'' emissions, a rule which in some instances requires a downward adjustment of PAL's will therefore reduce the area's inventory of actual emissions. Such adjustments would ''free up'' a portion of the PSD increments in attainment areas for use by other sources in the area.

Third, an indefinite PAL may hinder a State's ability to plan effectively for attainment. If a State does its attainment planning based exclusively on source's actual emissions to the atmosphere, and does not treat a PAL allowable limit as the PAL source's ''actual'' emissions, then an emission credit created long in the past may reappear in the future as real emissions to the air, without being part of the State's attainment planning. For example, if a PAL-covered source replaces an oil boiler today with a more modern and efficient gas turbine and the State, in its next inventory, calculates the source's emissions at the new lower level, then bases its attainment planning on the assumption that the source will continue to emit at the lower level, the State may not meet its attainment goals (or, perhaps, fall out of attainment) if the PAL source decides to utilize its full PAL allowable at some point in the future.

## V. PAL Review and Adjustment Options

The EPA is seeking comment on how the PAL concept can be reconciled with the legal and environmental policy concerns articulated above. Specifically, the Agency solicits input on the usefulness of a number of different options for periodically reviewing PAL allowable levels and on whether such options adequately address the legal issues associated with *Alabama Power* and environmental concerns posed by the long-term retention of unused allowable emissions.

It should be noted that EPA has not made a final decision on the frequency of a permitting authority's review of a PAL or the methodology used to establish a PAL baseline. The Agency is giving serious thought to 10 years as an approach. Therefore, the options discussed in this Notice assume a PAL with a term of 10 years with the PAL baseline established using the highest 1

year in the last ten years of historical emissions for the source. The Agency solicits comment on the appropriateness of reviewing PAL levels every 10 years and whether another period is more reasonable.

The EPA is considering several options to periodically revisit the appropriate PAL emission level. First, permitting authorities may adjust the PAL to account for emissions reductions from permitted units under the PAL that are shutdown or dismantled and the associated emission reductions remain unused for a period of at least 10 years. Second, the PAL may be reevaluated to account for emissions reductions where an emissions unit under the PAL operated for at least 10 years below the capacity level for that unit which was used to establish the previous PAL level. Third, the Agency is considering an option that would require PAL's to expire after 10 years or be renewed to reflect current actual emissions. Finally, EPA is soliciting comment on whether it is appropriate to adjust a PAL downward at all where all of the emission units subject to the PAL have good controls already in place (i.e., BACT, LAER) or where a source voluntarily implemented pollution prevention strategies which resulted in emissions reductions. The following discussion sets forth additional information on each of the PAL adjustment options.

*A. PAL Adjustments for Shutdown or Dismantled Units*

The first situation in which a downward PAL adjustment might be warranted is where emission reductions resulted from emission units under the PAL that were shutdown or dismantled. A shutdown unit would be one that the source did not operate at all during the 10-year life of the existing PAL. A dismantled unit would be one that was removed prior to the establishment of the current PAL level and the emissions capacity associated with such unit was not used by the source for ten years. Thus, the PAL level would be adjusted to remove only those emissions that could have potentially been emitted from any shutdown or dismantled units. The PAL would not be adjusted downward if the source had utilized those emission reductions from the shutdown or dismantled units elsewhere at the source (e.g., added new units or capacity or increased capacity utilization at existing units) during the period since the unit shut down or was removed. Nor would the PAL be adjusted downward due to underutilization of any units still in operation to any extent under the PAL.

For example, an initial PAL set in the year 2000 includes 600 tpy of VOC from unit A; unit A is shutdown in 2005. Periodic review occurs in 2010. In 2010, because unit A was used during the ten years prior to readjustment, the adjusted PAL level would assume that unit A was still operating. If by 2020, the next periodic review, the 600 tpy of emissions associated with the shutdown was not used by the source to make changes, the PAL level would be adjusted downward by 600 tpy. However, if between 2010 and 2020 the source used a portion of the shutdown emissions to add new units or make modifications under the PAL, then the PAL would be adjusted downward only for the emissions that remain unused.

The EPA believes that the periodic downward adjustment of PAL's for the failure to use emissions associated with shutdown or dismantled units is appropriate for air quality planning purposes. However, EPA is concerned that it may be difficult to determine whether an emissions increase under the PAL relied upon previous decreases at a shutdown or dismantled unit as opposed to other activities at the source. The Agency solicits comment on whether limiting the PAL adjustment to the situation of shutdown or dismantled units addresses the legal and policy concerns raised above and welcomes comments and suggestions on how to implement an adjustment option that would adjust downward only for those emissions from shutdown or dismantled units which the source failed to utilize for 10 years.

*B. PAL Adjustments for Unused Capacity*

The EPA is also considering periodic adjustments to a PAL where the emissions units under the PAL operate for a period of ten years below the capacity used initially to establish the PAL. The adjustment would be based on a review of the utilization of all emission units used to establish the PAL baseline, not just those that were shutdown or dismantled. Under this option, and in the example below, PAL adjustment would be based on the highest capacity utilization of each unit during any 12 month period in the past 10 years. Alternatively, EPA also solicits comment on whether the PAL adjustment should be based on the highest capacity utilization at the entire source during a single 12-month period within the past 10 years.

The following example illustrates how an initial review of the PAL and subsequent adjustments to the PAL could be handled under this option. As an example, unit A had operated at 80 percent during a 12-month period in the ten years prior to initial PAL establishment in 2000. In 2005, the source lowers unit A's utilization from 80 percent to 5 percent. At PAL review in 2010, because unit A's utilization in the past ten years (e.g., 2004) had reached 80 percent, the adjusted PAL level would assume a capacity utilization no lower than 80 percent. Under the alternative to this option the PAL adjustment would be based on the highest capacity for all units at the source during a single 12-month period within the past 10 years. If year 2005 is chosen as the single 12-month period for capacity review then the adjusted PAL level for unit A would assume a capacity utilization of 5 percent.

Where PAL's are adjusted because of long-term underutilization of capacity, EPA is also considering and seeking comments on the following alternatives and safeguards to ensure that an operating cushion exists: (1) Including in the adjusted PAL level an operating cushion that equals a fixed percentage (e.g., 10 percent, 15 percent, or 20 percent) of the current PAL, provided the adjusted PAL level does not exceed the current PAL level; (2) requiring no PAL adjustment due to underutilization of capacity if the emissions under the PAL are within a fixed percentage (e.g., 10 percent, 15 percent or 20 percent) of the current PAL baseline; (3) adjusting the PAL downward for unused capacity, but limit the potential downward PAL adjustment to a fixed percentage (e.g., 10 percent) of the current PAL level; and (4) re-setting the PAL as though it were being set initially (e.g., plantwide actual emissions plus an operating margin lower than the applicable significance threshold). The Agency seeks comment on whether these safeguards, if included in the final regulations, would both preserve sources' operational flexibility and address the specific legal and policy concerns raised above.

*C. Capacity Adjustments for PAL Expiration and Renewal*

The EPA is seeking comment on an option where the PAL expires as a major NSR applicability test for subsequent new units or subsequent modifications unless the source decides to renew the PAL. Under this option, a PAL would expire after ten years. When it expires, the PAL ceases to serve as the emissions baseline against which all source additions and modifications are measured for purposes of major NSR applicability. Instead, a source must revert to the traditional netting analysis to determine major NSR applicability for new or modified units.

At the time of PAL expiration, the source would choose either to re-establish the PAL for the entire facility after the expiration of the initial 10-year term or to allow it to expire. The source could also re-establish a PAL at some later date. If the renewal option is chosen by the source, the PAL baseline would be adjusted to reflect actual operating conditions and emissions for the 10 years prior to renewal, consistent with the procedures for setting a PAL. If the source elects not to renew the PAL, then subsequent new units and subsequent modifications are subject to the traditional netting analysis to determine major NSR applicability for those units. In addition, where the source elects not to renew the PAL for major NSR applicability purposes, the former PAL allowable limit would still remain in effect as an enforceable limit on total allowable emissions for those units previously covered under the PAL, notwithstanding its expiration as an applicability test.

The units previously subject to the PAL would remain free to increase emissions up to the former allowable PAL level, provided the increase is not the result of a physical or operational change at the source. The source retains the option to: (1) Reestablish an expired PAL to avoid major NSR for any subsequent physical or operational change at the source that is consistent with the reestablished PAL level, or (2) not to reestablish the PAL for the facility and process any new unit as a modification under the traditional major NSR applicability criteria to determine if a significant net emissions increase will result. In the latter case, emissions increases and decreases which have occurred during the term of the PAL as an applicability trigger would not count for netting purposes.

As an example, assume that in the year 2000 a source with five units establishes a PAL of 1000 tpy of pollutant X based on actual operations and emissions from the prior 10 years. During the period from 2000–2010 the source modifies three existing units and constructs two new units (Units 6 and 7), but within those 10 years operates the facility so as only to emit 700 tons of X per year. In 2010, the PAL (as an alternative applicability test for major NSR) must expire. If the source chooses to re-establish the PAL, based on the last 10 years of actual operating data the PAL baseline would be adjusted downward to reflect the 700 tpy level. The source could choose to continue the PAL at the adjusted 700 tpy level, or let the current PAL lapse for applicability purposes. If the source lets the PAL lapse, the original 1000 tpy cap would still remain for Units 1–7 to ensure that physical and operational changes which occurred during the life of the PAL do not result in actual emission increases that exceed the 1000 tpy cap without being subject to major NSR.

Suppose further that the PAL is not renewed and that in 2014, the actual plantwide emissions of pollutant X were 800 tpy, the highest actual emissions level for the previous ten years and that, in 2015, the source proposes to construct a new Unit 8 that emits 200 tpy of pollutant X. New Unit 8 would otherwise be subject to the traditional major NSR applicability test. The previous 1000 tpy PAL lapsed in 2010 and cannot include new units since 2010. As an alternative, the source may avoid major NSR for the new unit by establishing a new PAL at 800 tpy and include the new unit consistent with the newly established 800 tpy limit. In addition, once the PAL limit expires as a major NSR applicability limit compliance with the PAL as an allowable limit would still be required.

The EPA believes that the foregoing option provides sufficient flexibility to a source because it maintains the ability of the source to operate the units previously covered under the PAL at their full rated capacity. Additionally, it allows a source to add new units after the expiration of the PAL in accordance with the traditional NSR applicability determination, including the establishment of a new PAL at such time as it may be advantageous to the source to do so. Nevertheless, EPA solicits comment on whether this option sufficiently addresses the legal and policy concerns associated with PAL adjustments.

*D. PAL Adjustments Where Sources Implement Good Controls or Pollution Prevention Initiatives*

The EPA is also seeking comment on whether it is appropriate to adjust a PAL downward, even where unused capacity exists, if all of the emissions units subject to the PAL already have good controls in place (e.g, BACT, LAER), the source has installed innovative controls, or if the source created the emission reductions using pollution prevention strategies. The EPA believes that sources which voluntarily achieve emissions reductions through the installation of good and/or innovative controls throughout the facility or through pollution prevention initiatives should be encouraged to do so. By the terms ''good'' controls and ''innovative'' technology the Agency is referring to the types of controls and technology discussed previously in the July 1996 NSR Reform proposal for the ''clean unit'' and ''clean facility'' exclusion and undemonstrated control technology, respectively. *See* 61 FR at 38255 and 38281 (July 23, 1996). Additionally, the types of pollution prevention activities that would qualify are those consistent with the activities described in the July 1996 proposal and previous EPA policies. In light of the Agency's prior guidance and discussions concerning good controls, innovative technology, and pollution prevention initiatives, EPA seeks comment on whether the terms ''good controls'', ''innovative controls'', and ''pollution prevention initiatives'' are appropriately used and clearly defined for purposes of this option.

To require a PAL adjustment under these circumstances could create a disincentive to engage in these initiatives. However, this option raises certain enforcement concerns for the Agency. In particular, without additional clarification it may be difficult to determine if an emissions unit has good controls, utilizes innovative technology, or has reduced emissions because of pollution prevention initiatives, as opposed to other factors. Furthermore, EPA is concerned that if there is ambiguity about the meaning of these terms the public, sources, and permitting agencies may disagree about whether PAL adjustment is needed. Notwithstanding the Agency's interest in promoting innovative and voluntary pollution control and prevention initiatives, EPA does not believe voluntary emissions reductions achieved through the implementation of good controls, innovative technology and pollution prevention initiatives should necessarily relieve the source from other regulatory requirements. Accordingly, EPA seeks comment on these concerns as well as the types of circumstances that might be appropriate for a source that engages in innovative and positive environmental stewardship to avoid any downward adjustment to its PAL. The EPA also solicits comments on whether and how the policy and legal concerns set forth in this notice concerning PAL adjustments for sources which utilize innovative or good technology or engage in pollution prevention initiatives could otherwise be addressed.

Finally, given the flexibility and significant opportunities to utilize emissions reductions under the options described in this Notice, EPA solicits comment on whether additional PAL adjustment considerations are appropriate.

Dated: July 16, 1998.

**Richard D. Wilson,**

*Acting Assistant Administrator.*

[FR Doc. 98–19832 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5494–1]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 6, 1998 Through July 10, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities AT (202) 564–5076. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

### Draft EISs

ERP No. D–FRC–J05078–MT Rating EO2, Missouri-Madison Hydroelectric (FERC No. 2188) Project, Issuing a New licence (Relicense) for Nine Dams and Associated Facilities, MT.

*Summary:* EPA expressed environmental objections regarding FERC's rejection of Section 10 (j) recommendations; inadequacies in the analysis of thermal issues; the potential for impairment to the beneficial uses; and the rejection of some State Clean Water Act 401 conditions. EPA believes FERC should ensure license conditions that require hydropower operations be done in the best practicable manner to minimize harm to beneficial uses. License conditions also need to incorporate thermal success criteria and appropriate language to reopen the license if success criteria are not adequately attained by proposed mitigation. EPA believes additional information is needed to fully assess and mitigate all potential impacts of the management actions.

ERP No. D–IBR–J28020–UT Rating EO2, Narrows Dam and Reservoir Project, Construction of Supplemental Water Supply for Agricultural and Municipal Water Use, Gooseberry Creek, Sanpete and Carbon Counties, UT.

*Summary:* EPA expressed environmental objections to the proposed project, and stated that it believes additional, less damaging alternatives are available which would reduce the project related impacts. EPA requested additional detail on mitigation, project impacts, and alternatives.

ERP No. D–IBR–K39045–CA Rating EC2, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Central Valley, Trinity, Contra Costa, Alameda, Santa Clara and San Benito Counties, CA.

*Summary:* EPA expressed strong support for the overall intent of CVPIA implementation; alternatives which provide a strong two-pronged commitment to ecosystem restoration and flexible, efficient use of developed water supplies; and use of CVPIA tools to provide efficient management of existing, developed water supplies. EPA requested additional information and explanation on the range of implementation, relationship between PEIS and subsequent rules and regulations, and to the relationship of the PEIS to interim implementation programs and the ''Garamendi process''

ERP No. DR–DOI–K40222–TT Rating EO2, Palau Compact Road Construction, Revision to Major Transportation and Communication Link on the Island of Babeldaob, Implementation, Funding, Republic of Palau, Babeldaob Island, Trust Territory of the Pacific Islands.

*Summary:* EPA expressed environmental objections because the RDEIS did not provide sufficient documentation that all practicable means have been undertaken by the Corps and the Republic of Palau to avoid and minimize adverse impacts associated with placing dredged or fill material in wetlands and other aquatic resources protected under CWA Section 404.

### Final EISs

ERP No. F–AFS–L65285–AK, Chasina Timber Sale, Harvesting Timber and Road Construction, Tongass National Forest, Craig Ranger District, Ketchikan Administrative Area, AK.

*Summary:* Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65300–AK, Canal Hoya Timber Sale, Implementation, Stikine Area, Tongass National Forest, Value Comparison Unit (VCU), AK.

*Summary:* Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: July 21, 1998.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98–19884 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–5493–9]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed July 13, 1998 Through July 17, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980269, Draft EIS, AFS, ID, Eagle Bird Project Area, Timber Harvesting and Road Construction, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: September 07, 1998, Contact: Cameo Flood (208) 245–4517.

EIS No. 980270, Final EIS, FHW, NC, US 70 Improvements Project, I–40 to the Intersection of US 70 and US 70 Business, Funding and COE Section 404 Permit, Wake and Johnston Counties, NC, Due: August 24, 1998, Contact: Nicholas L. Graf, P.E. (919) 733–7842 ext. 260.

EIS No. 980271, Draft EIS, FHW, IN, US 231 Transportation Project, New Construction from CR–200 N to CR–1150′1, Funding, Right-of-Way Permit and COE Section 404 Permit, Spencer and Dubois Counties, IN, Due: October 15, 1998, Contact: Douglas N. Head (317) 226–7487.

EIS No. 980272, Draft EIS, NOA, MS, Grand Bay National Estuarine Research Reserve (NERR), Designation, To Conduct Research, Educational Project and Construction, East of the City of Biloxi, Jackson County, MS, Due: September 07, 1998, Contact: Stephanie Thornton (301) 713–3125 ext. 110

EIS No. 980273, Draft Supplement, FTA, PR, Tren Urbano Transit Project, Updated Information for the Minillas Extension, Construction and Operation, San Juan Metropolitan Area, Funding, NPDES Permit, US Coast Guard Bridge Permit and COE Section 10 and 404 Permits, PR, Due: September 07, 1998, Contact: Alex McNeil (404) 562–3511.

EIS No. 980274, Final EIS, FRC, NB, Kingsley Dam Project (FERC. No. 1417) and North Platte/Keystone Diversion Dam (FERC. No. 1835) Hydroelectric Project, Application for Licenses, Near the confluence of the North/South Platte Rivers, Keith, Lincoln, Garden, Dawson and Gasper Counties, NB, August 24, 1998, Contact: Frankie Green (202) 501–7704.

EIS No. 980275, Draft EIS, FAA, NC, Charlotte/Douglas International Airport, Construction and Operation, New Runway 17/35 (Future 18L/36R Associated Taxiway Improvements, Master Plan Development, Approval Airport Layout Plan (ALP) and COE Section 404 Permit, Mecklenburg County, NC, Due: September 07, 1998, Contact: Thomas M. Roberts (404) 305–7153.

EIS No. 980276, Draft EIS, BOP, PA, Greater Scranton Area, United States Penitentiary (USP) Construction and Operation, Site Selection, Lackawanna and Wayne Counties, PA, Due: September 8, 1998, Contact: David J. Dorworth (202) 514–6470.

EIS No. 980277, Draft EIS, DOE, ID, Advanced Mixed Waste Treatment Project, Construction and Operation, Site Selected, Idaho National Engineering and Environmental Laboratory (INEEL), Eastern Snake River Plain, ID, Due: September 11, 1998, Contact: John Medema (208) 526–1407.

EIS No. 980278, Final EIS, AFS, ID, North Round Valley Timber Sales and Road Construction, Implementation, Payette National Forest, New Meadows Ranger District, Adams County, ID, Due: August 24, 1998, Contact: Kimberly Brandel (208) 347–0300.

**Amended Notices**

EIS No. 980171, Draft EIS, COE, TX, Dallas Floodway Extension, Implementation, Trinity River Basin, Flood Damage Reduction and Environmental Restoration, Dallas County, TX, Due: August 14, 1998, Contact: Gene T. Rice, Jr. (817) 978–2110. Published FR 05–15–98—Review Period extended.

EIS No. 980267, Draft EIS, DOE, CA, NM, TX, ID, C, WA, Surplus Plutonium Disposition (DOE/EIS–0283) for Siting, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA, Due: September 16, 1998, Contact: G. Bert Stevenson (202) 586–5368. This EIS was inadvertently omitted from the 07–17–98 **Federal Register**. The official 45 days NEPA review period is calculated from 07–17–98.

Dated: July 21, 1998.

**William D. Dickerson,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 98–19885 Filed 7–23–98; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 17, 1998.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before August 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0089.

*Title:* Application for Land Radio Station Authorization in the Maritime Services.

*Form No.:* FCC 503.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 700.

*Estimated Time Per Response:* 45 minutes.

*Frequency of Response:* On occasion reporting requirements.

*Cost to Respondents:* $76,224 ($115 application fee for a new station; $90 application fee to modify an existing land station; postage).

*Total Annual Burden:* 525 hours.

*Needs and Uses:* FCC Rules require that applicants file FCC Form 503 when applying for a new station or when modifying an existing land radio station in the Maritime Mobile Service or an Alaska Public Fixed Station. This form is required by the Communications Act of 1934, as amended, International Treaties, and FCC Rules—47 CFR Parts 1.922, 80.19, and 80.29. The data collected are necessary to evaluate a request for station authorization in the Maritime Services or an Alaska Public Fixed Station, to issue licenses, and to update the database to allow proper management of the frequency spectrum. FCC Form 503 is being revised to collect Antenna Structure Registration Number/or FCC Form 854 File Number, and Internet or E-mail address of the applicant. Due to changes in the antenna clearance procedures, we no longer need to collect certain antenna information, such as the name of the nearest aircraft landing area and the distance and the direction to the nearest runway. The instructions are being edited accordingly.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–19715 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

July 18, 1998.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty

for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before August 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0827.

*Title:* Request for Radio Station License Update.

*Form No:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 172,000.

*Estimated Time Per Response:* 30 minutes.

*Frequency of Response:* On occasion reporting requirements.

*Cost to Respondents:* $0.

*Total Annual Burden:* 86,000 hours.

*Needs and Uses:* The information obtained will be used to update the Commission's databases to ensure that each license reflects the correct administrative and technical data. The request also reminds licensees of the requirements to file applications for modification, if needed, to submit invalid licenses for cancellation and to keep the Commission informed of any changes in mailing address. This verification and collection of information is being done at this time in preparation of the conversion to the Universal License System. It is the Commission's goal to have the most accurate, up-to-date information available prior to conversion of data.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 98–19721 Filed 7–23–98; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:31 a.m. on Tuesday, July 21, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Joseph H. Neely (Appointive), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), Director Julie L. Williams (Acting Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(8), (c)(9)(A)(ii), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(8), (c)(9)(A)(ii), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: July 21, 1998.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 98–19973 Filed 7–22–98; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1223–DR]**

### Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida, (FEMA–1223–DR), dated June 18, 1998, and related determinations.

**EFFECTIVE DATE:** July 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 18, 1998.

Alachua, Baker, Bradford, Clay, Citrus, Columbia, Dixie, Duval, Gilchrist, Gulf, Hamilton, Hernando, Lafayette, Lake, Lee, Levy, Madison, Marion, Nassau, Okaloosa, Orange, Osceola, Pasco, Putnam, Sumter, Suwannee, Taylor, Union, and Walton Counties for Individual Assistance (already designated for Category B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19818 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1223–DR]**

### Florida; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Florida, (FEMA–1223–DR), dated June 18, 1998, and related determinations.

**EFFECTIVE DATE:** July 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 18, 1998.

Bay, Calhoun, Holmes, Jackson, Liberty, and Washington Counties for Individual Assistance and Category B under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19819 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1230–DR]**

### Iowa; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1230–DR), dated July 2, 1998, and related determinations.

**EFFECTIVE DATE:** July 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Iowa, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1998:

Allamakee and Harrison Counties for Public Assistance.

Iowa, Johnson, Keokuk, Louisa, Marshall, Muscatine, Poweshiek, and Washington Counties for Public Assistance (already designated for Individual Assistance).

Lee, Osceola and Tama Counties for Public Assistance and Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Laurence W. Zensinger,**

*Division Director, Response and Recovery Directorate.*

[FR Doc. 98–19824 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1230–DR]**

### Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa (FEMA–1230–DR), dated July 2, 1998 and related determinations.

**EFFECTIVE DATE:** July 15, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19825 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1231–DR]**

### New Hampshire; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New Hampshire (FEMA–1231–DR), dated July 2, 1998, and related determinations.

**EFFECTIVE DATE:** July 2, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 2, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Laurence W. Zensinger,**

*Division Director, Response and Recovery Directorate.*

[FR Doc. 98–19826 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1231–DR]**

### New Hampshire; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New Hampshire, (FEMA–1231–DR), dated July 2, 1998, and related determinations.

**EFFECTIVE DATE:** July 14, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of New Hampshire, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1998.

Belknap, Carroll, Grafton, Merrimack, and Rockingham Counties (already designated under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Laurence W. Zensinger,**

*Division Director, Response and Recovery Directorate.*

[FR Doc. 98–19827 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1233–DR]**

### New York; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1233–DR), dated July 7, 1998, and related determinations.

**EFFECTIVE DATE:** July 7, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 7, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New York, resulting from severe storms and flooding beginning on June 25, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. If Hazard Mitigation is later requested, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster:

Cattaraugus, Clinton, Erie, Essex and Wyoming Counties for Individual Assistance.

Cattaraugus, Clinton, Erie, Essex, Franklin and Wyoming Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 98–19828 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1233–DR]**

### New York; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New York (FEMA–1233–DR), dated July 7, 1998, and related determinations.

**EFFECTIVE DATE:** July 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 10, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Laurence W. Zensiger,**

*Division Director, Response and Recovery Directorate.*

[FR Doc. 98–19829 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1233–DR]**

### New York; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New York (FEMA–1233–DR), dated July 7, 1998, and related determinations.

**EFFECTIVE DATE:** July 14, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of New

York, is hereby amended to include the Hazard Mitigation Grant Program among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1998:

All counties in the State of New York are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Laurence W. Zensinger,**

*Division Director, Response and Recovery Directorate.*

[FR Doc. 98–19830 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1227–DR]**

### Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Ohio (FEMA–1227–DR), dated June 30, 1998, and related determinations.

**EFFECTIVE DATE:** July 5, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 5, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19820 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1228–DR]**

### Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Vermont, (FEMA–1228–DR), dated June 30, 1998, and related determinations.

**EFFECTIVE DATE:** July 10, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Vermont, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 1998:

Caledonia and Orleans Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19821 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1228–DR]**

### Vermont; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Vermont, (FEMA–1228–DR), dated June 30, 1998, and related determinations.

**EFFECTIVE DATE:** July 15, 1998.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Vermont, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 1998:

Essex County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19822 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1228–DR]**

### Vermont; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Vermont (FEMA–1228–DR), dated June 30, 1998, and related determinations.

**EFFECTIVE DATE:** July 13, 1988.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective July 13, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 98–19823 Filed 7–23–98; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL HOUSING FINANCE BOARD

**[No. 98–27]**

## Statement of Policy: Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Final Policy Statement.

**SUMMARY:** The Board of Directors of the Federal Housing Finance Board (Finance Board) is adopting a statement of policy entitled ''Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System.'' The policy statement will generally require that the combined annual and quarterly financial reports of the Federal Home Loan Bank (FHLBank) System be prepared in a manner that is consistent, in the judgment of the Finance Board, with the financial and other disclosure requirements promulgated by the Securities and Exchange Commission (SEC).

**EFFECTIVE DATE:** August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202–408–2845, or Deborah F. Silberman, General Counsel, Office of General Counsel, 202–408–2570, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The FHLBank Act (12 U.S.C. 1431(c)) authorizes the Finance Board to issue consolidated obligations (COs) that are the joint-and-several obligations of the FHLBanks. As issuer of the COs the Finance Board has assumed the responsibility of preparing combined FHLBank System annual and quarterly financial reports that are used in conjunction with the issuance of the COs.

Until now, the Finance Board has established no formal policies as to the scope and content of the information presented in the FHLBank System combined annual and quarterly financial reports. Since the establishment of the Finance Board in 1989, the combined annual report has grown in length as the disclosures have become more detailed and more comprehensive. Current disclosure practices represent an evolution of generally accepted accounting principles (GAAP) and industry disclosure standards, and reflect a consensus among Finance Board staff, FHLBank staff, the independent outside accountant for the combined financial report, and outside bond counsel.

The scope, form, and content of the combined FHLBank System annual and quarterly financial reports closely resemble reports issued by both corporate securities issuers that are required to register their securities with the SEC under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, (1934 Act), and by other Government Sponsored Enterprises (GSEs) that are, like the FHLBank System, exempt from such requirements.

The Finance Board is adopting this final policy statement about financial and other disclosures in the combined annual and quarterly financial reports for two reasons. First, the Finance Board will address a significant policy matter on how the FHLBanks provide disclosures and raise debt in the capital markets. The Finance Board believes that, as one of the largest issuers of debt securities in the U.S. capital markets, it has an obligation to provide purchasers of FHLBank System debt with adequate and accurate financial disclosure that is consistent with industry standards. One of the statutory responsibilities of the Finance Board is to ensure that the FHLBanks remain able to raise funds in the capital markets (see 12 U.S.C. 1422a (a)(3)(b)(iii)).[1] The Finance Board believes that the rules promulgated by the SEC pursuant to the Federal securities laws represent ''best practice,'' and that financial and other disclosure concerning the FHLBank System should conform to this standard to the greatest extent practicable.

Second, the Finance Board believes that adoption of the final policy statement and final rule should address Congressional concerns about FHLBank System disclosure, as described in the notice of the proposed policy statement, 63 FR 5381 at 5382 (Feb. 2, 1998).

The Finance Board published the proposed policy statement for notice and comment on February 2, 1998 (63 FR 5381, Feb. 2, 1998). In response to this proposal and a related proposed regulation on financial disclosures by the FHLBanks, the Finance Board received a total of six comments. Four of the comments were from or on behalf of FHLBanks, one comment was from a trade association, and one comment was from a public accounting firm. With respect to the proposed policy statement, the comments addressed the following major issues: the method of applying SEC reporting and disclosure requirements; disclosures about derivatives; Federal preemption of State securities laws; and implementation date.

### Analysis of Comments Received

*Method of Applying SEC Reporting and Disclosure Requirements*

The proposed policy statement provided that the combined annual and quarterly reports of the FHLBank System would follow SEC requirements with certain exceptions. Several commenters urged that, instead of enumerating exceptions, the Finance Board specify the areas in which the FHLBank System would follow the SEC requirements in place at the time that the policy statement was adopted. The commenters expressed concern that the Bank System would automatically be subject to yet-unwritten SEC rules if the policy statement were adopted in the proposed form. The commenters preferred the approach of formal adoption by the Finance Board each time the SEC changes its reporting and disclosure rules.

The Finance Board is adopting the procedure outlined in the proposed policy statement without change. The final policy statement enumerates areas for which no disclosure or modified disclosure will be made of information that, in the judgment of the Finance Board, would otherwise be required by the SEC's rules to be disclosed in a particular way. This will make clear that the Finance Board fully intends to provide disclosure on an ongoing basis that is consistent to the extent practicable and in the judgment of the Finance Board with the SEC's reporting and disclosure requirements, even if the SEC changes its rules. In addition, the Finance Board will not have to take formal action each time the SEC modifies its reporting and disclosure requirements to render the Finance

[1] At December 31, 1997, consolidated obligations outstanding exceeded $304 billion, and the amount of consolidated obligations issued in 1997 exceeded $2.1 trillion.

Board's policies consistent with those of the SEC.

The policy statement makes it clear that consistency with the SEC's reporting and disclosure rules as they affect the combined annual and quarterly financial reports of the FHLBank System will be determined solely by the Finance Board.

*Derivatives*

In February 1997, the SEC amended its rules by adding new disclosure and reporting requirements about derivatives. These requirements are codified as Item 305(b) of Regulation S–K (17 CFR 229.305) (Derivatives Rule). In general, the Derivatives Rule requires registrants to provide *qualitative* information about their use of derivatives, their strategies using derivatives, and any limits the entity places on derivatives. In addition, Item 305(a) of Regulation S–K requires registrants to present certain *quantitative* information about derivatives. The Derivatives Rule gives registrants a number of options on how best to present this information. The qualitative and quantitative information about derivatives is not part of the entity's financial statements, and, accordingly, the entity's independent outside accountant does not have to attest to the statements made.

The proposed policy statement on financial disclosure indicated that the Finance Board would provide the qualitative disclosures required by the Derivatives Rule in the 1997 combined FHLBank System annual financial report, but would defer making the quantitative disclosures until the 1998 combined FHLBank System annual financial report.

Two commenters recommended deferring the qualitative disclosures until 1998 because of a concern that any disclosures made in 1997 may not be consistent with disclosures made when the Finance Board fully implements the rule in 1998. However, one of the commenters recommended that the Finance Board ''consider enhancing the section 305-affected disclosures [that appeared in the 1996 annual financial report] only where they are not dependent on the yet to be determined quantitative disclosures.''

The Finance Board has expanded the discussion of risk management that appeared in the 1996 combined annual financial report, and this expanded discussion appears in the 1997 combined annual financial report. The Finance Board believes that this expanded discussion meets all the qualitative derivative disclosure requirements by the Derivatives Rule, but the disclosure is in no way dependent on the prospective quantitative disclosures.

*Federal Preemption*

A number of commenters recommended that the Finance Board state explicitly in both the policy statement and the regulation that the FHLBank Act and any regulations promulgated by the Finance Board thereunder occupy the field and preempt State law in matters related to the issuance of CO's. These commenters expressed concern that the Finance Board should explicitly express its intention to exercise its preemptive authority over State law so that the Finance Board and the FHLBanks may limit their liability and avoid attempts by States to impose their laws or regulations on the Finance Board's issuance of COs.

The Finance Board believes that such statements are unnecessary and inappropriate for the purposes of the policy statement and the regulation, and therefore has not included such a statement in either the policy statement or the regulation.

Implementation Date. Two commenters recommended deferring all derivatives disclosures until the 1998 combined FHLBank System annual financial report. Two other commenters recommended deferring the effective date of the policy statement to the end of 1999.

**Disclosure Standards**

In light of the comments received and based on further analysis, the Finance Board is adopting the policy statement with several changes that are addressed below. These changes do two things. First, the changes clarify that consistency with the SEC's reporting and disclosure rules as they affect the combined annual and quarterly financial reports of the FHLBank System will be determined solely by the Finance Board. Second, the final policy statement enumerates a number of additional areas that the Finance Board will carve out from disclosure in the combined FHLBank System reports because, in its judgment, the Finance Board believes such disclosure is either inapplicable or inappropriate for the FHLBank System.

The Finance Board believes that the combined FHLBank System annual and quarterly financial reports are generally consistent with SEC disclosure requirements, with several exceptions. The final policy statement requires, as a general matter, that the combined FHLBank System annual and quarterly financial reports be prepared in a manner that is consistent, in the judgment of the Finance Board, with the SEC's regulations to the greatest extent practicable, with certain noted exceptions.

The Finance Board intends to comply with Statement of Financial Accounting Standards No. 131, ''Disclosures about Segments of an Enterprise and Related Information'' (FASB 131). For purposes of FASB 131, the Finance Board considers each FHLBank to be a segment. In complying with FASB 131, the Finance Board will provide combining schedules for the statement of condition and the statement of income in the quarterly combined financial report of the FHLBank System. The Finance Board already provides these combining schedules in the annual combined financial report.

**Exceptions to Following SEC Rules**

*Derivatives*

On February 10, 1997, the SEC published the Derivatives Rule. It applies to all filings made with the SEC after June 15, 1997, and encompasses all types of derivatives—commodity, currency, equity, and financial. The Finance Board believes that the only facet of the FHLBanks' operations that meets the threshold test for disclosure in the Derivatives Rule is the interest-rate risk associated with financial derivatives.

The Derivatives Rule presents only one issue unique to the FHLBank System. The System combined financial report rolls up the financial information of 12 independent portfolios and eliminates all material transactions among the FHLBanks. Many complex financial organizations fall within the scope of the rule, but these complex organizations ultimately report to a single board of directors. The FHLBanks report to 12 separate boards of directors, and each has differing investment strategies, yet each FHLBank is jointly and severally liable for the consolidated obligations of the FHLBank System issued by the Finance Board.

Information for the System's quantitative disclosures would come from simulation of interest-rate shocks in the asset-liability management models of the FHLBanks. The FHLBanks use different modeling software and assumptions. Any analysis should first ensure some uniformity of assumptions and methodology to make sure the results will be meaningful and comparable. Furthermore, there are conceptual difficulties in how the Finance Board could combine the results of these 12 sets of simulations to present a System derivatives disclosure.

It may not be possible to present a combined quantitative derivatives disclosure, and the Finance Board instead may present separate quantitative derivatives disclosures in 1998 for each of the FHLBanks.

In light of these complexities, the Finance Board is making the qualitative disclosures about derivatives in the 1997 combined financial report, but will make the quantitative disclosures in the 1998 combined annual financial report. Finance Board staff will work with FHLBanks' staff in developing a methodology for arriving at a common set of assumptions for the quantitative analysis that would appear in the 1998 combined financial report.

*Related-Party Transactions*

SEC regulations require the disclosure of any transaction greater than $60,000 between a director and a related party. Due to the cooperative nature of the FHLBank System, it is expected that the FHLBanks will have business dealings with members whose officers also serve as directors of the FHLBank. It would be unwieldy to present full disclosures of all credit relationships between the FHLBanks and the members their directors represent in the combined annual report. However, the Finance Board is including in the combined annual report an aggregate disclosure about the percentage of advances to members whose officers serve as directors of an FHLBank. In addition, the Finance Board is including a disclosure in the annual financial report that shows the 10 largest advance borrowers in the FHLBank System and the 5 largest advance borrowers by FHLBank along with indicating which of these members had an officer that also served as an FHLBank director.

*Information about Directors and Officers*

The SEC's regulations require disclosure of a wide variety of information about all directors and executive officers of the registrant. The required information includes name, age, current and previous positions with the registrant, terms of office, family relationships with the registrant, business experience, and other directorships. The Finance Board believes that presenting biographical information on all FHLBank directors and all FHLBank executive officers in the combined annual report would be unwieldy and not particularly enlightening. The FHLBanks may wish to consider making this disclosure in their individual annual reports. The Finance Board has expanded the biographical information about members of the Board of Directors of the Finance Board and FHLBank presidents by including the age of those persons. In addition, the Finance Board is providing similar biographical information about the managing director of the Office of Finance and the chairs and vice chairs of the FHLBanks.

*Submission of Matters to a Vote of Stockholders*

The SEC's regulations require registrants to provide certain information about matters submitted to stockholders for a vote. The only item that FHLBank stockholders vote upon is the annual election of directors. For two reasons, the Finance Board has determined to exclude election-of-director information from the combined annual financial statements. First, matters concerning election of directors can be handled more expeditiously and efficiently by separate mailings to an FHLBank's stockholders as a part of the election process. The combined financial report is primarily a disclosure document for bond holders. Second, election of directors occurs in the fall, but the annual combined financial report is published in late spring, making it impossible to provide timely information about the election of directors in the combined annual report.

*Compensation*

Item 402 of the SEC's Regulation S-K (17 CFR 229.402) sets forth the requirements for disclosure of compensation for the chief executive officer and the four next most highly compensated executive officers other than the chief executive officer. The policy statement will require disclosure of compensation information only for the presidents of the 12 FHLBanks and the managing director of the Office of Finance.

*Exhibits*

The policy statement will not require the FHLBanks to file the exhibits specified to be filed with the SEC by the SEC's regulations.

*Per Share Information*

The SEC has a number of requirements that certain financial information be presented on a per-share basis. Per share disclosure is not meaningful or appropriate for the FHLBank System, because stock in the FHLBanks is not publicly traded and is based on statutory requirements. The amount of shares expands and contracts as member assets or advances change. Furthermore, members purchase FHLBank stock at par and can redeem it at par.

*Ownership of Capital Stock*

Item 403 of the SEC's Regulation S-K (17 CFR 229.403) requires certain disclosures about the beneficial ownership of capital stock. The policy statement requires, and the annual FHLBank System 1997 combined financial report will provide instead, a listing of the top 10 holders of capital stock in the FHLBank System and a listing of the top 5 holders of capital stock by FHLBank. These listings will identify all those members and officer of which serves and an FHLBank director.

*Dates*

SEC registrants are required to file their annual reports within 90 days from the end of their fiscal year, and quarterly reports are to be filed within 45 days from the end of a fiscal quarter. Since the Finance Board cannot begin preparing the combined financial reports until the FHLBanks finish their annual and quarterly reports, the time frames for the publication of the combined annual and quarterly reports need to be adjusted accordingly. It is Finance Board's intention generally to make the annual report available by June 30, and to make the quarterly reports available within 90 days of the end of a quarter.

**Distribution**

While the SEC rules apply to entities with publicly traded stock, the stock in the FHLBanks is not publicly traded, and minimum capital stock holdings are set in statute. Furthermore, only members of an FHLBank may own stock in that FHLBank. Members purchase stock at its par value, and voluntary members may redeem stock at its par value. Nevertheless, the Finance Board believes that disclosure to the stockholders of an FHLBank is as important as disclosure to the purchasers of FHLBank debt. Therefore, the Finance Board will distribute a copy of the annual and quarterly combined financial reports to each FHLBank member.

The text of the proposed policy follows:

**Federal Housing Finance Board—Statement of Policy**

**Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System**

*1. Policy Objective*

The Federal Housing Finance Board (Finance Board) policy on Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System provides that purchasers of Federal Home Loan Bank

(FHLBank) System consolidated obligations receive information consistent, in the judgment of the Finance Board and to the extent practicable, with disclosures required to be made by Securities and Exchange Commission (SEC) registrants. The Finance Board has the explicit statutory responsibility to ensure that the FHLBanks are able to raise funds in the capital markets, and assuring that it is providing industry-standard disclosures facilitates the issuance of this debt.

*2. General Policy*

It is the policy of the Finance Board that in preparing the combined FHLBank System annual and quarterly financial reports the Finance Board will maintain consistency to the extent practicable with the requirements of the SEC's Regulations S-K and S-X (*see* 17 CFR Parts 229 and 210). With respect to the combined FHLBank System annual and quarterly reports, consistency with the SEC's regulations will be determined solely by the Finance Board.

The Finance Board will comply with Statement of Financial Accounting Standards No. 131, ''Disclosures about Segments of an Enterprise and Related Information'' (FASB 131). It will include in the quarterly combined financial report the combining schedules required by FASB 131.

*3. Exceptions to the General Policy*

a. *Derivatives.* Item 305, Regulation S-K, 17 CFR 229.305, requires certain registrants to present information about their derivatives holdings and activities. The requirement includes a discussion of accounting policy for derivatives, a qualitative discussion about derivatives by management, and an analysis that presents quantitative information about derivatives. The presentation of the quantitative information will be deferred until the 1998 combined annual report of the FHLBank System.

b. *Related-Party Transactions.* Item 404 of Regulation S-K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the FHLBank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will provide disclosures on (1) the percent of advances to members an officer of which serves and an FHLBank director, and (2) a listing of the top 10 holders of advances in the FHLBank System and the top 5 holders of advances by FHLBank, with a further disclosure that indicates which of these members had an officer that served as an FHLBank.

c. *Biographical Information.* The biographical information required by Items 401 and 405 of Regulation S-K, 17 CFR 229.401, 229.405, will be provided only for the members of the Board of Directors of the Finance Board, FHLBank presidents, the managing director of the Office of Finance, and FHLBank chairs and vice chairs.

d. *Compensation.* The information on compensation required by Item 402 of Regulation S-K, 17 CFR 229.402, will be provided only for members of the FHLBank presidents and the managing director of the Office of Finance. Since stock in each FHLBank trades at par, the Finance Board will not include the performance graph specified in Item 402(l) of Regulation S-K, 17 CFR 229.402(l).

e. *Submission of Matters to a Vote of Stockholders.* No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10-K, 17 CFR 249.310. The only item shareholders vote upon is the annual election directors.

f. *Exhibits.* The exhibits required by Item 601 of Regulation S-K, 17 CFR 229.601, are not applicable and will not be provided.

g. *Per Share Information.* The statement of financial information as required by Items 301 and 302 of Rule S-K , 17 CFR 229.301 and 302, is inapplicable because the shares of the FHLBanks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

h. *Beneficial Ownership.* Item 403 of Rule S-K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the 10 largest holders of capital stock and a listing of the 5 largest holders of capital stock by FHLBank. This listing will also indicate which members had an officer that served as a director of an FHLBank.

i. *Dates.* The Finance Board generally intends to make the annual combined financial report available within 180 days from the end of the previous year. It plans to make quarterly reports available 90 days from the end of the previous quarter.

*4. Distribution*

The Finance Board will distribute a copy of the annual and quarterly combined financial reports to each FHLBank member.

Dated: June 24, 1998.

By the Board of Directors of the Federal Housing Finance Board.

**Bruce A. Morrison,**

*Chairperson.*

[FR Doc. 98–19809 Filed 7–23–98; 8:45 am]

BILLING CODE 6725–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-19292) published on page 38836 of the issue for Monday, July 20, 1998.

Under the Federal Reserve Bank of Chicago heading, the entry for State Financial Services Corporation, Hales Corners, Wisconsin, is revised to read as follows:

**A. Federal Reserve Bank of Chicago** (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. State Financial Services Corporation*, Hales Corners, Wisconsin; to acquire Home Bancorp of Elgin, Inc., Elgin, Illinois, a savings and loan holding company, and indirectly acquire Home Federal Savings and Loan Association of Elgin, Elgin, Illinois, pursuant to § 225.28 (b)(4)(ii) of Regulation Y.

Comments on this application must be received by August 13, 1998.

Board of Governors of the Federal Reserve System, July 20, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–19709 Filed 7–23–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than August 10, 1998.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Fred A. Moore, Laura H. Moore, Bonita B. Moore*, all of Lockhart, Texas; to acquire additional shares of Lockhart Bankshares, Inc., Lockhart, Texas, and thereby indirectly acquire voting shares of First Lockhart National Bank, Lockhart, Texas. In addition, O. T. Moore, III, Lockhart, Texas, has applied to retain voting shares of Lockhart Bankshares, Inc., Lockhart, Texas, and thereby indirectly retain voting shares of First Lockhart National Bank, Lockhart, Texas.

Board of Governors of the Federal Reserve System, July 21, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–19882 Filed 7–23–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1998.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Barclays PLC and Barclays Bank PLC*, both of London, England; to acquire The LongView Group, Inc., Boston, Massachusetts, and thereby engage in data processing activities developing institutional portfolio management and trading desk software, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–19708 Filed 7–23–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1998.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Arvest Bank Group, Inc.*, Bentonville, Arkansas, and its wholly owned subsidiary, First Bancshares, Inc., Bartlesville, Oklahoma; to acquire Ameritrust Corporation, Tulsa, Oklahoma, and thereby engage in performing functions or activities that may be performed by a trust company, pursuant to § 225.28(b)(5) of Regulation Y; and thereby indirectly acquire Americorp Investment Advisors, Inc., Tulsa, Oklahoma, and Investment Management, Inc., Tulsa, Oklahoma, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–19881 Filed 7–23–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of May 19, 1998.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 19, 1998.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has continued to grow rapidly in 1998. Nonfarm payroll employment registered another substantial increase in April after a slight decline in March, and the civilian unemployment rate fell to 4.3 percent in April. However, factory output has changed little on balance in recent months. Retail sales grew appreciably in April, and consumer spending as a whole has been very strong this year. Residential sales and construction also have strengthened this year. Business fixed investment rebounded sharply in the first quarter after having declined slightly in the fourth quarter, and available indicators point to continuing strength over coming months. Business inventories appear to have increased very rapidly in the first quarter. The nominal deficit on U.S. trade in goods and services widened substantially in January and February from its average monthly rate in the fourth quarter. Despite indications of persisting pressures on employment costs associated with tight labor markets, price inflation has

[1] Copies of the Minutes of the Federal Open Market Committee meeting of May 19, 1998, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

remained subdued this year, primarily as a consequence of large declines in energy prices.

Most market interest rates have declined slightly on balance over the intermeeting period. Share prices in U.S. equity markets have moved up a little further. In foreign exchange markets, the trade-weighted value of the dollar in terms of major currencies has changed little on net over the period. However, the dollar has risen on balance against the currencies of key emerging market economies, particularly those in Asia. Equity markets in Asia have fallen substantially over the period to near their lows of late 1997, while those in Europe have risen to new highs.

M2 and M3 expanded briskly further in April, but data for late April and early May show M2 declining and M3 leveling out. The swing in these measures seemed to be related largely to movements of funds associated with tax payments. Expansion of total domestic nonfinancial debt appears to have moderated somewhat after a pickup earlier in the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1997 to the fourth quarter of 1998. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks conditions in reserve markets consistent with maintaining the federal funds rate at an average of around 5-1/2 percent. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, a somewhat higher federal funds rate would or a slightly lower federal funds rate might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with considerable moderation in the growth in M2 and M3 over coming months.

By order of the Federal Open Market Committee, July 13, 1998.

**Donald L. Kohn,**

*Secretary, Federal Open Market Committee.*

[FR Doc. 98–19710 Filed 7–23–98; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, July 29, 1998.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 22, 1998.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 98–19942 Filed 7–22–98; 11:06 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Chapter I

**[Docket No. 98N–0339]**

### Public Meetings on Section 406(b) of the FDA Modernization Act of 1997

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

**ACTION:** Notice of meetings.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following series of meetings on section 406(b) of the FDA Modernization Act of 1997 (FDAMA) to discuss how FDA can best meet its statutory obligations under the Federal Food, Drug, and Cosmetic Act (the act). The agency intends to involve participants from consumer and scientific groups and the regulated industry in drafting FDA's developmental plan to meet the objectives of FDAMA.

**DATES:** Comments may be submitted by September 11, 1998. For the dates of each meeting, see section III of this document.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852; e-mail ''FDADockets@bangate.fda.gov'' or via the FDA website ''http://www.fda.gov''. For the address of each meeting, see section III of this document.

**FOR FURTHER INFORMATION CONTACT:** Catherine P. Beck, Office of Management and Systems (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3443.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under section 406(b) of FDAMA, the agency is required to consult with its external stakeholders, specifically ''appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry.'' Following these consultations, FDA is to develop and publish a plan for achieving compliance with each of its obligations under the act.

Under section 406(b) of FDAMA, the plan, which must be published in the **Federal Register** by November 21, 1998, should address, but may not be confined to, the following six objectives: (1) Maximizing the availability and clarity of information about the agency application and submission review processes; (2) maximizing the availability and clarity of information for consumers and patients concerning new products; (3) implementing inspection and postmarket monitoring provisions of the act; (4) assuring access to the scientific and technical expertise needed to carry out FDA's obligations; (5) establishing mechanisms, by July 1, 1999, for meeting specified time periods for the review of applications and submissions; and (6) eliminating backlogs in the review of applications and submissions.

To help focus comments, FDA requests that oral and/or written views regarding how the agency can best meet these six objectives of its modernization plan address seven questions. An information packet, available on the FDA webpage or from the designated contact persons listed in section III of this document, provides substantive background information; it is highly recommended that those individuals or groups who wish to make a presentation or submit written comments obtain this packet. Specific questions relate to each objective as follows:

1. What can FDA do to improve its explanation of the agency's submission review processes, and make explanations more available to product sponsors and other interested parties?

2. How can the agency maximize the availability and clarity of information concerning new products?

3. How can FDA work with its partners to ensure that products—both domestic and foreign—produced and marketed by the regulated industry are of high quality and provide necessary consumer protection; and how can FDA best establish and sustain an effective, timely, and science-based postmarketing surveillance system for reporting, monitoring, evaluating, and correcting problems associated with use/consumption of FDA-regulated products?

4. What approach should FDA use to assure an appropriate scientific infrastructure, with continued access to the scientific and technical expertise needed to meet its statutory obligations and strengthen its science-based decisionmaking process?

5. What do you believe FDA should do to adequately meet the demands that are beginning to burden the application review process, especially for non-user fee products, so that it can meet its statutory obligations to achieve timely product reviews?

6. What suggestions do you have for the agency to eliminate backlogs in the review process?

7. What other objectives related to the agency's statutory obligations or public expectations—beyond the six objectives—should be included in the FDA plan?

## II. Comments

Written comments should be identified with the docket number found in brackets in the heading of this document and should be submitted by September 11, 1998, to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments can be sent to the Dockets Management Branch at the following e-mail address ''FDADockets@bangate.fda.gov'' or via the FDA website ''http://www.fda.gov''.

## III. Scheduled Meetings

The meetings will be held as follows:

TABLE 1

| FDA Center/Region | Meeting Address | Date and Time | Contact Person |
|---|---|---|---|
| Center for Biologics Evaluation and Research (CBER—Washington, DC) | Department of Health and Human Services, Hubert H. Humphrey Bldg., Penthouse Conference Room (rm. 800), 200 Independence Ave. SW., Washington, DC. | Friday, August 14, 1998, from 9 a.m. to 5 p.m | Gail H. Sherman, HFM–42, Food and Drug Administration, suite 200–N, 1401 Rockville Pike, Rockville MD 20852, 301–827–1315, FAX 301–827–3079, e-mail ''SHERMAN@cber.fda.gov'' |
| Center for Drug Evaluation and Research (CDER) | Department of Health and Human Services, Hubert H. Humphrey Bldg., Penthouse Conference Room (rm. 800), 200 Independence Ave. SW., Washington, DC. | Monday, August 17, 1998, from 9 a.m. to 5 p.m. | Susan H. Carey, HFD–011, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1496, FAX 301–827–0509, e-mail ''CAREYS@cder.fda.gov'' |
| Center for Devices and Radiological Health (CDRH) | Department of Health and Human Services, Hubert H. Humphrey Bldg., Penthouse Conference Room (rm. 800), 200 Independence Ave. SW., Washington, DC. | Tuesday, August 18, 1998, from 9 a.m. to 5 p.m. | Ronald G. Jans, HFZ–205, Food and Drug Administration, 1350 Piccard Dr. Rockville, MD 20850, 301–594–3744, FAX 301–443–8810, e-mail ''RSJ@CDRH.FDA.GOV'' |
| Center for Veterinary Medicine (CVM) | Department of Health and Human Services, Hubert H. Humphrey Bldg., Penthouse Conference Room (rm. 800), 200 Independence Ave. SW., Washington, DC. | Wednesday, August 19, 1998, from 9 a.m. to 5 p.m. | Linda A. Grassie, HFV–12, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6513, FAX 301–594–1831, e-mail ''LGrassie@bangate.fda.gov'' |
| CBER—San Francisco | Oakland Federal Bldg., Royball Auditorium, 1301 Clay St., Oakland, CA. | Friday, August 28, 1998, from 9 a.m. to 5 p.m. | Mark S. Roh, HFR–PA17, Pacific Regional Office, Food and Drug Administration, 1301 Clay St., suite 1180–N, Oakland, CA 94612, 510–637–3980, FAX 510–637–3977, e-mail ''mroh@ora.fda.gov'' |

A separate FDAMA section on the FDA website will provide current information about these public meetings. It is highly recommended that individuals who wish to present at these public meetings, plan to attend the entire day. Information will be presented throughout the day about FDA activities related to the FDA Plan.

Each public meeting will provide an opportunity for an open comment session where attendees can express their views.

## IV. Registration and Requests for Oral Presentations

Send registration information (including name, title, firm name, address, telephone, e-mail, and fax number), and written material and requests to make oral presentations, to the appropriate contact person listed in section III of this document by July 31, 1998.

If you need special accommodations due to a disability, please contact the appropriate contact person listed in section III of this document at least 7 days in advance.

## V. Additional Meetings

The public meeting for the Center for Food Safety and Applied Nutrition (CFSAN) was held on June 24 and 25, 1998. The comment period associated with the CFSAN meeting closed on July 15, 1998. A summary of the views presented at the CFSAN meeting is available on the CFSAN website ''http://www.cfsan.fda.gov''. For information on the CFSAN meeting, contact Tracy S. Summers, Center for Food Safety and Applied Nutrition (HFS–1), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4850, FAX 202–205–5025, e-mail ''tsummers@bangate.fda.gov''.

An additional public meeting is being planned for September 15, 1998, to obtain stakeholder views on potential recurring themes and the best approach for consolidating these themes agency wide. A separate notice of this meeting will be published in the **Federal Register**.

## VI. Transcripts

Transcripts of these meetings may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the meeting will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA website ''http://www.fda.gov''.

Dated: July 20, 1998.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

[FR Doc. 98–19816 Filed 7–21–98; 3:31 pm]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Dental Products Panel of the Medical Devices Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Dental Products Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on August 4, 1998, 10:30 a.m. to 6:30 p.m., and August 5, 1998, 8 a.m. to 3 p.m.

*Location*: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

*Contact Person*: Pamela D. Scott, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12518. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On August 4, 1998, the committee will discuss: (1) Previously unclassified devices for use in the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain, (2) devices that FDA believes may fall within a present device classification and those devices that do not fall within a present device classification and thus remain unclassified, and (3) classification of the devices that remain unclassified. On August 5, 1998, the committee will continue discussion of the classification of devices for use in the diagnosis and/or treatment of temporomandibular joint dysfunction and oral-facial pain that remain unclassified. The list of those devices that FDA believes may fall within a present device classification and those devices that do not fall within a present device classification and thus remain unclassified will be placed on the FDA web site at ''http://www.fda.gov/cdrh/degenint.html''.

*Procedure*: On August 4, 1998, from 10:30 a.m. to 5:30 p.m. and on August 5, 1998, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 31, 1998. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on August 4, 1998, and between approximately 8:10 a.m. and 8:40 a.m. on August 5, 1998. Near the end of committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the classification before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 31, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On August 4, 1998, from 5:30 p.m. to 6:30 p.m., the meeting will be closed to permit discussion of trade secret and/or confidential information regarding dental device issues (5 U.S.C. 552b(c)(4)). The meeting will discuss classified device issues.

FDA regrets that it was unable to publish this notice 15 days prior to the August 4 and 5, 1998, Dental Products Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Dental Products Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice. I11Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 21, 1998.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 98–19945 Filed 7–22–98; 11:41 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98D–0514]**

### Draft Guidance for Industry on ANDA's: Impurities in Drug Substances; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''ANDA's: Impurities in Drug Substances.'' This draft guidance provides recommendations for including information in abbreviated new drug applications (ANDA's) and supporting drug master files on the content and qualification of impurities in drug substances produced by chemical syntheses for both monograph and nonmonograph drug substances.

**DATES:** Written comments on the draft guidance may be submitted by September 22, 1998. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm''. Written requests for single copies of the draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Trimmer, Office of Generic Drugs, Center for Drug Evaluation and Research (HFD–625), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–5848.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled ''ANDA's: Impurities in Drug Substances.'' This draft guidance provides information on the following: (1) Qualifying impurities found in the drug substance used for ANDA via a comparison with impurities found in the related United States Pharmacopeia (USP) monograph, scientific literature, or innovator material; (2) qualifying impurities found at higher levels in the drug substance used for ANDA than found in the related USP monograph, scientific literature, or innovator material; (3) qualifying impurities in the drug substance used for ANDA which are not found in the related USP monograph, scientific literature, or innovator material; and (4) threshold levels, below which qualification is not needed.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the content and qualification of impurities in drug substances produced by chemical syntheses that are used in generic drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, on or before September 22, 1998, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 1998.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 98–19714 Filed 7–23–98; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–250,254]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Secondary Payer Information Collection and Supporting Regulations 42 CFR 489.20; *Form No.:* HCFA–250,254 OMB #0938–0214; *Use:* This questionnaire will collect information from beneficiaries on health insurance coverage that is primary to Medicare. This information is necessary in order for HCFA to identify those Medicare beneficiaries who have group health insurance that would pay before Medicare, resulting in savings to the Medicare Trust Fund. Medicare Secondary Payer (MSP) is essentially the same concept known in the private insurance industry as coordination of benefits, and refers to those situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary. HCFA contracts with health insuring organizations, herein referred to as intermediaries and carriers, to process Medicare claims. HCFA charges its Medicare intermediaries and carriers with various tasks to detect MSP cases; develops and disseminates tools to enable them to better perform their tasks; and monitors their performance in achievement of their assigned MSP functions. Because intermediaries and carriers are also marketing health insurance products that may have liability when Medicare is secondary, the MSP provisions create the potential for conflict of interest. Recognizing this inherent conflict, HCFA has taken steps to ensure that its intermediaries and carriers process claims in accordance with the MSP provisions, regardless of what other insurer is primary. *Frequency:* One time only; *Affected Public:* Individuals or Households; *Number of Respondents:* 14,204,000; *Total Annual Responses:* 14,204,000; *Total Annual Hours:* 773,240.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed

within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 15, 1998.

**John P. Burke III,**

*HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Security and Standards Group, Health Care Financing Administration.*

[FR Doc. 98–19730 Filed 7–23–98; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–18F5]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance and Supporting Regulation 42CFR 406.7; *Form No.:* HCFA–18F5, OMB # 0938–0251; *Use:* The HCFA 18F5 is used to establish entitlement to hospital insurance and supplementary medical insurance for beneficiaries entitled under title XVII of the Social Security Act only. *Frequency:* One time submission; *Affected Public:* Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 14, 1998.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 98–19731 Filed 7–23–98; 8:45 am]

BILLING CODE 4120–03–P

## DEPARMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center of Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(b), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel General Clinical Research Centers Review Committee.

*Date:* September 9, 1998.

*Time:* 8:00 am to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* University of Pittsburgh, Magee-Women's Hospital, 300 Halket Street, Pittsburgh, PA 15213.

*Contact Person:* John L. Meyer, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

*Date:* October 4–6, 1998.

*Time:* October 4, 1998, 6:00 pm to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* John L. Meyer, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–19796 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Research Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Research Resources Council Executive Subcommittee.

*Date:* September 17, 1998.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* To discuss policy issues.

*Place:* National Institutes of Health, Conference Room 3B13, Building 31, Bethesda, MD 20892.

*Contact Person:* Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

*Name of Committee:* National Advisory Research Resources Council.

*Date:* September 17–18, 1998.

*Open:* September 17, 1998, 9:00 a.m. to Recess.

*Agenda:* To discuss policy issues.

*Place:* National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

*Closed:* September 18, 1998, 8:30 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

*Open:* September 18, 1998, 10:00 a.m. to Adjournment.

*Agenda:* Report of Center Director and other issues related to Council business.

*Place:* National Institutes of Health, 9000 Rockville Pike, Conference Room 10, Building 31C, Bethesda, MD 20892.

*Contact Person:* Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–19797 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel.

*Date:* August 3–4, 1998.

*Time:* 8:00 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Gopal M. Bhatnagar, Phd., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Commttee Management Officer, NIH.*

[FR Doc. 98–19798 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel R03s and R13 Special Emphasis Panel.

*Date:* August 3, 1998.

*Time:* 1:00 pm. to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Hameed Khan, Phd, Scientific Review Administrator, Division of Scientific Review National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Populations Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–19799 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel. Body Weight Supported Ambulation Training After Spinal Cord Injury.

*Date:* July 29, 1998.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–19800 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel.

*Date:* July 27, 1998.

*Time:* 7:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Scott F. Andres, PHD, Acting Director, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 17, 1998.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 98–19801 Filed 7–23–98; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4341–N–20]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** July 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans' Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 16, 1998.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 98–19414 Filed 7–23–98; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Notice of Availability of the Final Environmental Impact Statement for Construction of the Palau Compact Road, Babeldaob Island, Republic of Palau

**AGENCY:** Office of the Secretary, Department of the Interior.

**ACTION:** Notice of Availability of the Final Environmental Impact Statement for Construction of the Palau Compact Road, Babeldaob Islands, Republic of Palau.

**SUMMARY:** The Department of the Interior announces that the Final Environmental Impact Statement (EIS) for construction of the Palau Compact Road, Babeldaob Island, Republic of Palau is available for public review and comment.

**DATES:** Comments on the Final EIS will be accepted until August 24, 1998.

**ADDRESSES:** Comments on the Final EIS should be submitted to Mr. Allen Chin, CEPOH–ED–E, U.S. Army Engineer District, Honolulu, Fort Shafter, HI 96858–5440. A limited number of copies of the document may be obtained by writing to the above address or by calling 808–438–6974.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allen Chin, CEPOH–ED–E, U.S. Army Engineer District, Honolulu, Fort Shafter, HI 96858–5440, telephone (808) 438–6974.

**SUPPLEMENTARY INFORMATION:** The proponent for the Proposed Action is the United States Department of the Interior as program manager and on behalf of the United States of America.

The Compact of Free Association (Compact) with the Republic of Palau (ROP), which became effective on October 1, 1994, requires the United States Government (USG) to provide a road system to the people of Palau in order to assist the ROP to advance the economic development and self-sufficiency of the Palau people. To fulfill this statutory and treaty requirement, the USG and the ROP are cooperating to construct a major road system on the island of Babeldaob in accordance with Section 212(a) of the Compact of Free Association and as implemented by certain nation-to-nation agreements.

The Department of the Interior published a Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) in the **Federal Register** on March 7, 1996. Scoping meetings were held for governmental agencies and the public on April 24, 1996. The Notice of

Availability of the DEIS was announced in the **Federal Register** in May 1997. A public hearing to present the DEIS was held on May 21, 1997 in Palau. The DEIS was subsequently revised to incorporate the results of additional studies and to address public and agency comments on the original DEIS. After receipt of comments on the revised DEIS, a Final EIS will be prepared. The Notice of Availability of the revised DEIS was announced in the **Federal Register** on February 19, 1998. Comments on the Revised DEIS have been considered in preparing the Final EIS.

The Proposed Action calls for construction of a safe, high-quality, all-weather, two-lane paved vehicular road system on the island of Babeldaob. This roadway has been configured as a loop system with a northern spur to serve as a direct transportation and communication link between the 10 states on Babeldaob Island. Additionally, the road would provide access through, or be near known areas having potential for agriculture, forestry, mining and quarrying, industry and tourism, and water resource and port development. It would also provide a land-based transportation corridor to and from the proposed site of the Republic of Palau's new capital in Melekeok State.

The Final EIS will be used by the Department of the Interior in reaching a final decision and developing a final array of measures to avoid, or mitigate adverse impacts. The Record of Decision will be approved at least 30 days after publication of the Final EIS to allow for public review and comment on the Final EIS.

Copies of the Final EIS are also available for review at the following locations: Republic of Palau Ministry of Resources and Development, Palau Environmental Quality Protection Board, and the U.S. Army Corps of Engineers Palau Compact Road Field Office, on the third floor of the WCTC building in Koror.

Dated: July 17, 1998.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance, Department of the Interior.*

[FR Doc. 98–19711 Filed 7–23–98; 8:45 am]

**BILLING CODE 4310–RK–M**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement for Little Pend Oreille National Wildlife Refuge, Stevens County, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) to advise other agencies and the public of our intentions; (2) to obtain suggestions and information on the preliminary alternatives which have been drafted for the EIS; and (3) to announce public open house meetings.

**DATES:** Submit comments on or before August 24, 1998. See **SUPPLEMENTARY INFORMATION** for meeting dates and locations.

**ADDRESSES:** Address comments and requests for more information to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Road, Colville, Washington 99114.

**FOR FURTHER INFORMATION CONTACT:** Lisa Langelier, Refuge Manager (509) 684–8384.

**SUPPLEMENTARY INFORMATION:** The Service started the process of developing a management plan for Little Pend Oreille National Wildlife Refuge (Little Pend Oreille NWR) in 1995. Open houses and public meetings were held in 1995, 1996, and 1997. A previous notice was published in the **Federal Register** (61 FR 65591, Dec. 13, 1996).

Persons and organizations involved in the scoping process include: the U.S. Department of Agriculture, Forest Service; U.S. Department of Agriculture, Natural Resource Conservation Service; Washington Department of Fish and Wildlife; U.S. Air Force; members of national, state and local conservation organizations; timber industry representatives; grazing permittees; inholders and neighboring landowners; and other interested citizens. Comments and concerns received have been used to identify issues and draft preliminary alternatives.

Major issues to be addressed in the plan include grazing; management of degraded aquatic and riparian habitats; overstocked forest habitats; military training; and various recreational public uses. The plan will include the following topics: (a) an assessment of existing biological, physical, and cultural resources, and their condition; (b) identification of the long term goals and objectives of the refuge, consistent with the National Wildlife Refuge System mission; (c) strategies for habitat management, including actions for forests, riparian areas, water courses, reservoirs, wetlands, and old farm fields; (d) strategies for management of public access and uses, including hunting, fishing, wildlife observation and photography, environmental education and interpretation, camping, horseback riding, mountain-bike riding, and snowmobiling; and (e) strategies for management of other special uses including military training and grazing.

Draft management goals are intended to guide the future management of Little Pend Oreille NWR. They are: (1) Conserve, enhance and restore native forest, riparian, in-stream, and wetland habitats and associated migratory birds, other wildlife, fish and plants. (2) Monitor, protect and recover plants and animals that are threatened, endangered, proposed, and candidate species and species of special concern. (3) Provide opportunities for wildlife-dependent recreation, education, and research to enhance public appreciation, understanding, and enjoyment of refuge, wildlife, fish and their habitats.

A range of preliminary alternatives are being considered in the plan:

(A) The No Action Alternative—Make no changes to the prevailing practices and uses at the refuge.

(B) Restore Wildlife Habitat While Managing Existing public Uses—This alternative combines an active forest and riparian restoration program with minimal change to existing public uses.

(C) Restore Wildlife Habitat While Emphasizing Priority Uses—This alternative adopts a greater emphasis on priority uses identified under the Wildlife Refuge System Improvement Act of 1997 (PL 105–57) and eliminates or reduces non-priority uses. This alternative also incorporates a strong forest and riparian restoration program.

(D) Manage the Refuge as an Ecological Reserve and Reduce Human Disturbances—This alternative minimizes human access and use of the refuge while conducting a moderate restoration program, with a greater emphasis on hydrologic restoration than other alternatives.

(E) The Caretaker Strategy With Minimal Public Services Alternative—This alternative minimizes management, reduces public uses, and would minimize staffing needs.

With the publication of this notice, the public is encouraged to attend

public open houses and/or submit written comments on the preliminary management alternatives. Comments already received are on record and need not be resubmitted.

Two public open houses will be held as follows:

July 29, 4pm–8pm, Colville High School, 154 Highway 20 East, Colville, Washington. (Presentation on alternatives at 6:30 pm)

July 30, 4pm–8pm, Inland NW Wildlife Council Building, 616 North Market St., Spokane, Washington. (Presentation on alternatives at 6:30 pm)

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the draft CCP / Environmental Impact Statement will be available in November, 1998.

Dated: July 10, 1998.

**Don Weathers,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 98–19727 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–00–P]**

### Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 14(h)(8) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(8), will be issued to the Bering Straits Native Corporation for 3,840 acres. The lands involved are in the vicinity of Marys Igloo, Alaska, and are within T. 5 S., R. 30 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until August 24, 1998, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Heather A. Coats,**

*Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.*

[FR Doc. 98–19782 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–030–08–1010–00–1784]**

### Southwest Resource Advisory Council Meeting.

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice; Resource Advisory Council Meeting

**SUMMARY:** In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in Gunnison, Colorado.

**DATES:** The meeting will be held on Thursday, August 13, 1998.

**ADDRESSES:** For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov.

**SUPPLEMENTARY INFORMATION:** The August 13, 1998, meeting will begin at 9:00 a.m. in the Aspinall-Wilson Center, South Room, 909 Escalante Drive, Gunnison, Colorado. The agenda will include discussions on the Montrose District's Fiscal Year 1999 Annual Work Plan priorities and updates on implementation of the Gunnison Sage Grouse Plan, the recreation guidelines, and on-going exchange efforts in the Montrose District. Time will be provided for public comments at 9:30 a.m.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: July 20, 1998.

**Roger Alexander,**

*Public Affairs Specialist.*

[FR Doc. 98–19776 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–020–08–A155; AZA–29932]**

### Notice of Realty Action Noncompetitive Sale of Public Lands in Maricopa County, Arizona

**AGENCY:** City of Glendale, BLM, Interior.

**ACTION:** Notice of Realty Action, Noncompetitive Sale.

**SUMMARY:** The following public lands have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less

than the estimated fair market value to be established by appraisal. The City of Glendale proposes to use the lands for an expansion to the already existing landfill operation. The land will not be offered for sale for at least 60 days after the date of this notice in the **Federal Register**.

**Gila and Salt River Meridian, Arizona**

T. 2 N., R. 1 W.,
Sec. 1, E½SE¼.

The area described contains 80 acres in Maricopa County.

The land described above is hereby segregated from appropriation under the public land laws including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. It has been determined that there are no known mineral values, therefore the mineral interests shall be determined suitable for sale under Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2727; 43 U.S.C. 1719) and may be conveyed simultaneously.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. Detailed information concerning this sale is available for review at the Phoenix Field Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Office Manager, Phoenix Field Office, at the above address.

In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 14, 1998.

**Sandra R. Nelson,**

*Acting Assistant Field Manager, Support Services.*

[FR Doc. 98–19732 Filed 7–23–98; 8:45 am]

**BILLING CODE 4310–32–M**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[AZ–010–98–1150–00]**

## Arizona: Amend the Arizona Strip Resource Management Plan, Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice to amend.

**SUMMARY:** The Bureau of Land Management has proposed to amend the Arizona Strip Resource Management Plan (RMP–1992), to modify RMP decisions to comply with the Endangered Species Act and to achieve the goals and objectives of the recovery plan for the Mojave population of desert tortoises, listed by the U.S. Fish and Wildlife Service as threatened. Since the signing of the Record of Decision for the RMP, critical habitat has been designated, and the Desert Tortoise Recovery Plan (1994) has been approved by the U.S. Fish & Wildlife Service (USFWS).

This amendment also addresses conservation and recovery of three other species federally listed as endangered: southwestern willow flycatcher, Virgin River chub, and woundfin minnows. Management of Virgin River chub and woundfin were addressed in the 1992 RMP. The RMP did not address southwestern willow flycatchers because the listing of southwestern willow flycatchers as endangered did not occur until 1995, after the RMP was finalized. Critical habitat for southwestern willow flycatchers was designated in 1997.

The proposed Decision Record documents approval of an amendment to the Arizona Strip Resource Management Plan. This amendment supercedes decisions in the RMP. Decisions contained in the amendment apply only to areas that are: within desert tortoise habitat as categorized by the Bureau in the RMP; within critical habitat as designated by USFWS; within any one of the four Areas of Critical Environmental Concern (ACECs); or within pastures of livestock grazing allotments containing tortoise habitat (including portions of Nevada and Lake Mead NRA that are administered by the Arizona Strip BLM).

The proposed decision is to implement the Proposed Action as described in Environmental Assessment AZ–010–95–01, with additional terms and conditions from USFWS biological opinion 2–21–96–F–132. The Proposed Action is designed to address tortoise recovery goals and objectives while reducing impacts on local communities and human activities that occur in the Mojave Desert.

BLM is proposing to designate three ACECs encompassing 169,300 acres (264.5 sq. miles) to be managed primarily for recovery of desert tortoises, and modify the prescriptions for the Virgin River ACEC (8,100 acres). Beaver Dam Slope ACEC: This would expand the existing ACEC to include tortoise habitat on public lands in Arizona north of I–15 and the Virgin River but outside the Beaver Dam Wilderness Area, as categorized in the RMP. This area would complement management in Nevada and Utah and contain approximately 51,400 acres (80.3 sq. miles) in Arizona.

*Virgin Slope ACEC:* This area would include most tortoise habitat on public lands in Arizona between the Virgin River (or I–15) and the Virgin Mountains, as categorized in the RMP. A small portion of the Mesquite Community Allotment in Nevada would be managed consistent with the ACEC. This ACEC would contain approximately 41,375 acres (64.6 sq. miles) in Arizona.

*Pakoon ACEC:* This would include tortoise habitat on public lands in the Pakoon Basin. This area would contain approximately 76,525 acres (119.6 sq. miles). Activities administered by the Arizona Strip on Lake Mead NRA and on public lands in Nevada would be managed in accordance with ACEC prescriptions. This ACEC would be closed to livestock grazing.

*Virgin River ACEC:* There would be no change in the boundary of this ACEC (8,100 ac), although prescriptions would be modified to be consistent with the tortoise ACECs. BLM proposes to manage the following resources to reduce impacts on listed species and their habitats: mineral exploration and development, fire suppression, livestock grazing, vegetation harvest, lands and realty, transportation and access, off-highway vehicles, recreation, wild, free-roaming burros, wildlife management, and other surface-disturbing activities (such as military maneuvers and airports). Outside of the four ACECs there would be no change to decisions in the RMP, except that grazing would be managed in accordance with the grazing decisions issued August 11, 1995.

Management of the ACECs would be consistent with the recommendations found in the Desert Tortoise Recovery Plan. Land use prescriptions within ACECs would affect livestock grazing, lands and realty actions, wild burros, recreation, and other activities.

**DATES:** BLM proposes to implement the proposed action on August 31, 1998. Closure of the Pakoon ACEC to grazing would occur following a two-year notification period.

**SUPPLEMENTARY INFORMATION:** Protest procedures described in 43 CFR 1610.5–2 give the public an opportunity to seek administrative review of perceived oversights or inadequacies in a proposed plan. Any proposed decision in the resource management plan amendment may be protested. The

protest may only raise issues that were submitted for the record while the plan amendment was being prepared. Any party who has participated in the planning process may file a letter of protest.

For proposed decisions in an EA-level plan amendment, a letter of protest to the Director must be filed within 30 days of this **Federal Register** notice. Letters of protest must be complete and respond to the content requirements established in 43 CFR 1610.5–2(a)(2).

If you wish to protest the proposed plan amendment, letters of protest must be mailed to: Director, Bureau of Land Management, *Attention:* Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

The overnight mail address is: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator WO–210, 1620 L Street, N.W., Room 1075, Washington, DC 20240 [Phone: 202 452–5110].

Letters of protest must be filed within 30 days of this **Federal Register** notice. To expedite consideration, in addition to the original sent by mail or overnight mail, a copy of the protest may be sent by fax to 202/452–5112 or e-mail to bhudgens@wo.blm.gov

**FOR FURTHER INFORMATION CONTACT:** Ray Mapston, Program Manager, BLM Arizona Strip, 345 East Riverside Drive, St. George, Utah 84790, (435) 688–3200.

**Roger G. Taylor,**

*Field Manager.*

[FR Doc. 98–19616 Filed 7–23–98; 8:45 am]

**BILLING CODE 4310–32–P**

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 171

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Final notice of sale.

1. *Authority.* The Minerals Management Service (MMS) is issuing this Final Notice of Sale under the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR Part 256).

A ''Sale Notice Package,'' containing this Notice and several supporting and essential documents referenced in the Notice, is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 15 of this Notice).

2. *Filing of Bids.* Bidders must comply with the following requirements. Times specified hereafter are local New Orleans times unless otherwise indicated.

(a) *Filing of Bids.* Sealed bids must be received by the Regional Director (RD), Gulf of Mexico Region, MMS, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., Tuesday, August 25, 1998. If the RD receives bids later than the time and date specified above, he will return the bids unopened to bidders. Bidders may not modify or withdraw their bids unless the RD receives a written modification or written withdrawal request prior to 10 a.m. Tuesday, August 25, 1998.

(b) *Bid Opening Time.* Bid Opening Time will be 9 a.m., Wednesday, August 26, 1998, in the Hyatt Regency Hotel, 500 Poydras Plaza, New Orleans, Louisiana (Cabildo Ballrooms A, B, and C). The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 63 FR 14473, on March 25, 1998.

(c) *Natural Disasters.* In the event of widespread flooding or other natural disaster, the MMS Gulf of Mexico Regional Office may extend the bid submission deadline. Bidders may call (504) 736–0557 for information about the possible extension of the bid submission deadline due to such an event.

3. *Method of Bidding.*

(a) *Submission of Bids.* For each tract bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled ''Sealed Bid for Oil and Gas Lease Sale 171, not to be opened until 9 a.m., Wednesday, August 26, 1998.'' The total amount bid must be in a whole dollar amount; any cent amount above the whole dollar will be ignored by the MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document ''Bid Form and Envelope'' contained in the Sale Notice Package (see paragraph 15 of this Notice).

Bidders must execute all documents in conformance with signatory authorizations on file in the MMS Gulf of Mexico Regional Office. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. The MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. The MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(b) *Submission of the ⅕th Bonus Payment.* Bidders have the option of submitting the ⅕th cash bonus in cash or by cashier's check, bank draft, or certified check with the bid, or by using electronic funds transfer (EFT) procedures. Detailed instructions for submitting the ⅕th bonus payment by EFT are contained in the document ''Instructions for Making EFT ⅕th Bonus Payments'' included in the Sale Notice Package.

Bidders are advised that the MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the ⅕th bonus on all high bids. Bidders must include a statement to this effect on each bid (see the document ''Bid Form and Envelope'' contained in the Sale Notice Package).

4. *Minimum Bid, Yearly Rental, and Bidding Systems.*

The following minimum bid, yearly rental, and bidding systems apply to this sale (the map ''Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171'' is included in the Sale Notice Package (see paragraph 1)):

**Note:** Example for Calculating Minimum Bid and Rental: If the block bid contains a fraction of an acre (for example, 3,010.2 acres), round up to the next whole acre (3,011 acres) and multiply by the applicable dollar amount to determine the correct minimum bid or rental. In this example, if the established minimum bid for the block is $25 per acre, the minimum bid for the block would be $75,275 (3,011 × $25). If the rental rate for the block is $5 per acre, the annual rental for the block would be $15,055 (3,011 × $5).

(a) *Minimum Bid.* Bidders must submit a cash bonus in the amount of $25.00 or more per acre or fraction thereof with all bids submitted at this sale.

(b) *Yearly Rental.* All leases awarded on tracts in water depths of 200 meters and greater (i.e., tracts in any of the three royalty suspension areas), as depicted on the map ''Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171,'' will require a yearly rental payment of $7.50 per acre or fraction thereof until initial production is obtained.

All leases awarded on other tracts (i.e., those in water depths of less than 200 meters) will provide for a yearly rental payment of $5.00 per acre or fraction thereof until initial production is obtained.

(c) *Bidding Systems.* After initial production is obtained, leases will require a minimum royalty of the

amount per acre or fraction thereof as specified as the yearly rental in paragraph 4(b) above, except during periods of royalty suspension as discussed in paragraph 4(c)(3) of this Notice. The following royalty systems will be used in this sale:

(1) *Leases with a 12 ½-Percent Royalty.* This royalty rate applies to tracts in water depths of 400 meters or greater; this area is shown on the Map ''Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171.'' Leases issued on the tracts offered in this area will have a fixed royalty rate of 12 ½ percent, except during periods of royalty suspension (see paragraph 4(c)(3) of this Notice).

(2) *Leases with a 16 ⅔-Percent Royalty.* This royalty rate applies to tracts in water depths of less than 400 meters (see aforementioned map). Leases issued on the tracts offered in this area will have a fixed royalty rate of 16 ⅔ percent, except during periods of royalty suspension for leases in water depths 200 meters or greater (see paragraph 4(c)(3) of this Notice).

(3) *Royalty Suspension.* In accordance with Public Law 104–58, signed by the President on November 28, 1995, the MMS has developed procedures providing for the suspension of royalty payments on production from eligible leases issued as a result of this sale. The final rule specifying royalty suspension terms for lease sales in the Central and Western Gulf was published in the **Federal Register** on January 16, 1998 (63 FR 2626). Additional information pertaining to royalty suspension matters may be found in the document ''Information to Lessees,'' contained in the Sale Notice Package.

The map titled ''Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171'' depicts the blocks in which such suspensions may apply.

5. *Equal Opportunity.* The certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985) must be on file in the MMS Gulf of Mexico Regional Office prior to lease award (see paragraph (e) of the document ''Information to Lessees,'' contained in the Sale Notice Package).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

7. *Deposit of Payment.* Any payments made in accordance with paragraph 3(b) above will be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal of Tracts.* The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for the tract.

9. *Acceptance, Rejection, or Return of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any tract will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice, including the documents contained in the associated Sale Notice Package (see paragraphs 1 and 15 of this Notice), and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus as specified in paragraph 4 above. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, tracts will be evaluated in accordance with established MMS bid adequacy procedures. A copy of the current procedures (''Summary of Procedures for Determining Bid Adequacy at Offshore Oil and Gas Lease Sales: Effective August 1997, with Sale 168'') is available from the MMS Gulf of Mexico Regional Office Public Information Unit (see paragraph 15 of this Notice). This document incorporates changes announced in a **Federal Register** Notice at 62 FR 37589, dated July 14, 1997.

10. *Successful Bidders.* The following requirements apply to successful bidders in this sale:

(a) *Lease Issuance.* The MMS will require each person who has submitted a bid accepted by the authorized officer to execute copies of the lease (Form MMS–2005 (March 1986) as amended), pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued by EFT in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I, as amended.

Additional information pertaining to this matter may be found in the document ''Information to Lessees'' contained in the Sale Notice Package.

(b) *Certification Regarding Nonprocurement Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* Each person involved as a bidder in a successful high bid must have on file, in the MMS Gulf of Mexico Regional Office Adjudication Unit, a currently valid certification that the person is not excluded from participation in primary covered transactions under Federal nonprocurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification becomes available. In the event of new or revised applicable information, the MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certifications should review the requirements of 43 CFR, Part 12, Subpart D.

A copy of the certification form is contained in the Sale Notice Package.

11. *Leasing Maps and Official Protraction Diagrams.* The following Leasing Maps and Official Protraction Diagrams, which may be purchased from the MMS Gulf of Mexico Regional Office Public Information Unit (see the document ''Information to Lessees'' contained in the Sale Notice Package), depict the tracts offered for lease in this sale:

(a) Outer Continental Shelf (OCS) Leasing Maps—Texas, Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) Outer Continental Shelf (OCS) Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (rev. 01/27/76)
NG 14–6 Port Isabel (rev. 01/15/92)
NG 15–1 East Breaks (rev. 01/27/76)
NG 15–2 Garden Banks (rev. 10/19/81)
NG 15–4 Alaminos Canyon (rev. 04/27/89)
NG 15–5 Keathley Canyon (rev. 04/27/89)
NG 15–8 (No Name) (rev. 04/27/89)

12. *Description of the Areas Offered for Bids.*

(a) *Acreage Available for Leasing.* Acreage of blocks is shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by

administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, is included in the document:

Western Gulf of Mexico Lease Sale 171—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

The Sale Notice Package contains this document.

(b) *Tracts not available for leasing.* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a) and (b), except for those blocks or partial blocks already under lease and those blocks or partial blocks listed below. A list of Western Gulf of Mexico tracts currently under lease, titled ''Western Gulf of Mexico Leased Lands List dated July 15, 1998,'' is included in the Sale Notice Package.

Although currently unleased, no bids will be accepted on High Island Area, East Addition, South Extension, Blocks A–375, A–398, and A–401 (at the Flower Garden Banks), and High Island Area, South Addition, Block A–513 (at Stetson Bank).

Although currently unleased, no bids will be accepted on the following blocks located off Corpus Christi which have been identified by the Navy as needed for testing equipment and training mine warfare personnel: Mustang Island Area Blocks 793, 799, and 816.

Although currently unleased, no bids will be accepted on the following blocks which are currently under appeal: High Island Area Block 170, and Galveston Area, South Addition, Block A–125.

Although currently unleased, no bids will be accepted in this Sale on the following blocks which are beyond the United States Exclusive Economic Zone (EEZ). The offering of these blocks, which are identified as the Northern portion of the Western Gap, has been temporarily deferred by the Department of the Interior due to ongoing negotiations with the Government of Mexico on the delimitation of the continental shelf in the Western Gap beyond the EEZ of both countries.

*Keathley Canyon (Area NG15–05)*

Blocks

722 through 724
764 through 770
807 through 816
849 through 861
892 through 907
934 through 953
978 through 999

*Area NG15–08*

Blocks

11 through 34
56 through 81
102 through 128
148 through 173
194 through 217
239 through 261
284 through 305
336 through 349

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on the map ''Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171.'' A copy of this map is included in the Sale Notice Package. Copies of the lease form are available from the MMS Gulf of Mexico Regional Office Public Information Unit (see the document ''Information to Lessees'' contained in the Sale Notice Package).

(b) The map titled ''Stipulations and Deferred Blocks, Sale 171'' depicts the blocks to which the three lease stipulations (Topographic Features, Military Areas, and Naval Mine Warfare Area) apply. The text of the lease stipulations is contained in the document ''Lease Stipulations for Oil and Gas Lease Sale 171;'' this map and document are contained in the Sale Notice Package. These stipulations will become a part of any leases on applicable blocks resulting from Sale 171. These stipulations are the same stipulations used in Sale 168, Western Gulf, held in August 1997. (See the Final Notice of Sale for Sale 168 in the **Federal Register** at 62 FR 39863, July 24, 1997.)

14. *Information to Lessees.* The Sale Notice Package contains a document titled ''Information to Lessees.'' These Information to Lessees items provide information on various matters of interest to potential bidders.

15. *Sale Notice Package.* The Sale Notice Package, and individual documents contained therein, are available from the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone at (504) 736–2519 or (800) 200–GULF.

The documents referenced below and contained in the Sale Notice Package contain information essential for bidders, and bidders are charged with the knowledge contained therein. Included in the Package are:

Cover sheet

Final Notice of Sale for Sale 171
Information to Lessees for Sale 171
Western Gulf of Mexico Leased Lands List dated July 15, 1998
Western Gulf of Mexico Lease Sale 171—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease
Lease Stipulations for Oil and Gas Lease Sale 171
Debarment Certification Form
Bid Form and Envelope
Phone Numbers/Addresses of Bidders Form
Instructions for Making EFT 1/5th Bonus Payments
Lease Terms, Bidding Systems, and Royalty Suspension Areas, Sale 171 Map
Stipulations and Deferred Blocks, Sale 171 Map

For additional information, contact the Regional Supervisor for Leasing and Environment, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, or by telephone at (504) 736–2759. In addition, certain documents may be viewed and downloaded from the MMS World Wide Web site at http://www.mms.gov. The MMS also maintains a 24-hour Fax-on-Demand Service at (202) 219–1703.

Dated: July 20, 1998.

**Cynthia Quarterman,**

*Director, Minerals Management Service.*

Approved:

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 98–19843 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–MR–P

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## General Management Plan, Lassen Volcanic National Park, California; Notice of Intent To Prepare an Environmental Impact Statement

*Summary:* The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Lassen Volcanic National Park, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

*Background:* The purpose of the GMP/EIS will be to state the management philosophy for the park and provide strategies for addressing major issues facing the area. Two types

of strategies will be presented in the GMP: (1) those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Lassen Volcanic National Park should address these to the Superintendent, Lassen Volcanic National Park, P.O. Box 100, Mineral, CA 96063–0100. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (530) 595–4444. Comments on the scoping of the proposed GMP/EIS should be received no later than September 30, 1998.

Public scoping meetings to receive comments and suggestions on the plan will be held in August in communities in the vicinity of the park. The time and location of these meetings will be announced in the local and regional media.

The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service. The draft GMP/EIS is expected to be available for public review in late summer or fall, 1999, and the final GMP/EIS and Record of Decision completed early in 2000.

Dated: June 26, 1998.

**Patricia L Neubacher,**

*Acting Regional Director, Pacific West Region*

[FR Doc. 98–19747 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

### Maine Acadian Culture Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, August 21, 1998. The meeting will convene at 7:00 P.M. at the Acadian Village in Van Buren, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (PL 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

*The implementation of an interpretive program of Acadian culture in the state of Maine.

*The proceedings of a joint meeting with the Maine Acadian Heritage Council.

The Agenda for this meeting is as follows:

1. Review of April 10 and June 12, 1998, summary reports.
2. Speaker: Barbara LeBlanc of Church Point, Nova Scotia, Canada on ''Acadian Story Telling.''
3. Report of the National Park Service project staff.
4. Opportunity for public comment.
5. Proposed agenda, place, and date of the next Commission Meeting.

The meeting is open to the public. Further information concerning Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5459.

Dated: July 16, 1998.

**Len Bobinchock,**

*Acting Superintendent Acadia National Park.*

[FR Doc. 98–19748 Filed 7–23–98; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–410]**

### Certain Coated Optical Waveguide Fibers and Products Containing Same; Notice of Commission Determination not to Review Initial Determination Granting Motion To Amend the Complaint and Notice of Investigation to Add an Additional Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting complainant's motion for leave to amend the complaint and to amend the notice of investigation to add an additional respondent in the above-captioned investigation.

**FOR FURTHER INFORMATION:** Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3098.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this patent-based section 337 investigation on May 8, 1998, based on a complaint filed by Corning, Inc. (''Corning''). Two respondents were originally named in the investigation—Plasma Optical Fibre, B.V. (''POF'') and Chromatic Technologies, Inc. (''CTI'').

On June 8, 1998, Corning, pursuant to Commission rules 210.14(b) and 210.15(a)(2), 19 C.F.R. 210.14(b), 210.15(a)(2), filed a motion for leave to amend the complaint and the notice of investigation to add Yangtze Optical Fiber and Cable Co., Ltd. (''YOFC'') as an additional respondent. POF and CTI opposed the motion. The Commission investigative attorney (IA) supported the motion.

The ALJ granted Corning's motion in an ID (Order No. 4) issued on June 18, 1998. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 C.F.R. 210.42. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: July 17, 1998.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–19871 Filed 7–23–98; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–396]**

### Certain Removable Electronic Cards and Electronic Card Reader Devices and Products Containing Same; Notice of Final Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to find no

violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3095.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 2, 1997, on the basis of a complaint filed by Innovatron S.A. (''Innovatron''). 62 FR 15728. The complaint, as subsequently amended, named two respondents—Thomson Multimedia, S.A. and Thomson Consumer Electronics, Inc.

In its complaint, Innovatron alleged that respondents violated section 337 by importing into the United States, and selling after importation, television receivers and receiver access cards that infringe claim 8 of Innovatron's U.S. Letters Patent 4,404,464 (the "'464 patent''). The presiding administrative law judge (''ALJ'') held an evidentiary hearing from September 29 to October 7, 1997.

On March 24, 1998, the ALJ issued his final ID finding a violation of section 337. He found that claim 8 of the '464 patent was not invalid due to anticipation or obviousness, that there have been importations and sales after importation of the accused devices, and that the accused devices can be used to practice the method patented in claim 8 of the '464 patent. He also found that respondents actively induced infringement of claim 8 of the '464 patent and that they contributorily infringed that claim as well. Finally, the ALJ found that there is a domestic industry with respect to the '464 patent.

On April 6, 1998, the Commission investigative attorney and the Thomson respondents filed petitions for review of the ALJ's final ID. Complainant Innovatron filed a response in opposition to the petitions. The Commission determined to review the bulk of the ID and directed the parties to file written responses addressing certain questions posed in the Commission's notice of review, and the issues of remedy, the public interest, and bonding. In accordance with the Commission's directions, the parties filed initial briefs on June 11, 1998, and reply briefs on June 18, 1998.

Having examined the record in this investigation, including the ID, the review briefs, and the responses thereto, the Commission determined that there is no violation of section 337. More specifically, the Commission modified the ALJ's construction of claim 8 of the '464 patent, and found the claim as properly construed to be valid but not infringed by users of the accused imported products. The Commission found further that the domestic industry requirement is not met in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Copies of the public version of the ID, the Commission's order and opinion, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: July 20, 1998.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–19869 Filed 7–23–98; 8:45 am]

BILLING CODE 7020–02–P

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## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–373 & 731–TA–769–775 (Final)**

## Stainless Steel Wire Rod From Germany, Italy, Japan, Korea, Spain, Sweden, and Taiwan; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Closure of a portion of a Commission hearing to the public.

**SUMMARY:** Upon request of certain respondents in the above-captioned final investigations, the Commission has unanimously determined to conduct a portion of its hearing scheduled for July 22, 1998 in camera. *See* Commission rules 207.24(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.24(d), 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

**FOR FURTHER INFORMATION CONTACT:** Peter Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3152. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that respondents have justified the need for a closed session. A full discussion regarding the proprietary financial and trade data of all parties in these investigations can only occur if a portion of the hearing is held in camera. Because much of this information is not publicly available, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held in camera. The Commission has determined to deny, however, petitioners' request to allow representatives of the petitioning firms who are not on the administrative protective order to attend the closed session. The Commission believes that petitioners have not justified their request. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a presentation by respondents that discusses the business proprietary information submitted in this proceeding, and for questions from the Commission relating to the BPI, followed by an in camera presentation by petitioners. For the in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The Commission is allotting twenty minutes for each in camera session. The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

**Authority:** The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Stainless Steel Wire Rod from Germany, Italy, Japan, Korea, Spain, Sweden and Taiwan, Inv. Nos. 701–TA–373 & 731–TA–767–775 (Final) may be closed to the public to prevent the disclosure of BPI.

Issued: July 20, 1998.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 98–19870 Filed 7–23–98; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on June 30, 1998, a proposed *De Minimis* Consent Decree in *United States* v. *Arkwright, Inc.*, Civil Action No. 96–CV–75795, was lodged with the United States District court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against Arkwright, Inc. for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, Arkwright, Inc. will pay a total of $793,431 in reimbursement of response costs incurred by the United States Environmental Protection Agency at 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 proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Arkwright, Inc.*, D.J. Ref. 90–11–3–289E.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–19733 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–15–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 July 10, 1998, a proposed Consent Decree in *United States* v. *The Town of Milford*, No. 98–430–B (D.N.H.), was lodged with the United States District Court for the District of New Hampshire.

In this action the United States sought, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), recovery of costs concerning the First Operable Unit of the Fletcher Paint Works and Storage Facility Superfund Site (the ''Site''), located in Milford, New Hampshire. The Town of Milford currently owns a portion of the Site and previously operated a burning dump on another portion of the Site. In the proposed consent decree, the settling party, the Town of Milford, New Hampshire, agrees to pay to the United States, $62,139.00, for past and future response costs incurred at the First Operable Unit at the Site, to provide various in-kind services, including replacement piping material, which is valued at $16,675.00, to provide access to portions of the Site owned or controlled by the Town of Milford, and to covenant not to sue the United States. This settlement does not address any potential liability for the Second Operable Unit at 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 decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *The Town of Milford*, D.J. Ref. 90–11–3–684A. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The consent decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Room 312, Concord, New Hampshire 03301–3904, at U.S. EPA Region I, One Congress Street, Boston, Massachusetts 02203, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail for the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 98–19736 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the Resource Conservation and Recovery Act

In accordance with 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in *United States* v. *Refined Metals Corporation*, Civil Action No. IP 90–2077–C (S.D. Ind.), was lodged with the United States District Court for the Southern District of Indiana, on July 14, 1998. The proposed consent decree would resolve the United States' civil claims against the Refined Metals Corporation under the Clean Air Act (CAA), 42 U.S.C. 7401 *et seq.*, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, for certain of its operations at its facility in Beech Grove, Indiana.

Under the terms of the proposed consent decree, defendant Refined Metals Corporation will comply with all applicable requirements of the CAA and RCRA, perform closure and corrective actions at its plant, and, in the event the company recommences operations, install air pollution control equipment that will prevent emissions of lead and particulate matter in excess of the State Implementation Plan limits. In addition, the Decree provides for the payment of a $210,000 civil penalty, including

interest from February 26, 1998, and stipulated penalties for failure to comply with the CAA, RCRA, and the Decree.

The Department of Justice will receive, for a period of thirty (30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Refined Metals Corporation*, Civil Action No. IP 90–2077–C (S.D. Ind.) and DOJ Reference No. 90–11–2–469.

The proposed consent decree may be examined at: (1) the office of the United States Attorney for the Southern District of Indiana, U.S. Courthouse 5th Floor, 46 East Ohio Street, Indianapolis, Indian 46204, 317–226–6333; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 2005–202–624–0892. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $70.00 (pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–19737 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree

Notice is hereby given that on July 13, 1998 a proposed Consent Decree in *Upper Chattahoochee Riverkeeper Fund, Inc., The Chattahoochee Riverkeeper, Inc., and W. Robert Hancock, Jr.* v. *The City of Atlanta, Georgia*, Civil Action No. 1:95–CV–2550–TWT and *United States of America and State of Georgia* v. *City of Atlanta*, Civil Action 1:98–CV–1956–TWT (CONSOLIDATED) was lodged with the United States District Court for the Northern District of Georgia. This Consent Decree represents a settlement of claims against the City of Atlanta, Georgia under Section 309 (b) and (d) of the Clean Water Act, 33 U.S.C. 1319 (b) and (d).

Under this settlement between the Citizen Plaintiffs, United States, the State and the City, the City will be required to undertake extensive rehabilitation to its Combined Sewer Overflow systems (CSOs). The consent decree also provides for the recovery of a civil penalty of $2,500,000 to be paid by the City. The penalty shall be paid as follows: within thirty (60)??? days after the consent decree is entered by the Court, the City shall pay $500,000 to the United States, and $500,000 to the State of Georgia, on or before the one year anniversary of the Date of Entry, the City shall pay $750,000 to the United States and $750,000 to the State of Georgia. In addition, the consent decree requires the City to undertake the implementation of a Supplemental Environmental Project (''SEP''). The SEP involves the acquisition of riparian properties or ''greenways'' for the purpose of reducing or eliminating non-point source pollution into the Chattahoochee and South Rivers and or their tributaries. The City shall also be required to undertake a cleanup of the Combined Sewer Overflow stream beds. A secondary benefit of the SEP shall be to protect, restore, and enhance aquatic and stream corridor habitats of the river systems.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States of America and State of Georgia* v. *City of Atlanta, Georgia*, Civil Action No. 1:98–CV–1956–TWT (CONSOLIDATED), D.J. Ref. 90–5–1–1–4430.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Georgia, 1800 United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30335 and at Region 4, Office of the Environmental Protection Agency, Water Programs Enforcement Branch, Water Management Division, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. In requesting a copy, please enclose a check in the amount of $29.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–19735 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Under the Clean Air Act

Notice is hereby given that on June 12, 1998, a proposed Consent Decree in *United States* v. *Wells Cargo, Inc.*, Civil Action No. CV–S–98–00901–LDG (RLH) was lodged with the United States District Court for the District of Nevada.

In this action the United States sought injunctive relief and the assessment of civil penalties against Wells Cargo, Inc., located in Las Vegas, Nevada. The United States alleges that Wells Cargo, Inc. operated its nonmetallic mineral processing plant and hot mix asphalt facility in violation of Sections 110 and 111 of the Clean Air Act, 42 U.S.C. 7410 and 7411. Specifically, the United States alleges that Wells Cargo, Inc., in violation of applicable New Source Performance Standards, failed to make required notification to the U.S. Environmental Protection Agency regarding the construction commencement date, the start-up date, and the opacity observation date for new equipment installed in December, 1994. The United States also alleges that Wells Cargo failed to perform timely opacity observations after the installation and start-up of new equipment. The United States further alleges that Wells Cargo operated its asphalt facility in violation of the emission limit for visible air contaminants as set forth in the Nevada state implementation plan. The Consent Decree entered provides for a civil penalty to be paid by the defendant of $61,000 and the installation and operation of a smoke recovery system to be placed over the hot mix asphalt storage silos.

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 of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to United States v. Wells Cargo, Inc., D.J. Ref. 90–5–2–1–2127.

The Consent Decree may be examined at the Office of the United States Attorney, 701 E. Bridger Avenue, Suite

800, Las Vegas, Nevada, at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 98–19734 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement; United States v. General Electric Company and InnoServ Technologies, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States v. General Electric Company and InnoServ Technologies, Inc., No. 1:98CV01744RCL (D.D.C., filed July 14, 1998). On July 14, 1998, the United States filed a Complaint alleging that the proposed acquisition of InnoServ by General Electric would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, permits General Electric to acquire InnoServ but requires that General Electric divest InnoServ's PREVU diagnostic software used in the maintenance and repair of diagnostic imaging machines (e.g., CT scanners, MRIs, x-ray machines). Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C., in Room 215, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Public comment is invited within 60 days of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Suite 300, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202/616–5935).

**Constance Robinson,**

*Director of Operations and Merger Enforcement, Antitrust Division.*

### Stipulation and Order

The undersigned parties, by their respective attorneys, stipulate that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties, and venue of this action is proper in the District of Columbia.

2. The Court may enter and file a Final Judgment in the form hereto attached upon the motion of any party or upon the Court's own motion at any time after compliance with the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice on defendants and by filing that notice with the Court.

3. The defendants agree to comply with the proposed Final Judgment pending its approval by the Court, and shall, from the date of signing this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though it were in full force and effect as an order of the Court, provided, however, that defendants shall not be bound by the terms and provisions of the proposed Final Judgment unless and until the closing of any transaction in which General Electric Company directly or indirectly acquires all or any part of the assets or stock of InnoServ Technologies, Inc.

4. If the United States withdraws its consent, or the court does not enter the proposed Final Judgment pursuant to the terms of the Stipulation, the time for all appeals of any Court ruling declining entry of the Final Judgment has expired, and the Court has not otherwise ordered continued compliance with the Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

5. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Dated: July 14, 1998.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Joel I. Klein,

*Assistant Attorney General.*

John M. Nannes,

*Deputy Assistant Attorney General.*

Constance K. Robinson,

*Director of Operations and Merger Enforcement.*

Mary Jean Moltenbrey,

*Chief, Civil Task Force.*

Susan L. Edelheit,

*Assistant Chief, Civil Task Force.*

Jon B. Jacobs, Fred E. Haynes, Joan H. Hogan, Peter J. Mucchetti,

*Attorneys for the United States.*

Bernard M. Hollander,

*Senior Trial Attorney, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 514–5012.*

For Defendant General Electric Company:

Richard L. Rosen,

*Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004, (202) 942–5499.*

For Defendant Innoserv Technologies, Inc.:

Malcolm R. Pfunder,

*Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, (202) 955–8227.*

So ordered on this ____ day of _____

United States District Judge.

### Final Judgment

Plaintiff, United States of America, filed its Complaint on July 14, 1998. Plaintiff and defendants, General Electric Company (''GE'') and InnoServ Technologies, Inc. (''InnoServ''), by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence or admission by any party with respect to any issue of fact or law. Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court.

The essence of this Final Judgment is the prompt and certain divestiture through sale or licensing of certain rights or assets by the defendants to establish a viable competitor in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Defendants have represented to the United States that the sale required below can and will be accomplished and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify

any of the divestiture provisions contained below.

Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

*I Jurisdiction*

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against GE and InnoServ under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

*II Definitions*

As used in this Final Judgment:

(A) ''Diagnostic imaging equipment'' means equipment that produces images of the interior of the human body used for diagnostic or therapeutic purposes in the practice of medicine.

(B) ''GE'' means defendant General Electric Company, a New York corporation with headquarters in Fairfield, Connecticut, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(C) ''InnoServ'' means defendant InnoServ Technologies, Inc., a California corporation with headquarters in Arlington, Texas, its successors, assigns, divisions, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and its directors, officers, employees, agents, consultants, or other persons acting for or on behalf of any of them.

(D) ''PREVU diagnostic package'' means the intellectual property and any other related assets owned by InnoServ as part of its proprietary advanced diagnostic service, including its PREVU remote access software, PREVU computer, and cables necessary to interface the PREVU computer to diagnostic imaging equipment for the purpose of performing on-site and remote diagnostics.

*III Applicability*

This Final Judgment applies to the defendants, and each of their successors and assigns, subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

*IV Sale of Prevu Diagnostic Package*

(A) GE is ordered, within 180 calendar days from the date of the filing of the Complaint in this action or five days after notice of entry of this Final Judgment by the Court, whichever is later, to sell InnoServ's PREVU diagnostic package to an acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to 30 calendar days, and shall notify the Court in such circumstances. GE agrees to use its best efforts to accomplish the sale as expeditiously as possible.

(B) Unless the United States otherwise consents in writing, the sale of the PREVU diagnostic package shall include the entire PREVU diagnostic package and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the PREVU diagnostic package can and will be utilized by the purchaser as a part of a viable, ongoing business. The sale, whether made by GE under this section or by a trustee under Section V, shall be made to a purchaser that, in the United State's sole judgment: (1) has the capability and intent of competing effectively, and (2) has the managerial, operational, and financial capability to compete effectively, in the sale of service for certain models of GE diagnostic imaging equipment, in the sale of comprehensive asset-management or multi-vendor services, or in the licensing of advanced diagnostic software for use in any such service. Furthermore, none of the terms of any agreement between the purchaser and GE shall give GE the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively.

(C) In accomplishing the sale ordered by this Final Judgment, GE promptly shall make known, by usual and customary means, the availability of the PREVU diagnostic package. GE shall inform any person making inquiry regarding a possible purchase of the PREVU diagnostic package that the package is being sold pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. GE shall offer to furnish to all bona fide prospective purchasers, subject to confidentiality assurances, all information and documents relating to the PREVU diagnostic package customarily provided in a due diligence process—including access to personnel, inspection of the assets, and any financial, operational or other documents relevant to the sale—except such information or documents subject to the attorney-client or work-product privileges. GE shall make available such information to the United States at the same time that such information is made available to any other person.

(D) GE shall provide to the purchaser of the PREVU diagnostic package and to the United States information relating to the personnel who have the primary responsibility for the development, maintenance, and distribution of the PREVU diagnostic package, and training thereon, to enable the purchaser to make offers of employment. GE will not interfere with any negotiations by the purchaser to employ any such person.

(E) If a sale is accomplished under this Final Judgment, GE may retain a non-exclusive, nonassignable license (without right to sublicense) to use the PREVU diagnostic package solely:

(1) In connection with fulfilling InnoServ service contracts in effect on the date of GE's acquisition of InnoServ;

(2) In connection with fulfilling any service contracts resulting from written proposals made by InnoServ to prospective customers that are outstanding on the date of GE's acquisition of InnoServ, provided that any such contract is entered into within 90 days of GE's acquisition of InnoServ; and

(3) in connection with fulfilling any renewals of any service contracts described in Section IV(E)(1) or (2), so long as the renewal was entered into prior to any sale of the PREVU diagnostic package.

Such a license pursuant to Section IV(E)(1), (2), and (3) shall expire, for each such contract, on the expiration date of the contract in effect on the date that the PREVU diagnostic package is sold.

(F) Nothing in this Final Judgment shall prevent the buyer of the PREVU diagnostic package from granting GE any non-exclusive rights to use the PREVU diagnostic package in addition to those rights listed in Section IV(E), but GE shall not make any such grant of additional rights a condition of the sale.

*V Appointment of Trustee*

(A) If GE has not sold the PREVU diagnostic package within the time period specified in Section IV(A), GE shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States to effect the sale of the PREVU diagnostic package. Until such time as a trustee has been appointed, GE shall continue to

use its best efforts to accomplish the sale of the PREVU diagnostic package.

(B)After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the PREVU diagnostic package. The trustee shall have the power and authority to accomplish a sale at the earliest possible time to a purchaser acceptable to the United States at the best price and on the best terms as are then obtainable upon the reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers respecting the PREVU diagnostic package as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of GE any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the sale.

(C) GE shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by GE must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

(D) The trustee shall serve at the cost and expense of GE, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for this services and those of any professionals and agents retained by the trustee, any remaining money shall be paid to GE, or GE shall pay to the trustee any expenses not covered by the proceeds of the sale, and the trust shall then be terminated. The compensation and expenses of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the PREVU diagnostic package and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the sale and the speed with which it is accomplished.

(E) GE shall use its best efforts to assist the trustee in accomplishing a sale. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities relating to the assets to be sold, and GE shall develop financial and other information relevant to such assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. GE shall take not action to interfere with or to impede the trustee's accomplishment of a sale. GE shall permit bona fide prospective purchasers of the assets to have reasonable access to personnel and to make such inspection of any and all financial, operational, or other documents and other information as may be relevant to a sale under this Final Judgment.

(F) After its appointment, the trustee, shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish a sale or license (as provided in V(G)–(H)) under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire or license, expressed an interest in acquiring or licensing, entered into negotiations to acquire or license, or was contacted or made an inquiry about acquiring or licensing, and interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to sell or license the PREVU diagnostic package.

(G) If the trustee has not accomplished a sale of the PREVU diagnostic package within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (i) the trustee's efforts to accomplish a sale, (ii) the reasons, in the trustee's judgment, why a sale has not been accomplished, and (iii) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

(1) Extending the trust and the term of the trustee's appointment to sell the PREVU diagnostic package by a period that is reasonable in light of the trustee's earlier efforts and any additional efforts that the Court believes can reasonably be made to sell the PREVU diagnostic package; or

(2) Directing the trustee to proceed with licensing the PREVU diagnostic package pursuant to Section V(H).

(H) Upon entry of an order by the Court pursuant to Section V(G)(2) directing the trustee to license the PREVU diagnostic package, or upon the expiration of any extended period for the sale of the PREVU diagnostic package ordered by the Court pursuant to Section V(G)(1), the trustee shall, for one year, offer perpetual, fully paid-up (at a reasonable royalty rate), non-exclusive licenses to the PREVU diagnostic package to any interested service providers of diagnostic imaging equipment. The rights granted to such licensees shall include the perpetual right to use, copy, and sublicense the PREVU diagnostic package and to make and copyright derivative works from it. The trustee shall advertise the availability of such non-exclusive licenses in at least one national general circulation newspaper and one medical diagnostic imaging equipment trade publication, which publications shall be approved by the United States. GE shall pay for all expenses reasonably incurred by the trustee in its attempts to license the PREVU diagnostic package under this section. The trustee shall promptly notify the United States and GE of any persons who acquire a license under this section.

(I) If the trustee sells the PREVU diagnostic package, the trust will terminate when the trustee has fulfilled all its duties regarding the sale. Otherwise, at the end of the one-year licensing period, the trustee shall promptly file with the Court a report setting forth: (i) the trustee's efforts to license the PREVU diagnostic package, (ii) the name, address, and telephone number of each person who acquired a license, made an offer to license, expressed an interest in licensing, entered into negotiations to license, or was contacted or made an inquiry about licensing, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person, and (iii) the trustee's recommendations about whether the trustee's continuing to license the PREVU diagnostic package would serve the public interest. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter an order either:

(1) Extending the trust and the term of the trustee's appointment to license the PREVU diagnostic package by a period that is reasonable in light of the

trustee's earlier efforts and any additional benefits to the public interest that the Court believes would result from continuing attempts to license the PREVU diagnostic package; or

(2) Terminating the trust.

*VI. Notification*

(A) Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect any proposed sale pursuant to Section IV or V of this Final Judgment, GE or the trustee, whichever is then responsible for effecting the sale required herein, shall notify the United States of the proposed sale. If the trustee is responsible, it shall similarly notify GE. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the PREVU diagnostic package, together with full details of the same.

(B) Within 15 calendar days of receipt by the United States of such notice, the United States may request from GE, the proposed purchaser or purchasers, any other third party, or the trustee (if applicable) additional information concerning the proposed sale and the proposed purchaser or purchasers, and any other potential purchaser. GE and the trustee shall furnish any additional information requested from them within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within 30 calendar days after receipt of the notice or within 20 calendar days after the United States has been provided the additional information requested from GE, the proposed purchaser or purchasers, any third party, and the trustee, whichever is later, the United States shall provide written notice to GE and the trustee, if there is one, stating whether or not it objects to the proposed sale. If the United States provides written notice that it does not object, then the sale may be consummated, subject only to GE's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a sale proposed under Section IV or Section V shall not be consummated. Upon objection by GE under Section V(C), a sale proposed under Section V shall not be consummated unless approved by the Court.

*VII. Financing*

GE shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

*VIII. Preservation of Assets*

Until any sale under this Final Judgment has been accomplished:

(A) GE shall preserve the PREVU diagnostic package in its existing condition and shall take no action with respect to the PREVU diagnostic package to cause any deterioration in the value of, or to deter any person from buying or licensing, the PREVU diagnostic package.

(B) GE shall continue to license, on reasonable terms, the PREVU diagnostic package to the persons who are licensees on the date of GE's acquisition of InnoServ.

(C) GE shall not, except as part of a divestiture approved by the United States, sell any part of the PREVU diagnostic package.

(D) GE shall appoint a person or persons to oversee the PREVU diagnostic package, and who will be responsible for GE's compliance with this section.

*IX Affidavits*

(A) Within 20 calendar days of the filing of the Complaint in this action, and every 30 calendar days thereafter until the sale has been completed under Section IV or V, GE shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding 30 days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the PREVU diagnostic package, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts GE has taken to solicit a purchaser for the PREVU diagnostic package and to provide required information to prospective purchasers including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by GE, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

(B) Within 20 calendar days of the filing of the Complaint in this action, GE shall deliver to the United States an affidavit that describes in reasonable detail all actions GE has taken and all steps GE has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. GE shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in GE's earlier affidavit(s) filed pursuant to this section within 15 calendar days after the change is implemented.

(C) Until one year after a sale has been completed or, if a sale is not completed, one year after the trust under Section V is terminated, GE shall preserve all records of all efforts made to preserve, sell, and license the PREVU diagnostic package.

*X Compliance Inspection*

(A) For the purposes of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to GE, be permitted:

(1) Access during GE's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or control of GE, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, GE's officers, employees, or agents, who may have counsel present, regarding such matters. The interviews shall be subject to GE's reasonable convenience and without restraint or interference by GE.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, GE shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section or Section IX shall be divulged by the United States to any person other than a duly-authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by GE to the

United States, GE represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and GE marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 calendar days notice shall be given by the United States to GE prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which GE is not a party.

*XI Retention of Jurisdiction*

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**Competitive Impact Statement**

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

The United States filed a civil antitrust Complaint on July 14, 1998, alleging that General Electric Company's (''GE'') proposed acquisition of InnoServ Technologies, Inc. (''InnoServ'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that GE and InnoServ compete in servicing individual pieces of GE medical imaging equipment and in the sale of comprehensive multi-vendor or asset-management services (''multi-vendor service''). Multi-vendor service involves contracting to service all or a significant portion of a hospital's medical equipment.

The proposed combination would substantially lessen competition and tend to create a monopoly in the markets for servicing certain models of GE imaging equipment, especially GE CT scanners and magnetic resonance imagers (MRIs), and in multi-Vendor service. InnoServ is an effective competitor of GE in part because InnoServ is one of very few companies that has developed proprietary diagnostic software for servicing certain models of GE imaging equipment. The prayer for relief in the Complaint seeks: (a) an adjudication that the proposed merger would violate Section 7 of the Clayton Act; (b) a permanent injunction preventing the transaction's consummation; (c) plaintiff's costs of this action; and (d) such other relief as is just and proper.

Prior to filing this suit, the parties reached a proposed settlement that permits GE to acquire InnoServ, yet preserves competition in the markets in which the transaction would raise significant competitive concerns. Along with the Complaint, the parties filed a Stipulation and proposed Final Judgment setting out the settlement terms.

The proposed Final Judgment orders GE to divest InnoServ's proprietary diagnostic service software and related materials, which are collectively known as the PREVU diagnostic package, to an acquirer acceptable to the United States. Unless the United States agrees to a time extension, GE must complete the divestiture within 180 calendar days after the filing of the Complaint or five days after notice of the entry of this Final Judgment by the court, whichever is later.

If GE does not complete the divestiture within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the PREVU diagnostic package. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, GE must continue to license, on reasonable terms, the PREVU diagnostic package to persons who were PREVU licensees on the date GE acquires InnoServ.

If the trustee has not sold the PREVU diagnostic package within six months of its appointment, it will, for one year, license the package at a reasonable royalty rate to any service provider unless the Court grants the trustee additional time to complete a sale. The licenses will be perpetual, fully paid-up, and non-exclusive and include the perpetual right to use, copy, and sublicense the package and to make and copyright derivative works.

The plaintiff and defendants have stipulated that the court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

*II. Description of the Events Giving Rise to the Alleged Violation*

A. The Defendants and the Proposed Transaction

GE is a New York corporation headquartered in Fairfield, Connecticut. GE is a diversified technology, manufacturing, and services company. In 1997, GE's total revenues exceeded $90 billion. Its wholly owned subsidiary General Electric Medical Systems (''GEMS''), located in Waukesha, Wisconsin, manufactures medical-imaging equipment such as CT scanners. MRIs, X-ray units, and nuclear-medicine cameras. GEMS is the leading servicer of GE imaging equipment in the United States. GEMS also services imaging equipment manufactured by other companies through GE HealthCare Services, GE's wholly owned multi-vendor and asset-management service group.

InnoServ, a California corporation headquartered in Arlington, Texas, is one of the nation's largest independent service organizations (''ISOs''). InnoServ services individual pieces of medical equipment and provides comprehensive asset management, multi-vendor maintenance and repair, and other specialized services for radiology, cardiology, biomedical, and laboratory equipment. For the fiscal year ending April 30, 1997, InnoServ's service revenues exceeded $37 million. It has struggled financially for the past two years, however, losing over $1.5 million for the nine months ending January 31, 1998. In March 1998, InnoServ publicly expressed concern about its ability to continue to meet its working capital requirements. For some time, InnoServ has been seeking potential buyers of the company, but only GE has made such an offer.

On May 19, 1998, the defendants signed a merger agreement providing that GE would acquire InnoServ's common stock for a purchase price of $16 million. The United States filed this suit because the proposed merger threatened to decrease competition.

B. Anticompetitive Consequences of the Proposed Transaction

Competition between original equipment manufacturers such as GE and ISOs such as InnoServ has benefited hospitals and other owners of medical imaging equipment by driving down the cost of servicing their equipment. GE and InnoServ have been competitors in the market for servicing certain models of GE imaging equipment on a discrete basis and in the multi-vendor service market.

InnoServ is one of the few competitors of GE that has developed proprietary diagnostic software for servicing certain models of GE imaging equipment. Advanced diagnostic software enables a service engineer to more quickly service and maintain imaging equipment. GE also has developed and uses its own advanced diagnostic software for servicing imaging equipment.

GE's proposed acquisition of InnoServ would eliminate InnoServ as an independent competitor in the market for servicing certain models of GE imaging equipment on a discrete basis and in the multi-vendor service market. It would also give GE exclusive control over InnoServ's advanced service software. GE does not license its own advanced diagnostic software to competing service providers and likely would not license PREVU to its service competitors. Because InnoServ is an experienced service provider with access to advanced diagnostic software, GE's proposed acquisition of InnoServ would decrease competition and likely increase prices for imaging equipment service. Given InnoServ's financial difficulties, however, it is not clear whether it can continue as an independent competitor in these markets.

*III. Explanation of the Proposed Final Judgment*

The proposed Final Judgment would promote additional competition in servicing certain models of GE imaging equipment and in multi-vendor service by requiring GE to divest InnoServ's proprietary diagnostic service software and related materials to an acquirer acceptable to the United States. These service materials, which are collectively known as the PREVU diagnostic package, give InnoServ a competitive advantage in servicing certain models of imaging equipment and in multi-vendor service. Unless the United States agrees to a time extension, GE must complete the divestiture within 180 calendar days after the filing of the Complaint in this matter or five days after notice of the entry of this Final Judgment by the Court, whichever is later.

If GE does not complete the divestiture within the divestiture period, the Court, upon application of the United States, is to appoint a trustee selected by the United States to sell the assets. The proposed Final Judgment also requires that, until the divestiture mandated by the Final Judgment has been accomplished, GE must continue to license, on reasonable terms, the PREVU diagnostic package to persons who were PREVU licensees on the date GE acquires InnoServ.

If the trustee has not accomplished the divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the sale, (2) the reasons, in the trustee's judgment, why the sale has not been accomplished, and (3) the trustee's recommendations. At the same time, the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The Court will then either give the trustee additional time to accomplish a sale, depending on the trustee's earlier efforts and any additional efforts that the Court believes can reasonably be made to the accomplish the sale, or direct the trustee, for one year, to license the PREVU diagnostic package at a reasonable royalty rate to any service provider. The licenses will be perpetual, fully paid-up, and non-exclusive and include the perpetual right to use, copy, and sublicense the package and to make and copyright derivative works.

At the end of the one-year licensing period, the trustee shall promptly file with the Court a report setting forth: (1) the trustee's efforts to license the PREVU diagnostic package and (2) the trustee's recommendations as to whether the trustee's continuing to license the PREVU diagnostic package would serve the public interest. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations. The Court will then either: (1) have the trustee continue to license the PREVU diagnostic package for a period that is reasonable in light of the trustee's earlier efforts and any additional benefits to the public interest that would result from continuing attempts to license the package, or (2) terminate the trust.

If a trustee is appointed, the proposed Final Judgment provides that GE will pay all reasonable costs and expenses of the trustee and any professionals and agents retained by the trustee. After appointment, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to divest or license the PREVU diagnostic package as ordered under the proposed Final Judgment.

The divestiture of the PREVU diagnostic package will allow one or more third parties to use the software, which in turn will enable them to service more efficiently certain models of imaging equipment and better compete in the markets for servicing individual pieces of imaging equipment and providing multi-vendor service. In addition to using the package in its service business, a buyer of PREVU could resell or license PREVU to other parties. Similarly, PREVU licensees could also use the package for servicing imaging equipment and/or sublicense PREVU to other parties. Both a buyer and licensees would be free to make and copyright derivative works. The ability to improve upon PREVU will encourage investment in developing advanced service software, which would further improve an entity's ability to compete with GE.

In conjunction with this settlement, GE has also agreed to consent to all of the relief that the Government was seeking in another case, *United States* v. *General Electric Company*, No. CV–96–121–M–CCL (D. Mont. Filed Aug. 1, 1996) (hereinafter ''Montana case''). The settlement of the Montana case should help to alleviate some of the competitive concerns raised by this transaction, by eliminating agreements that prevented numerous hospitals around the country from competing with GE in some of the markets affected by this transaction. The United States considered whether obtaining full relief in the Montana case, by itself, would be a sufficient remedy for this case, abut concluded that the Montana settlement would not fully address the competitive problems raised by the InnoServ transaction. The United States therefore required GE to divest PREVU in addition to settling the Montana litigation. The United States evaluated the merits of the settlement proposals in each case independently, concluding that the proposed settlement of this case is in the public interest for the reasons stated herein, and that the proposed settlement of the Montana case is in the public interest for reasons stated in the Competitive Impact Statement filed in that case today.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The parties have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, provided that the United States has not withdrawn its consent. The APPA conditions that entry upon the Court's prior determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will give all comments due consideration and respond to each of them. The United States remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and responses will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 7th Street, N.W., Suite 300, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

*VI. Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint to enjoin GE's acquisition of InnoServ. The United States is satisfied, however, that the divestiture of the PREVU diagnostic package will promote competition in the relevant markets, particularly given that InnoServ's poor financial condition threatens its ability to continue operations. Incurring the substantial costs and uncertainty of a full trial on the merits of the Complaint is therefore unnecessary.

*VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.[1]

The United States Court of Appeals for the D.C. Circuit has held that this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties.[2] In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [3] Rather,

[A]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.[4]

Accordingly, with respect to the adequacy of the relief secured by the decree, a court should not engage ''in an unrestricted evaluation of what relief would best serve the public.'' [5] Precedent requires that:

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. [citations omitted] The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' [citations omitted] More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose of its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [7]

*VIII. Determinative Documents*

There are not determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: July 14, 1998.

Respectfully submitted,

Jon B. Jacobs,

Fred E. Haynes,

Joan H. Hogan,

Peter J. Mucchetti,

*Attorneys for the United States, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20539, (202) 514–5012.*

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[1] 15 U.S.C. 16(e).

[2] *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[4] *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

[5] *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *see also Microsoft*, 56 F.3d at 1460–62.

[6] *Bechtel*, 648 F.2d at 666; *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[7] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—''Advanced Micro Devices, Inc./Objectspace, Inc.''

Notice is hereby given that, on December 19, 1997, pursuant to 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Advanced Micro Devices, Inc./ObjectSpace, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the parties are: Advanced Micro Devices, Inc., Austin, TX; ObjectSpace, Inc. Dallas, TX.

The Consortium's are of planned activity is to develop and demonstrate a distributed computing infrastructure and applications software for defining and deploying software agents to improve the overall factory effectiveness of semiconductor factories. The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Standards and Technology, and The Department of Commerce.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cummins Engine, UNOVA Landis/Gardner/Goldcrown, Cincinnati Milacron

Notice is hereby given that, on January 20, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cummins Engine Company, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Cummins Engine Company, Inc., Columbus, IN; UNOVA Landis/Gardner/Goldcrown, Waynesboro, PA; Cincinnati Milacron, Cincinnati, OH. The nature and objectives of the venture are to develop and demonstrate sub-micron precision grinding of advanced engineering materials. The activities of this venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations Antitrust Division.*

[FR Doc. 98–19741 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993 Fuel Cell Commercialization Group

Notice is hereby given that, on April 2,1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Fuel Cell Commercialization Group (''FCCG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership/project status. The changes include the resignation and withdrawal of nine members of the FCCG. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the FCCG advised that City of Burbank Public Service Department, Burbank, CA; Central and Southwest Services, Dallas, TX; Lincoln Electric System, Lincoln, NE; City of Manassas Electric Department, Manassas, VA; Massachusetts Municipal Wholesale Electric Company, Ludlow, MA; Southern California Edison, Irwindale, CA; New York Power Authority, New York, NY; Oglethrope Power Corporation, Tucker, GA; and Zieglar Coal Holding Company, Fairview Heights, IL are no longer members of the FCCG.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the FCCG remains open, although certain membership benefits are based in part on the date on which the member joined the organization. The FCCG intends to file additional written notification disclosing all changes in membership.

On September 21, 1990, the FCCG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 25, 1990, 55 FR 43050.

The last notification was filed with the Department on January 24, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 10, 1996, 61 FR 15970.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19740 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Gas Utilization Research Forum (GURF)

Notice is hereby given that, on March 4, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (GURF) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Air Products and Chemicals, Inc., Allentown, PA; Compressor Controls Corporation, Des Moines, IA; and VICO Enterprises, Inc., Houston, TX, have become new members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (GURF) intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum (GURF) filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on August 11, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60530).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19744 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum Project No. 2, Supplemental Study

Notice is hereby given that, on March 4, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C 4301 *et seq.* (''Act''), the Gas Utilization Research Forum (''GURF'') Project No. 2, Supplemental Study has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership, and of a limited open period in which to become a new member of the Supplemental Study, as a Post-Study Participant. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amoco Corporation, Naperville, IL; ARCO International Oil and Gas Company, Plano, TX; BG plc, Loughborough, Leicestershire, United Kingdom; Chevron Research and Technology Company, Richmond, CA; Exxon Production Research Company, Houston, TX; Gaz de France, Nantes Cedex 1, France; Mobil Technology Company, Dallas, TX; and Texaco Natural Gas International, Houston, TX, are current members of the Supplemental Study

Membership in the Supplemental Study, which has been closed as of the Supplemental Study Completion Date, has been reopened to Post-Study Participants for a period of thirty (30) days from the date this notice appears in the **Federal Register**. The members of the Supplemental Study intend to file additional written notification disclosing all changes in membership. Information regarding participation in GURF Project No. 2, Supplemental Study may be obtained from Dennis Winegar, Vice President, International Marketing & Business Development, Texaco Global Gas and Power, 1111 Bagby Street, Houston, TX, 77002, Telephone (713) 752–7654, Facsimile: (713) 752–4681.

On May 15, 1995, GURF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 1995, (60 FR 32170).

The last notification was filed with the Department on September 23, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 5, 1996, (61 FR 56971).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19745 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Intelligent Maintenance Advisor for Turbine Engines (IMATE)

Notice is hereby given that, on March 2, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), GE Aircraft Engines (GEAE) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Electric Company, acting by and through GEAE, Cincinnati, OH; General Electric's Corporate Research and Development Division, Schenectady, NY; Lockhead Martin Company, Bethesda, MD, acting by and through its Control Systems Division, Johnson City, NY; Oceana Sensor Technologies, Inc., Virginia Beach, VA; Applied Research Laboratory of Penn State University, State College, PA. The nature and objectives of the venture are to implement Cooperative Agreement No. MDA972–98–3–002, sponsored by the Defense Advanced Research Projects Agency. The technical objective of this program is to design and test a condition-based intelligent maintenance advisor for turbine engines in order to reduce cost of service, improve maintenance planning, and minimize unnecessary component removals. In addition, the IMATE program will provide the technologies needed for developing the global, propulsion asset-management infrastructures.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19742 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993 Michigan Materials and Processing Institute

Notice is hereby given that, on February 9, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Michigan Materials and Processing Institute (''MMPI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

MMPI has been merged into the National Center for Manufacturing Sciences (''NCMS''). NCMS is the surviving corporation, and the separate legal existence of MMPI has ceased (except as it may be continued by operation of law), as of December 31, 1997. Membership in this group research project is no longer open, and organizations interested in university/industry cooperative projects involving polymer and polymer composites are referred to NCMS.

On August 7, 1990, MMPI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 6, 1990, 55 Fed. Reg. 36710. The last notification was filed with the Department on December 16, 1997. A notice was published in the **Federal Register** pursuant to Section

6(b) of the Act on February 27, 1998, 63 FR 10041.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19738 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Media Laboratory Strategic Alliance

Notice is hereby given that, on December 19, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Media Laboratory Strategic Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Minnesota Mining and Manufacturing Company (''3M''), St. Paul, MN; Ceridian Corporation, acting through its Computing Devices International Division, Bloomington, MN; Ampex Data Systems Corporation, Redwood City, CA; Imation Corporation, Oakdale, MN; Lucent Technologies, Inc., Murray Hill, NJ; Motorola, Schaumburg, IL. The name of the venture is the ''National Media Laboratory Strategic Alliance'', and was entered on November 4, 1997. The nature and objectives of the venture are to perform research and development in the area of information technologies and provide prototype solutions necessary to support military and intelligence community requirements. Some of the information technologies covered include high bandwidth information communication, compression, computing displays, information processing, records management, on-line interactive training, assisted target recognition, multi-media databases, data architectures, storage media, and storage devices.

Membership in the Consortium will remain open and the Consortium will file additional written notifications disclosing all changes in membership.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19743 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Association (''PCA'')

Notice is hereby given that, on February 25, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following changes in the PCA list of members have occurred: Independent Cement Corporation should be deleted and now listed as St. Lawrence Cement Company, Albany, NY; and Fuller-Kovako should also be deleted and now listed as Fuller Bulk Handling, Behtlehem, PA. New members are: Roanoke Cement Company, Roanoke, VA; and Lone Star Northwest, Inc., Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association (''PCA'') intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association (''(PCA'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on September 15, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 31, 1997 (62 FR 58982).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 98–19746 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Affidavit of Support under Section 213A of the Act and Notification of Reimbursement of Means-Tested Benefits.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 1998 at 63 FR 16277, allowing for emergency review with a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 24, 1998. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Dan Chenok, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

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

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

*Overview of this Information Collection*

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Support Under Section 213A of the Act and Notification of Reimbursement of Means-Tested Benefits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–864 and I–864A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is mandated by law for a petitioning relative to submit an affidavit on their relative's behalf. The executed form creates a contract between the sponsor and any entity that provides means-tested public benefits.

(5) *:An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 415,000 principal immigrant respondents at 1.15 hours per response for Form I–864; 150,000 family member respondents at 30 minutes (.5) for Form I–864; and 25,000 respondents at 15 minutes (.25) per response for Form I–864A.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 558,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 4251 I Street NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW., Washington, DC 20530.

Dated: July 20, 1998.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 98–19779 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–18–M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities

**ACTION:** Notice of Information Collection Under Review; Sponsor's Notice of Change of Address.

The Office of Management and Budget (OMB) approval is being sought for the information collection list below. This proposed information collection was previously published in the **Federal Register** on April 2, 1998 at 63 FR 16276, allowing for emergency review with a 60-day public comment period and subsequently withdrawn by the Service. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 24, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Mr. Dan Chenok, (202) 395–7316, Department of Justice Desk Officer, Room 10235, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Mr. Robert B. Briggs, Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points.

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

*Overview of This Information Collection*

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–865. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form will be used by every sponsor who has filed an Affidavit of Support under section 213A of the INA to notify the Service of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 respondents at .233 hours per response.

(6) *An estimate of the total public burden, (in hours) associated with the collection:* 23,300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service (INS), U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Comments may also be submitted to INS via facsimile to (202) 305–0143.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to (202) 514–1534.

Dated: July 20, 1998.

**Robert B. Brigg**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 98–19780 Filed 7–23–98; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

July 21, 1998.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by July 30, 1998. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd Owen ({202} 219–5096 ext. 143).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the U.S. Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 935–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g, permitting electronic submissions of response.

*Agency:* Employment and Training Administration, Office of Job Training Programs.

*Title:* Summer Youth Employment Program.

*OMB Number:* 1205–XXXX (new).

*Frequency:* One-time Report.

*Affected Public:* Local Job Training Partnership Act Agencies.

*Number of Respondents:* 3,328.

*Estimated Time Per Respondent:* Ten minutes.

*Total Burden Hours: 555.*

*Total Burden Cost (capital/startup):* N/A.

*Total Burden Cost (operating/maintaining):* $5,594.56.

*Description:* The employment and Training Administration (ETA) has oversight responsibilities for the Summer Youth Employment and Training. As a part of the Department oversight responsibilities, ETA will conduct a uniform survey of a representative sample of service delivery areas (SDAs) to effectively measure customer satisfaction and collect information on other monitoring protocol data. Information obtained from these surveys will be used to help us access the performance of the summer program and aid the Department in the development of surveys for future summer programs.

**Todd Owen,**

*Departmental Clearance Officer.*

[FR Doc. 98–19867 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34, 363 and NAFTA–02283]**

### Dana Corporation, Marion Forge Division, Marion, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 17, 1998, a company official and Local 1667 of the Boilermakers International Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Adjustment Assistance, applicable to petition numbers TA–W–343, 363 and NAFTA–02283. The denial notices were signed on May 14, 1998, and published in the **Federal Register** on June 22, 1998 (63 FR 33958) and May 29, 1998 (63 FR 29431), respectively.

The petitioners present information that not all products produced by workers at the subject firm were included in the investigation.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 6th day of July 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–19865 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,727]**

### Berg Electronics, Clearfield, Pennsylvania; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1998 in response to a worker petition which was filed June 22, 1998 on behalf of workers at Berg Electronics, including contract workers from Manpower, Incorporated, in Clearfield, Pennsylvania (TA–W–34,727).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–34,558). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of July 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–19861 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,723]**

### Conner Forest Industries, Inc. Wakefield, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1998, in response to a petition by a company official filed on the same date on behalf of workers at Conner Forest Industries, Inc., Wakefield, Michigan.

A certification applicable to the petitioning group of workers, employed at Conner Forest Industries, Inc., Wakefield, Michigan, was issued on September 12, 1998, and is currently in effect (TA–W–32,593). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of July, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–19862 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 3, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 3, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 6th day of July, 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX—PETITIONS INSTITUTED ON 7/6/98

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 34,714 | Nobur Manufacturing Co (Wkrs) | North Hollywood, CA | 06/10/98 | Cutting and Recessing Tools. |
| 34,715 | Paragon Electric Co (IBEW) | Two Rivers, WI | 06/24/98 | Time Controls—Defrost, Lighting. |
| 34,716 | Ambler Industries (Wkrs) | Orangeburg, SC | 06/22/98 | Men's and Boys' Suits, Jackets and Pants. |
| 34,717 | Garland Commercial Ind. (Wkrs) | Freeland, PA | 06/22/98 | Commercial Cooking Equipment. |
| 34,718 | NACCO Materials Handling (Co.) | Flemington, NJ | 06/18/98 | Forklift Trucks and Spare Parts. |
| 34,719 | Angelica Image Apparel (Co.) | Waynesboro, TN | 06/18/98 | Work Pants, Shirts and Dresses. |
| 34,720 | Contenical Cabinet (Wkrs) | Rensselaer, IN | 06/22/98 | Cabinets, Doors, and Vanities. |
| 34,721 | Triple A In The USA (Co.) | Bellaire, OH | 06/23/98 | Ladies' Swimwear. |
| 34,722 | Robinson Manufacturing (Co.) | Oxford, ME | 06/19/98 | Dyed and Finished Wool and Wool Nylon. |
| 34,723 | Connor Forest Industries (Co.) | Wakefield, MI | 06/17/98 | Hardwood Lumber. |
| 34,724 | Nazdar Company (Wkrs) | Chicago, IL | 06/11/98 | Screen Printing Ink. |
| 34,725 | Millport Slacks (Wkrs) | Millport, AL | 06/15/98 | Men's Pants and Shorts. |
| 34,726 | Unity Knitting Mills (Wkrs) | Wadesboro, AL | 04/01/98 | Thermal Undergarments. |
| 34,727 | Berg Electronics (Wkrs) | Clearfield, PA | 06/22/98 | Electronic Connectors. |
| 34,728 | Vestal Electronic Devices (Co.) | Kirkwood, NY | 06/24/98 | Electronic Ferrite Component. |
| 34,729 | Klamath Veneer, Inc (Wkrs) | Klamath Falls, OR | 06/26/98 | Green Veneer. |
| 34,730 | Columbia Lighting-LCA (IBEW) | Houston, TX | 06/18/98 | Commercial Light Fixtures. |
| 34,731 | Kemet Electronics Corp (Co.) | Simpsonville, SC | 06/18/98 | Ceramic Capacitors. |
| 34,732 | Occidental Oil and Gas (Wkrs) | Tulsa, OK | 06/25/98 | Crude Oil. |

[FR Doc. 98–19860 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–34,544]**

### Turner & Minter, Inc. Eagle Rock, Virginia; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 13, 1998 in response to a worker petition which was filed on behalf of workers at Turner & Minter, Inc., Eagle Rock, Virginia.

All workers of the subject firm are covered under an existing certification (TA–W–34,487A).

Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC this 26th day of June 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–19863 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–01873 and NAFTA–01873A]**

### Anglo Fabrics Company, Incorporated, Webster, MA and New York, NY; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility To Apply for NAFTA Transitional Adjustment Assistance on October 19, 1997, applicable to all workers of Anglo Fabrics Company, Incorporated, Webster, Massachusetts. The notice was published in the **Federal Register** on November 7, 1997 (62 FR 60280).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the New York, New York location of Anglo Fabrics Company when it closed in May, 1998. The New York, New York location was headquarter offices, sales and designing to support the production of wool fabrics at the Webster, Massachusetts facility of Anglo Fabrics Company, Incorporated.

Accordingly, the Department is amending the certification to cover workers at Anglo Fabrics Company, Incorporated, New York, New York.

The intent of the Department's certification is to include all workers of Anglo Fabrics Company, Incorporated adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–01873 is hereby issued as follows:

All workers of Anglo Fabrics Company, Incorporated, Webster, Massachusetts (NAFTA–01873) and New York, New York (NAFTA–01873A) who became totally or partially separated from employment on or after July 30, 1996 through October 19, 1999 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10 day of July 1998.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 98–19864 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Massachusetts
- MA980001 (Feb. 13, 1998)
- MA980002 (Feb. 13, 1998)
- MA980003 (Feb. 13, 1998)
- MA980007 (Feb. 13, 1998)
- MA980009 (Feb. 13, 1998)
- MA980017 (Feb. 13, 1998)
- MA9800018 (Feb. 13, 1998)
- MA9800019 (Feb. 13, 1998)
- MA9800020 (Feb. 13, 1998)
- MA9800021 (Feb. 13, 1998)

Maine
- ME980018 (Feb. 13, 1998)
- ME980026 (Feb. 13, 1998)

New York
- NY980003 (Feb. 13, 1998)
- NY980007 (Feb. 13, 1998)
- NY980013 (Feb. 13, 1998)
- NY980018 (Feb. 13, 1998)
- NY980021 (Feb. 13, 1998)
- NY980026 (Feb. 13, 1998)
- NY980060 (Feb. 13, 1998)

*Volume II*

Pennsylvania

PA980005 (Feb. 13, 1998)
PA980006 (Feb. 13, 1998)
PA980027 (Feb. 13, 1998)

*Volume III*

Florida
FL980032 (Feb. 13, 1998)
Kentucky
KY980002 (Feb. 13, 1998)
KY980003 (Feb. 13, 1998)
KY980025 (Feb. 13, 1998)
KY980027 (Feb. 13, 1998)
KY980028 (Feb. 13, 1998)
KY980029 (Feb. 13, 1998)

*Volume IV*

Indiana
IN980002 (Feb. 13, 1998)
IN980003 (Feb. 13, 1998)
IN980004 (Feb. 13, 1998)
IN980006 (Feb. 13, 1998)
Minnesota
MN980003 (Feb. 13, 1998)
MN980005 (Feb. 13, 1998)
MN980007 (Feb. 13, 1998)
MN980008 (Feb. 13, 1998)
MN980012 (Feb. 13, 1998)
MN980015 (Feb. 13, 1998)
MN980027 (Feb. 13, 1998)
MN980031 (Feb. 13, 1998)
MN980035 (Feb. 13, 1998)
MN980039 (Feb. 13, 1998)
MN980043 (Feb. 13, 1998)
MN980046 (Feb. 13, 1998)
MN980049 (Feb. 13, 1998)
MN980058 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)
Ohio
OH980001 (Feb. 13, 1998)
OH980002 (Feb. 13, 1998)
OH980003 (Feb. 13, 1998)
OH980012 (Feb. 13, 1998)
OH980028 (Feb. 13, 1998)
OH980029 (Feb. 13, 1998)
Wisconsin
WI980005 (Feb. 13, 1998)
WI980013 (Feb. 13, 1998)
WI980034 (Feb. 13, 1998)

*Volume V*

Iowa
IA980038 (Feb. 13, 1998)
Kansas
KS980006 (Feb. 13, 1998)
KS980012 (Feb. 13, 1998)
KS980016 (Feb. 13, 1998)
Texas
TX980002 (Feb. 13, 1998)
TX980003 (Feb. 13, 1998)
TX980005 (Feb. 13, 1998)
TX980007 (Feb. 13, 1998)
TX980010 (Feb. 13, 1998)
TX980018 (Feb. 13, 1998)
TX980033 (Feb. 13, 1998)
TX980034 (Feb. 13, 1998)
TX980037 (Feb. 13, 1998)
TX980051 (Feb. 13, 1998)
TX980053 (Feb. 13, 1998)
TX980055 (Feb. 13, 1998)
TX980069 (Feb. 13, 1998)
TX980081 (Feb. 13, 1998)
TX980093 (Feb. 13, 1998)
TX980096 (Feb. 13, 1998)
TX980100 (Feb. 13, 1998)
TX980114 (Feb. 13, 1998)
TX980117 (Feb. 13, 1998)

*Volume VI*

Alaska
AK980001 (Feb. 13, 1998)
AK980002 (Feb. 13, 1998)
AK980010 (Feb. 13, 1998)
Oregon
OR980001 (Feb. 13, 1998)
Washington
WA980001 (Feb. 13, 1998)
WA980002 (Feb. 13, 1998)
WA980003 (Feb. 13, 1998)
WA980005 (Feb. 13, 1998)
WA980006 (Feb. 13, 1998)
WA980007 (Feb. 13, 1998)
WA980008 (Feb. 13, 1998)
WA980011 (Feb. 13, 1998)

*Volume VII*

Arizona
AZ980006 (Feb. 13, 1998)
AZ980012 (Feb. 13, 1998)
California
CA980029 (Feb. 13, 1998)
Hawaii
HI980001 (Feb. 13, 1998)
Nevada
NV980005 (Feb. 13, 1998)

## General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 17th day of July, 1998.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 98–19555 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–27–M

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Application for Waiver of Surface Facilities Requirement

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Application for Waiver of Surface Facilities Requirement. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the For Further Information Contact section of this notice.

**DATES:** Submit comments on or before September 22, 1998.

**ADDRESSES:** Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

**FOR FURTHER INFORMATION CONTACT:**

George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION**

## I. Background

Title 30 Sections 71.400 through 71.402 and 75.1712–1 through 75.1712–3 require coal mine operators to provide bathing facilities, clothing change rooms, and sanitary flush toilet facilities in a location that is convenient for use of the miners. If the operator is unable to meet any or all of the requirements, he/she may apply for a waiver. Title 30 CFR Sections 71.403, 71.404, 75.1712–4 and 75.1712–5 provide procedures by which an operator may apply for and be granted a waiver. Applications are filed with the District Manager for the district in which the mine is located and contain the name and address of the mine operator, name and location of the mine, and a detailed statement of the grounds upon which the waiver is requested and the period of time for which it is requested. Waivers for surface coal mines may be granted for a period not to exceed one year; requests for an annual extension may be sought by the operator. Waivers for underground coal mines may be granted for extended periods of time based on the information provided by the mine operator in the request for a waiver.

The purpose for the waiver is to assure the conditions at the mine make it impractical for the mine operator to provide the required facilities, and to document the circumstances for granting of the waiver. This gives the mine operator written documentation that the requirement(s) of the standard have been waived by MSHA and MSHA inspection personnel will not require the mine operator to comply with the part(s) of the standard included in the waiver. Without this written documentation MSHA inspection personnel can not be assured that a mine operator is not required to provide the required sanitary facilities.

## II. Current Actions

This information is necessary in order to assure the mine operator is not required to provide the sanitary facilities as required by the standard. This information provides written documentation that MSHA has waived the requirements for the applicable part(s) of the standard as outlined in the waiver.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Application for Waiver of Surface Facilities Requirement.

*OMB Number:* 1219–0024.

*Agency Number:* MSHA 212.

*Affected Public:* Business or other for-profit.

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response: (minutes) | Burden (hrs.) |
|---|---|---|---|---|---|
| 71.403 71.404, Initial | 204 | On Occassion | 204 | 30 | 102 |
| 71.403 71.404, Extensions | 519 | Annually | 519 | 20 | 173 |
| 75.1712–4 75.1712–5, Initial | 215 | On occassion | 217 | 30 | 108.5 |
| 75.1712–4 75.1712–5, Extension | 2 | On Occassion | 2 | 20 | 1 |
| Totals | 940 | | 940 | | 384 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 17, 1998.

**George M. Fesak,**

*Director, Program Evaluation and Information Resources.*

[FR Doc. 98–19866 Filed 7–23–98; 8:45 am]

BILLING CODE 4510–43–M

## MISSISSIPPI RIVER COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Mississippi River Commission.

**TIME AND DATE:** 8:30 a.m., August 17, 1998.

**PLACE:** On board MISSISSIPPI V at City Landing, Red Wing, MN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary of regional and national issues affecting Corps of Engineers and Mississippi River Commission projects and programs on the Mississippi River and its tributaries; (2) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps; and (3) District Commander's overview of current project issues within St. Paul District.

**TIME AND DATE:** 2:00 p.m., August 19, 1998.

**PLACE:** On board MISSISSIPPI V at City Landing, Burlington, IA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary of regional and national issues affecting Corps of Engineers and Mississippi River Commission projects and programs on the Mississippi River and its tributaries; (2) Views and suggestions from members of the public on matters pertaining to the programs or

projects of the Commission and the Corps; and (3) District Commander's overview of current project issues within Rock Island District.

**TIME AND DATE:** 9:00 a.m., August 21, 1998.

**PLACE:** On board MISSISSIPPI V at Melvin Price Locks and Dam, Alton, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Summary of regional and national issues affecting Corps of Engineers and Mississippi River Commission projects and programs on the Mississippi River and its tributaries; (2) Views and suggestions from members of the public on matters pertaining to the programs or projects of the Commission and the Corps; and (3) District Commander's overview of current project issues within St. Louis District.

**TIME AND DATE:** 8:30 a.m., August 24, 1998.

**PLACE:** On board MISSISSIPPI V at City Front, Caruthersville, MO.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries projects and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project within Memphis District.

**TIME AND DATE:** 8:30 a.m., August 25, 1998.

**PLACE:** On board MISSISSIPPI V at city Front, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; and (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project.

**TIME AND DATE:** 8:30 a.m., August 26, 1998.

**PLACE:** On board MISSISSIPPI V at Bunge Grain Facility, Mayersville, MS.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; and (3) District Commander's report on the Mississippi River and Tributaries project within Vicksburg District.

**TIME AND DATE:** 8:30 a.m., August 27, 1998.

**PLACE:** On board MISSISSIPPI V near at Teche-Vermilion Pumping Plant, Krotz Springs, LA.

**MATTERS TO BE CONSIDERED:** (1) Report on general conditions of the Mississippi River and Tributaries project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on matters pertaining to the flood control, navigation, and environmental features of the Mississippi River and Tributaries project; (3) District Commander's report on the Mississippi River and Tributaries project within New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Noel D. Caldwell, telephone 601–634–5766.

**Noel D. Caldwell,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 98–19922 Filed 7–22–98; 10:17 am]

BILLING CODE 3710–PU–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 98–099]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that StreamCor Inc., of Pittsburgh, PA, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. LAR 15637–1, entitled ''MAGNETICALLY SUSPENDED FLUID PUMP AND METHOD OF MAKING SAME,'' for which a U.S. Patent Application was filed by the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by September 22, 1998.

**FOR FURTHER INFORMATION CONTACT:** Hillary T. Womack, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–8882; fax (757) 864–9190.

Dated: July 20, 1998.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 98–19844 Filed 7–23–98; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

### Public Meeting

Establishment of the Medicare Commission included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report. The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register.**

Notice of Public Meeting of the National Bipartisan Commission on the Future of Medicare will hold public meetings on August 10, 1998 in the Cannon Caucus Room, Washington DC.

Monday, August 10, 1998, 9:00 a.m.-5:00 p.m., (tentative) Agenda: Graduate Medical Education, Task Force meetings through the afternoon.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380

Authorized for publication in the **Federal Register** by Julie Hasler, Office Manager, National Bipartisan Medicare Commission.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register.**

**Julie Hasler,**

*Office Manager, National Bipartisan Medicare Commission.*

[FR Doc. 98–19878 Filed 7–23–98; 8:45 am]

BILLING CODE 1132–00–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Museum Section (Creation & Presentation category) to the National Council on the Arts will be held on August 10–13, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on August 10, 11, and 12, and from 9:00 a.m. to 4:00 p.m. on August 13, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 9:00 a.m. to 11:00 a.m. on August 13, will be open to the public for a policy discussion on field issues and

needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on August 10, 11, and 12, and from 11:00 a.m. to 4:00 p.m. on August 13, are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of he panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 17, 1998.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 98–19724 Filed 7–23–98; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–410]**

## Central Hudson Gas & Electric Corp. (Nine Mile Point Nuclear Station Unit No. 2); Order Approving Application Regarding Restructuring of Central Hudson Gas & Electric Corporation by Establishment of a Holding Company Affecting License No. NPF–69, Nine Mile Point Nuclear Station, Unit No. 2

### I

Central Hudson Gas & Electric Corporation (Applicant) is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to own and possess a 9-percent interest in Nine Mile Point Nuclear Station, Unit 2 (NMP2), under Facility Operating License No. NPF–69, issued by the Commission on July 2, 1987. In addition to Applicant, the other owners who may possess, but not operate, NMP2 are New York State Electric & Gas Corporation with an 18-percent interest, Long Island Lighting Company with an 18-percent interest, and Rochester Gas and Electric Corporation with a 14-percent interest. Niagara Mohawk Power Corporation (NMPC) owns a 41-percent interest in NMP2, is authorized to act as agent for the other owners, and has exclusive responsibility and control over the operation and maintenance of NMP2. NMP2 is located in the town of Scriba, Oswego County, New York.

### II

Under cover of a letter dated April 8, 1998, as resubmitted June 8, 1998, and supplemented April 22, and July 9,1998, Applicant submitted an application for consent by the Commission, pursuant to 10 CFR 50.80, regarding a proposed corporate restructuring action that would result in the indirect transfer of the operating license for NMP2 to the extent it is held by Applicant. As a result of the proposed restructuring, Applicant would establish a new holding company and become a subsidiary of the new holding company, not yet named, to be created in accordance with an ''Amended and Restated Settlement Agreement'' dated January 2, 1998; as modified and approved by the New York State Public Service Commission's (PSC's) ''Order Adopting Terms of Settlement Subject to Modifications and Conditions'' (issued and effective February 19, 1998) in Case 96–E–0909, and further modified in the PSC's ''Modifications to Amended and Restated Settlement Agreement,'' dated February 26, 1998 (hereafter collectively known as ''Settlement Agreement''). These documents constituting the Settlement Agreement were included with the application dated April 8, 1998.

According to the application, the outstanding shares of Applicant's common stock would be exchanged on a share-for-share basis for common stock of the proposed new holding company, such that the holding company would own all of the outstanding common stock of Applicant. Also under the proposed restructuring, Applicant would sell at auction some of its fossil-fueled generating assets, but would continue to be an ''electric utility'' as defined in 10 CFR 50.2, providing the same utility services as it did before the restructuring. In addition, certain subsidiaries of Applicant would become subsidiaries of the new holding company. Applicant would retain its ownership interest in NMP2 and would continue to be a licensee. No direct transfer of the operating license or interests in the station would result from the proposed restructuring. The transaction would not involve any change to either the management organization or technical personnel of NMPC, which has exclusive responsibility under the operating license for operating and maintaining NMP2 and which is not involved in the proposed restructuring of Applicant.

Notice of the application for approval was published in the **Federal Register** on June 2, 1998 (63 FR 30025), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on June 25, 1998 (63 FR 34667).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application of April 8, 1998, as resubmitted June 8, 1998, and supplemented by submittals dated April 22, and July 9, 1998, the NRC staff has determined that the restructuring of Applicant by establishment of a holding company will not affect the qualifications of Applicant as a holder of the license, and that the transfer of control of the license for NMP2, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated July 19, 1998.

### III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC §§ 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, IT IS HEREBY ORDERED that the Commission approves the application regarding the proposed restructuring of Applicant by the establishment of a holding company, subject to the following: (1) Applicant shall provide the Director, Office of Nuclear Reactor Regulation, a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Applicant to its proposed parent, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Applicant's

consolidated net utility plant, as recorded on Applicant's books of account, and (2) should the restructuring of Applicant not be completed by July 19, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

This Order is effective upon issuance.

**IV**

By August 19, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of the hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ms. Ellen Ahearn, Corporate Secretary, Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12601–4879.

For further details with respect to this Order, see the application for approval dated April 8, 1998, as resubmitted under cover of a letter dated June 8, 1998, and supplemented by letters dated April 22, June 8, and July 9, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 19th day of July, 1998.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–19803 Filed 7–23–98; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–250 and 50–251]**

## Florida Power and Light Company (Turkey Point Plant, Units 3 and 4); Exemption

**I.**

Florida Power and Light (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, for the Turkey Point Plant (TPP), Units 3 and 4. The licenses provide, among other things, that the licensee is subject to all rules, and orders of the Commission now or hereafter in effect.

This facility consists of two pressurized water reactors located in Dade County, Florida.

**II.**

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.71 ''Maintenance of records, making of reports'', paragraph (e)(4) states, in part, that ''Subsequent revisions [to the updated Final Safety Analysis Report (FSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the FSAR] does not exceed 24 months.'' The two units at the TPP site share a common FSAR; therefore, this rule requires the licensee to update the same document annually or within 6 months after each unit's refueling outage (approximately every 9 months).

**III.**

Section 50.12(a) of 10 CFR, ''Specific exemptions,'' states that

> The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *.'' The licensee has proposed updating the unified TPP FSAR 6 months after each Unit 4 refueling outage. With the current length of fuel cycles, FSAR updates would be submitted approximately every 24 months. The underlying purpose of the rule was to relieve licensees of the burden of filing annual FSAR revisions while assuring that such revisions are made at least every 24 months. The Commission reduced the burden, in part, by permitting a licensee to submit its FSAR revisions 6 months after refueling outages for its facility, but did not provide in the rule for multiple unit facilities sharing a common FSAR. Rather, the Commission stated that ''With respect to * * * multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis'' 57 FR 39355 (1992).

The TPP units are on an 18-month fuel cycle. As noted in the staff's Safety Evaluation, the licensee's proposed schedule for TPP FSAR updates will ensure that the FSAR will be maintained current for both units within 24 months of the last revision. The proposed schedule satisfies the maximum 24-months interval between FSAR revisions specified by 10 CFR 50.71(e)(4). Revising the FSAR 6 months after refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). The Commission has further determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 50.71(e)(4) to submit updates to the TPP FSAR within 6 months of each unit's refueling outage. The licensee will be required to submit updates to the TPP FSAR within 6 months after each Unit 4 refueling outage, not to exceed 24 months between subsequent revisions.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (63 FR 36276).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of July 1998.

For the Nuclear Regulatory Commission.

**Samuel J. Collins,**

*Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–19802 Filed 7–23–98; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–397]**

## Washington Public Power Supply System; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–21, issued to Washington Public Power Supply System (Supply System or the licensee), for operation of the Nuclear Project Number 2 (WNP–2) located in Benton County, Washington.

This technical specification (TS) change authorizes the licensee to conduct TS Surveillance 3.8.4.8 (performance test) in lieu of TS Surveillance 3.8.4.7 (service test) for the WNP–2 Division 2 Class 1E 125 VDC battery on a one-time basis. The change to the TS is authorized until the licensee can perform the sevice test during the next scheduled refueling outage or during the next unplanned outage of sufficient duration. This amendment has been requested in accordance with the notice of enforcement discretion granted to the licensee on July 17, 1998.

This amendment needs to be processed on an exigent basis to promptly bring the plant into literal compliance with the technical specifications due to an inadvertent missed surveillance. Without this amendment the licensee would be required to shut down the plant and create an unnecessary plant transient.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the Battery E–B1–2 is to provide 125 VDC power to the Division 2 safety-related loads including: RCIC Turbine Exhaust Valve, CAC Isolation Valves, Diesel (DG–2) Engine Backup Lube and Fuel Oil Pumps, Critical Switchgear control power, Critical Instrument Power Supply Inverter, NSSS Instrument and Control Board power, and control power to the Remote Shutdown Panel. This establishes the Division 2, 125 VDC Power system as an accident mitigation system, and is not an individual precursor of an evaluated accident. Battery E–B1–2 has no role in the initiation of design basis accidents (DBAs) or transients identified in the FSAR.

The proposed change entails a one time relief from verbatim compliance with SR 3.8.4.7 by permitting the performance test in SR 3.8.4.8 to suffice for performance of the SR 3.8.4.7 service test. Improved Technical Specifications (ITS) SR 3.8.4.7 presently allows the ''modified'' performance test in SR 3.8.4.8 to be performed in lieu of the service test in SR 3.8.4.7. The difference between the modified performance test short duration load of 400 amperes for six seconds and the performance test load of 350 amperes is small when compared to the 922 ampere one-minute rating of the battery. Testing at the levels defined in either situation provides a satisfactory battery performance demonstration. Additionally, documented test results since the date of manufacture (1994) of Battery E–B1–2 substantiate the battery's capability to perform its intended safety functions. The performance test completed in April of 1997 demonstrated a battery capacity of 104.7% which is above the battery replacement criteria of 80% capacity. The performance test performed when the battery was new as part of acceptance testing in May of 1994 documented a capacity of 104.17%. Comparing the 1994 and 1997 performance test results indicates that the battery has not degraded during the 4 years since it was manufactured and installed. Based on the substantial battery capacity demonstrated by these performance tests and the short duration peak load required by the service test (400 amps) as compared to the one-minute rating of the battery (922 amps), the battery is fully capable of meeting the requirements of the modified performance test and the service test.

Regular battery surveillances are routinely performed which include specific gravity and battery terminal voltage measurements. As a compensatory measure, in addition to the visual corrosion inspection, the Supply System will measure Battery E–B1–2 connection resistance on a 92 day interval and verify that the intercell connector resistance is ≤ 24.4 E–6 ohms. These surveillance measures will ensure that Battery E–B1–2 remains operable.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Since Battery E–B1–2 is operable and will remain in service, this action will not change the availability of any safety related equipment and no individual precursors of an accident are affected. Therefore, this change does not increase the probability of an accident previously evaluated. In addition, since the functions and capabilities of systems designed to mitigate the consequences of an accident have not changed, the consequences of an accident previously evaluated are not expected to increase. Therefore, there is no significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The service test requires a discharge rate of 400 amps for the first six seconds and drops to less than 250 amps for a duration of two hours. The performance test requires a constant 350 amps throughout the test. Therefore, a difference of 50 amps for the first six seconds is not enveloped by the performance test. The service test requirement of 400 amps is small compared to the manufacturer's one-minute discharge rating of the battery (922 amps). The 50 amperes for six seconds difference in the testing profiles of the SR 3.8.4.7 service test and the SR 3.8.4.8 performance test was confirmed by the manufacturer as insignificant relative to demonstration of the battery capacity and its short duration discharge rate.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration. No modifications to plant configuration will result from this proposed one time surveillance test change. Documented test results demonstrate that Battery E–B1–2 is capable of performing its intended safety function. Since Battery E–B1–2 has not been modified and will remain in operation during Operational Modes 1, 2, and 3 as required by the Technical Specifications, no new failure modes of the 125 VDC Distribution System are introduced.

Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a signficant reduction in a margin of safety.

The basis for the margin of safety for the Division 2, 125 VDC battery is the two hour operating time defined in the DC System

design basis. Battery E–B1–2 is properly sized using the methodology prescribed in IEEE Standard 485–1983 and includes the emergency loads anticipated during a Loss of Coolant Accident (LOCA) with a coincident Loss of Offsite Power (LOOP), for two hours. Additionally, the battery is relatively new having been manufactured and installed in 1994 and is in the prime of its service life. The battery service test performed in April of 1995 documented 114.2 volts @ 459 amps (in-rush) and 111.0 volts @ 279.0 amps (120 mins.). This service test encompassed the safety-related two hour duty cycle and demonstrated that the battery is able to supply and maintain the operable status of all emergency loads for their respective duty times.

The performance test uses the manufacturer's two hour discharge rate and is used to establish baseline capacity for trending battery degradation. The modified performance draws approximately 700.1 ampere-hours and the performance test draws 700 ampere-hours. Both of these tests are more severe than the service test which, when corrected for temperature, draws approximately 413 amp-hours. Since the performance test done in April 1997 demonstrated a capacity of 104.7% (of 700 A-h) there is no decrease in the margin of safety when compared to the total amp-hour demands of the LOCA with LOOP duty cycle, (i.e., the service test).

Battery E–B1–2 will not be removed from service during plant operation. Therefore, there is no change in availability of the Division 2 125 VDC battery, charger, or distribution system, and as such, there is no change in the base assumptions of our PRA models. Thus there is no impact on the WNP–2 PSA. Therefore, this change will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 24, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no

significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Perry D. Robinson, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 17, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 20th day of July 1998.

For the Nuclear Regulatory Commission.

**L. Raynard Wharton,**

*Acting Project Manager Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 98–19804 Filed 7–23–98; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Customer Satisfaction Survey

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation intends to request that the Office of Management and Budget approve a collection of information under the Paperwork Reduction Act. The purpose of this information collection, which will be conducted through customer satisfaction surveys, is to help the agency assess the efficiency and effectiveness with which it serves participants in pension plans it becomes trustee of, and to design actions to address identified problems.

**ADDRESSES:** Comments may be mailed to the Office of General Counsel, Pension Benefit Guaranty Corporation, Suite 340, 1200 K St. NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240 at the same address, between 9 a.m. and 4 p.m. on business days. A copy of the proposed collection may be obtained without charge by writing to the PBGC at the above address or calling 202–326–4040. (For TTY and TDD users, call the Federal Relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The notice can be accessed on the PBGC's home page at http://www.pbgc.gov.

**FOR FURTHER INFORMATION CONTACT:** Marc Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connect to 202–326–4024).

**SUPPLEMENTARY INFORMATION:** An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC intends to request OMB approval of a collection of information consisting of customer satisfaction surveys. The collection is in furtherance of the goals described in Executive Order 12862, Setting Customer Service Standards, which states that, in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. The Executive Order directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order.

The customer satisfaction survey information collection will be accomplished by mailing questionnaires to a random sample of participants and beneficiaries who have had recent contact with the PBGC.

This voluntary collection of information will put a slight burden on a very small percentage of the public. The PBGC will collect information annually from 1,280 participants and beneficiaries in pension plans trusteed by the PBGC. The PBGC estimates that the total annual burden will be 106.66 hours.

The PBGC solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Issued at Washington, DC, this 21st day of July, 1998.

**Stuart Sirkin,**

*Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 98–19879 Filed 7–23–98; 8:45 am]

BILLING CODE 7708–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 27, 1998.

An open meeting will be held on Wednesday, July 29, 1998, at 11:00 a.m. A closed meeting will be held on Friday, July 31, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, July 29, 1998, at 11:00 a.m., will be:

Consideration of whether to issue an interpretive release setting forth the Commission's views on how public companies, investment companies, investment advisers, and municipal securities issuers should meet their disclosure obligations regarding the Year 2000 issue and its consequences. For further information, contact Mauri Osheroff at (202) 942–2840.

The subject matter of the closed meeting scheduled for Friday, July 31, 1998, at 10:00 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 21, 1998.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–19974 Filed 7–22–98; 12:28 pm]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–40226; File Nos. SR–AMEX–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26)**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes and Amendments by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc. Relating to Expansion and Permanent Approval of the 2½ Point Strike Price Program and Order Granting Accelerated Approval of Proposal to Extend the Current Pilot Program

July 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 1998, the American Stock Exchange, Inc. (''AMEX''); on June 30, 1998, the Chicago Board Options Exchange, Inc. (''CBOE''); on June 19, 1998, the Pacific Exchange, Inc. (''PCX''); and on July 1, 1998, the Philadelphia Stock Exchange, Inc. (''PHLX'') (referred to individually as ''Exchange'' and collectively as ''Exchanges'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared by the Exchanges. The AMEX submitted to the Commission Amendment No. 1 to its proposed rule change on July 13, 1998.[3] The CBOE submitted to the Commission Amendment No. 1 to its proposal on July 15, 1998.[4] The PCX submitted to the Commission Amendment No. 1 to its proposed rule change on July 7, 1998,[5] and Amendment No. 2 to its proposal on July 10, 1998.[6] The PHLX submitted to the Commission Amendment No. 1 to its proposed rule change on July 2, 1998,[7] and Amendment No. 2 to its proposal on July 8, 1998.[8] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. As discussed below, the Commission also is granting accelerated approval to the portion of the proposal relating to the extension of the 2½ Point Strike Price Pilot Program until January 15, 1999.

### I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to extend the 2½ Point Strike Price Pilot Program for six-months ending on January 15, 1999, or until the Commission approves the program permanently, whichever occurs first. In addition, the Exchange propose the expand the 2½ Point Strike Price Pilot Program by adding 20 allowable classes to the program each quarter for the 5 calendar quarters immediately following the Commission's grant of permanent approval of the pilot program. The additional options classes will be allocated among the Exchanges according to an agreement to be entered into by the Exchanges. The text of the proposed rule changes is available at the Office of the Secretary, the Exchanges, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the AMEX: 1) requests an extension of the current pilot program for a period of up to six-months from July 17, 1998; 2) sets forth the allocation of the additional option issues among the Exchanges; and 3) represents that the AMEX has sufficient capacity to support the proposed expansion of the program. *See* Letter from Scott G. Van Hatten, Legal Counsel, AMEX, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated July 10, 1998 (''AMEX Amendment No. 1'').

[4] In Amendment No. 1, the CBOE requests an extension of the 2½ Point Strike Price Pilot Program until January 15, 1999, or until the Commission approves the CBOE's proposal to make the program permanent, whichever occurs first. In addition, the CBOE amended its filing to request that the Commission expand the program and approve it permanently. *See* Letter from Timothy H. Thompson, Director—Regulatory Affairs, CBOE, to Deborah Flynn, Attorney, Division, SEC, dated July 14, 1998 (''CBOE Amendment No. 1'').

[5] In Amendment No. 1, the PCX proposes to add an additional 100 issues to the 2½ Point Strike Price Pilot Program and sets forth the allocation of the additional issues among the Exchanges. In addition, the PCX represents that it has not suffered capacity problems in the past and has sufficient capacity to handle an expansion of the program. *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, SEC, dated July 2, 1998 (''PCX Amendment No. 1'').

[6] In Amendment No. 2, the PCX requests an extension of the 2½ Point Strike Price Pilot Program until January 15, 1999, or until the Commission approves the PCX's proposal to make the program permanent, whichever occurs first. *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, SEC, dated July 8, 1998 (''PCX Amendment No. 2'').

[7] In Amendment No. 1, the PHLX clarifies that the allocation of the proposed 100 new options classes is to be made in accordance with an agreement to be reached by the Exchanges. *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinsakas, Deputy Associate Director, Division, SEC, dated July 1, 1998 (''PHLX Amendment No. 1'').

[8] In Amendment No. 2, the PHLX requests an extension of the 2½ Point Strike Price Pilot Program for six-months or until the Commission approves the PHLX's proposal to make the program permanent. *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinsakas, Deputy Associate Director, Division, SEC, dated July 7, 1998 (''PHLX Amendment No. 2'').

## II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of, and basis for, the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

1. Purpose

The Commission previously approved a pilot program proposed by the Exchanges and the New York Stock Exchange (''NYSE'') to list selected options trading at a strike price greater than $25 but less than $50 at 2½ point intervals (*i.e.*, 27½, 32½, 37½, 42½ and 47½).[9] Since its original adoption in 1995, the pilot program has been extended twice, once in July of 1996[10] and again in July of 1997.[11] Currently, the program expires July 17, 1998.[12] Pursuant to the original pilot program, the Exchanges, including the NYSE, were permitted to use 2½ point strike price intervals for a joint total of up to 100 option issues. Each of the Exchanges received an allocation of 10 options plus a percentage of the remaining 50 options equal to each Exchange's *pro rata* share of the total number of equity options listed by the Exchanges.[13] The allocation was subsequently changed to account for the sale of NYSE's option business to CBOE.[14] At the time of the sale of NYSE's option business, the NYSE had 11 option classes in the 2½ Point Strike Price Pilot Program.[15]

Currently, each Exchange is allocated a whole number of classes based on the sum of the following: 1) one quarter of the first 50 issues; and 2) a percentage of the remaining 50 classes determined by each Exchange's *pro rata* share of the total number of equity option listings as of July 1, 1997.[16] In addition, the options originally selected by the NYSE, which have not been subsequently decertified or delisted, continue to be eligible for the pilot program, but are not counted against any Exchange's allotment.[17] However, these classes may not be replaced by another selection in the event a class becomes ineligible or is decertified.

As has been the case since the inception of the 2½ Point Strike Price Pilot Program, when more than one Exchange selects a multiply-traded option for its allotment, the Options Clearing Corporation (''OCC'') will determine which will be deemed to have selected the option according to the procedures agreed upon by the Exchanges. The Exchanges have agreed that an Exchange (''Selecting Exchange'') intending to list 2½ point strikes on an option will inform OCC of its selection by submitting a notice (''Selection Notice'') to OCC between 8:30 a.m. and 12:00 Noon (Central Time). If more than one Exchange submits a Selection Notice to the OCC for the same multiply-traded option, then the Exchange that first submits a Selection Notice to the OCC will be deemed to be the Selecting Exchange for that option. Such option will count toward the allotment of the Selecting Exchange, but not toward the allotment of any other Exchange submitting a Selection Notice under the terms of the pilot program.

In addition, each of the Exchanges has submitted a report to the Commission that includes data and written analysis regarding the operation of the pilot program during the previous year, as required in the 2½ Strike Price Extension Order.[18] The Exchanges generally believe that the pilot program has provided customers greater opportunities and flexibility to tailor their options positions, while enhancing the depth and liquidity of the markets in the selected options classes. Generally, the Exchanges believe that permanent approval of the pilot program is now appropriate given the length of time the program has been in place and its past success.

In addition, the Exchanges are requesting an expansion of the pilot program from 100 to 200 eligible classes. Generally, to provide for the orderly introduction of the new classes and insure that the Exchanges' systems capacity remains sufficient throughout the expansion, the Exchanges propose to add only 20 classes each calendar quarter for the 5 quarters following the Commission's grant of permanent approval of the program. The additional options classes shall be allocated among the Exchanges in accordance with an agreement to be entered into by the Exchanges.[19] The Exchanges[20] and the Options Price Reporting Authority (''OPRA'')[21] represent that sufficient computer processing capacity is available to accommodate the expansion of the 2½ Point Strike Price Pilot Program on a permanent basis. The Exchanges propose to extend the current pilot program for an additional six-months to allow the Commission to consider the Exchanges' request seeking expansion and permanent approval of the 2½ Point Strike Price Pilot Program.

2. Statutory Basis

The Exchanges believe the proposed rule change is consistent with Section 6(b) of the Act[22] in general and furthers the objectives of Section 6(b)(5)[23] in particular in that the joint proposal is designed to prevent fraudulent and manipulative acts and practices, to

[9] *See* Securities Exchange Act Release No. 35993 (July 19, 1995) 60 FR 38073 (July 25, 1995) (order approving File Nos. SR–PHLX–95–08; SR–AMEX–95–12; SR–PSE–95–07; SR–CBOE–95–19; and SR–NYSE–95–12).

[10] *See* Securities Exchange Act Release No. 37441 (July 15, 1996) 61 FR 38234 (July 23, 1996) (order approving File Nos. SR–AMEX–96–24; SR–CBOE–96–41; SR–NYSE–96–19; SR–PSE–96–18; AND SR–PHLX–96–22).

[11] *See* Securities Exchange Act Release No. 38856 (July 21, 1997) 62 FR 40391 (July 28, 1997) (order approving File Nos. SR–AMEX–97–24; SR–CBOE–97–31; SR–PCX–97–30; and SR–PHLX–97–33) (''2½ Point Strike Price Extension Order'').

[12] *Id.*

[13] The original allotment of option issues for each Exchange was: CBOE (28), AMEX (22), PHLX (18), PSE (18), and NYSE (14).

[14] *See* Securities Exchange Act Release Nos. 38541 (April 23, 1997) 62 FR 23516 (April 30, 1997) (File No. SR–CBOE–97–14) (order approving the issuance of trading permits in connection with the purchase of the NYSE's options business) and 38542 (April 23, 1997) 62 FR 23521 (April 30, 1997) (File No. SR–NYSE–97–05) (order approving the transfer of the NYSE's options business to the CBOE).

[15] *See* 2½ Point Strike Price Extension Order, *supra* note 11.

[16] The actual allotment of options issues for each Exchange as of July 1997 is: CBOE (31), AMEX (25), PHLX (23), and PCX (21).

[17] *See* 2½ point Strike Price Extension Order, *supra* note 11.

[18] In the 2½ Point Strike Price Extension Order, *supra* note 11, the Commission required that each Exchange submit a report in conjunction with any proposal to extend, expand or make permanent the pilot program.

[19] The Exchanges have agreed to notify the Commission of the specific allocation of the additional options classes among the Exchanges prior to the actual allocation. Telephone conversation between Richard Strasser, Assistant Director, Division, SEC; Michael D. Pierson, Senior Attorney, PCX; Claire P. McGrath, Managing Director and Special Counsel, AMEX; Jonathan Kallman, Acting General Counsel, PHLX; and Timothy H. Thompson, Director-Regulatory Affairs, CBOE, on July 6, 1998.

[20] *See* PCX Amendment No. 1, AMEX Amendment No. 1, and File Nos. SR–CBOE–98–29 and SR–PHLX–98–26 (collectively ''Exchange Capacity Representations'').

[21] *See* Memorandum from Timothy H. Thompson, Senior Attorney, CBOE, to Joseph P. Corrigan, Executive Director, OPRA, dated June 12, 1998, and Letter from Joseph P. Corrigan, Executive Director, OPRA, to Timothy H. Thompson, Director-Regulatory Affairs, CBOE, dated June 12, 1998 (''OPRA Capacity Statement'').

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organizations' Statement on Burden on Competition*

The Exchanges believe that the proposed rule changes will impose no burden on competition.

*C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule changes.

## III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchanges have also requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act,[24] for approving the extension of the 2½ Point Strike Price Pilot Program for a six-month period ending on January 15, 1999, or until the Commission approves the request to expand the program and approve it permanently, whichever occurs first, on an accelerated basis prior to the thirtieth day after publication in the **Federal Register**.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes, as amended, are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule changes 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File Nos. SR–AMEX–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–PHLX–98–26 and should be submitted by August 14, 1998.

## V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Changes

The Commission finds that the proposed rule changes, as amended, relating to the extension of the 2½ Point Strike Price Pilot Program for six-months or until the Commission approves the Exchanges' proposal to make the program permanent, whichever occurs first, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[25] and, in particular, Section 6(b)(5) of the Act.[26] Specifically, the Commission believes that the proposed six-month extension of the pilot program providing for the listing of 2½ point strike price intervals in selected equity options will continue to provide investors with more flexibility in the trading of equity options with a strike price greater than $25 but less than $50, while allowing the Commission adequate time to consider the Exchanges' proposal seeking expansion and permanent approval of the program.

The Commission finds good cause for granting the Exchanges' request for a six-month extension of the 2½ Point Strike Price Pilot Program prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** As mentioned above, the Exchanges submitted separate reports to the Commission that include data and written analysis regarding the operation of the pilot program as required in the 2½ Strike Price Extension Order. The Commission notes that the Exchanges have not reported any significant problems with the pilot program since its inception and that the Exchanges will continue to monitor the pilot program to ensure that no problems arise. In particular, the Exchanges will continue to monitor the impact of the program on their systems capacity. The Commission believes extending the pilot program on an accelerated basis will provide the investing public with the added flexibility provided by 2½ point strike prices on an uninterrupted basis. Finally, although the pilot has been in place since 1995, the Commission has received no adverse comments concerning the operation of the pilot program. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until January 15, 1999, or until the Commission approves the Exchanges' proposal seeking to expand the program and to have it approved permanently, on an accelerated basis. Accordingly, the Commission believes that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[27]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[28] that the extension of the 2½ Point Strike Price Pilot Program proposed by the Exchanges (File Nos. SR–AMEX–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–PHLX–98–26), as amended, is approved until January 15, 1999, or until the Commission approves the proposal seeking to expand the program and have it approved permanently, whichever occurs first, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–19751 Filed 7–23–98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40219; File No. SR–DTC–98–02]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change to Implement the HUB Mailbox Service

July 16, 1998.

On February 10, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–02) pursuant to

[24] 15 U.S.C. 78s(b)(2).

[25] In granting partial approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** On May 12, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

## I. Description

The rule change implements the HUB Mailbox service. The HUB Mailbox service will use the Institutional Delivery (''ID'')[3] system's already-existing telecommunications facilities to allow investment managers and their custodians to exchange messages regarding: (1) securities purchases; (2) securities sales; (3) reconciliation data relating to securities positions and cash movements; and (4) other security-related transactions as agreed to by two or more HUB users. Occasionally, HUB users may also transmit trade data to recordkeeping vendors in situations where the custodial and accounting functions are performed by two different parties. All information will be entered in an ISITC[4] approved format initially, but other formats may be used later if agreed upon by two or more HUB users.[5]

To use the HUB Mailbox, investment managers and custodians will place formatted records into bundles for each addressee with appropriately coded headers and trailers, and DTC will route the bundles to addressees' mailboxes for retrieval. Addressees will acknowledge receipt of bundles through their mailboxes. All mail messages, both delivered and undelivered, will be transferred at the end of each business day between 2:00 AM and 3:00 AM (ET) to a separate file which can be accessed directly on the next day. DTC will store mail messages for up to five days. The HUB Mailbox service will not do any processing other than to direct mail to appropriate mailboxes.

## II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. As discussed below, the Commission believes that DTC's proposed rule change is consistent with this obligation.

The Commission believes that the electronic mail features of the HUB Mailbox service will enable users to reduce their reliance on facsimile transmissions when communicating information such as the details concerning securities purchases, sales, reconciliation, and other security related information. The Commission believes that transmitting this information electronically is more efficient and accurate than the methods currently used and therefore should help promote the prompt and accurate clearance and settlement of securities transactions.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–02) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–19808 Filed 7–23–98; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39955 (May 4, 1998), 63 FR 26237.

[3] For a complete description of the services provided by the ID system, refer to Securities Exchange Act Release Nos. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving proposed rule change relating to the enhanced ID system); 34166 (June 6, 1994), 59 FR 31660 [File No. SR–DTC–94–01] (order approving proposed rule change to add a standing instruction database to the ID system institutional delivery system); 34199 (June 10, 1994) 59 FR 31660 [File No. SR–DTC–94–04] (order granting accelerated approval of a proposed rule change to implement the interactive capabilities and the electric mail features of the enhanced institutional delivery system); 36050 (August 2, 1995), 60 FR 41139 [File No. SR–DTC–95–10] (order approving proposed rule change implementing advice of confirm correction/cancellation feature and modifying the authorization/exception processing feature of the institutional delivery system); 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98] (interpretation that a ''matching'' service that compares securities trade information from a broker-dealer's customer is a clearing agency function).

[4] ISITC (Industry Standardization for Institutional Trade Communication) is a global working committee of brokers, investment managers, custodians, and vendors which was established in 1991 and has developed standard message formats and operating protocols for transmitting information concerning security-related transactions.

[5] The notice of the proposed rule change, *supra* note 2, incorrectly stated that DTC developed the HUB Mailbox in cooperation with ISITC. It should have stated that DTC developed the HUB Mailbox service in cooperation with some ISITC members.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40227; File No. SR–NASD–98–01]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, and 3 by the National Association of Securities Dealers, Inc. Relating to the NASD's Rules Regarding Electronic Communications Networks, Locked and Crossed Markets, and a Member's Obligation to Provide Nasdaq With Certain Information

July 17, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 27, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. The NASD filed Amendment No. 1 to the proposal on June 8, 1998,[2] Amendment No. 2 on June 30, 1998,[3] and Amendment No. 3 on July 16, 1998.[4] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

Nasdaq is submitting proposed rule changes to amend NASD Rule 4623, which will specify the manner in which orders having a reserved size that are entered into an electronic communications network (''ECN'') must interact with SelectNet orders. Additionally, Nasdaq is proposing to amend NASD Rule 4613(e) by adding a provision regarding locked and crossed markets that occur at the open. Nasdaq also is proposing the adoption of NASD Rule 4625, which will set out the obligation of members participating in

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC, dated June 5, 1998.

[3] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division, SEC, dated June 29, 1998.

[4] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc. to Richard Strasser, Assistant Director, Division, SEC, dated July 15, 1998.

The Nasdaq Stock market to provide specified information to Nasdaq departments and staff when so requested. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 4623. Electronic Communications Networks

(a) The Association may provide a means to permit electronic communications networks *(''ECN'')*, as such term is defined in SEC Rule 11Ac1–1(a)(8), to meet the terms of the [electronic communications network] *ECN* display alternative provided for in SEC Rule 11Ac1–1(c)(5)(ii) (A) and (B) *(''ECN display alternative'')*. In providing any such means, the Association shall establish a mechanism that permits the [electronic communications network] *ECN* to display the best prices and sizes of orders entered by Nasdaq market makers (and other entities, if the [electronic communications network] *ECN* so chooses) into the [electronic communications network] *ECN*, and allows any NASD member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a Nasdaq market maker quotation in Nasdaq operated systems.

(b) An [electronic communications network] *ECN* that seeks to utilize the Nasdaq-provided means to comply with the [electronic communications network] *ECN* display alternative shall:

(1) demonstrate to the Association that it qualifies as an [electronic communications network] *ECN* meeting the definition in the SEC Rule;

(2) be registered as a[n] NASD member;

(3) enter into and comply with the terms of a Nasdaq WorkStation Subscriber Agreement*, as amended for ECNs*;

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the [electronic communications network] *ECN* so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the [electronic communications network] *ECN, and prior to entering such prices and sizes, register with Nasdaq Market Operations for each such security as an ECN*; and

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the [electronic communications network] *ECN* through the Nasdaq-provided display alternative.

*(c) When a NASD member attempts to electronically access through a Nasdaq-provided system an ECN-displayed order by sending an order that is larger than the ECN's Nasdaq-displayed size and the ECN is displaying the order in Nasdaq on a reserved size basis, the NASD member that operates the ECN shall execute such Nasdaq-delivered order:*

*(1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size or larger than the Nasdaq-delivered order; or*

*(2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size or larger than the ECN order (including the reserved size and displayed portions).*

*No ECN operating in Nasdaq pursuant to this rule is permitted to provide a reserved-size function unless the size of the order displayed in Nasdaq is 100 shares or greater. For purposes of this rule, the term ''reserved size'' shall mean that a customer entering an order into an ECN has authorized the ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.*

Rule 4613 Character of Quotations

(a)–(d) No Change

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to or greater than the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to or less than the bid quotation of another market maker entering quotations in the same security.

*The prohibitions of this rule include the entry of a locking or crossing quotation at or after 9:25 a.m Eastern Time if such quotation continues to lock or cross the market at the market's opening, and requires a market maker or ECN that enters a locking or crossing quotation at or after 9:25 a.m. Eastern Time to take action to avoid the lock or cross at the market's open or immediately thereafter, but in no case more than 30 seconds after 9:30 a.m.*

(2) No Change

(3) For purposes of this [paragraph] *rule*, the term ''market maker'' shall include*:* any NASD member that enters into an [electronic communications network] *ECN*, as defined in SEC Rule 11Ac1–1(a)(8), a priced order that is displayed in The Nasdaq Stock Market; *and* [Such term also shall include] any NASD member that operates the [electronic communication network] *ECN* when the priced order being displayed has been entered by a person or entity that is not a[n] NASD member.

*Rule 4625. Obligation to Provide Information*

*(1) A NASD member operating in or participating in the third market. The Nasdaq Stock Market, or other Nasdaq-operated system, shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of Nasdaq when:*

*(a) Nasdaq MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, or provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq MarketWatch is responsible for administering or to other duties and/or obligations imposed on Nasdaq MarketWatch by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or otherwise; this shall include, but not be limited to, information relating to:*

*(i) a locked or crossed market;*

*(ii) a trade reported by a member or ECN to the Automated Transaction Confirmation Service (''ACT''); or*

*(iii) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to NASD Rule 4120 and IM–4120–1; or*

*(iv) a quotation that appears not to be reasonably related to the prevailing market.*

*(b) Nasdaq Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific NASD rule, SEC rule, provision of a joint industry plan (e.g., ITS, UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Nasdaq Market Operations is responsible for administering or to other duties and/or obligations imposed on Nasdaq Market Operations by the Association under the Plan of Allocation and Delegation of Function by the NASD to Subsidiaries or*

*otherwise; this shall include, but not be limited to, information relating to:*

*(i) a clearly erroneous transaction, pursuant to NASD Rule 11890;*

*(ii) a request to reconsider a determination to withhold a primary market maker designation, pursuant to NASD Rule 4612;*

*(iii) a request for an excused withdrawal or reinstatement, pursuant to NASD Rules 4619, 4620, 4730, 5106 and 6350;*

*(iv) the resolution of a trade-through complaint, pursuant to NASD Rules 5262, 5265, and 11890;*

*(v) an ACT input error;*

*(vi) an equipment failure; or*

*(vii) a request to submit a stabilizing bid, pursuant to NASD Rules 4614 and 5106, or a request to have a quotation identified as a penalty bid on Nasdaq, pursuant to NASD Rule 4624.*

*(2) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the NASD's filing with the Commission, Nasdaq included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Background

Under SEC Rule 11Ac1–1(c)(5) (''ECN Rule''),[5] Nasdaq market maker must reflect in its public quotes any superior prices for those orders that the market maker privately places within an ECN. The ECN Rule provides an alternative to this requirement referred to as the ''ECN Display Alternative.'' Under the ECN Display Alternative, a market maker will be deemed to have complied with the ECN Rule if the ECN in which the market maker has placed s superior priced order has: established a link to Nasdaq by displaying the best ECN prices in Nasdaq's quote montage; and provided non-subscribers access, through Nasdaq, to such publicly displayed prices. To accommodate the alternative, Nasdaq created the ''SelectNet Linkage'' which allows: (1) ECNs to display their best prices from market makers and other ECN subscribers in the Nasdaq quote montage, including the inside market display; and (2) Nasdaq member firms to access those prices by sending orders to an ECN through SelectNet. Subsequent to the implementation of the ECN Rule, the following issues have come to the attention of the Association, which have necessitated amending NASD Rules 4613(e) and 4623 and promulgating NASD Rule 4625.[6]

#### 2. Reserved Size

Nasdaq is proposing amendments to NASD Rule 4623 to establish the manner in which orders having a reserved size that are entered into an ECN must interact with SelectNet orders. Since ECNs have been integrated into the Nasdaq market, Nasdaq has observed that ECNs cause a percentage of locked and crossed markets.[7] Frequently, locks or crosses are caused by an ECN's use of ''reserved'' size. Specifically, an ECN may publicly display one size of an order (*e.g.* 1,000 shares), while maintaining a significantly larger size of the order in reserve (*e.g.*, 10,000 shares) that is not displayed until the displayed size is executed against, that is, every time a 1,000 share order is executed against the ECN, the ECN displays another 1,000 shares at the same price until the full size of the order is exhausted. The market maker, however, does not know how many 1,000 share orders it must send to exhaust the ECN's size and take out its quote. As a result, a market maker often will send an ECN multiple SelectNet orders for the displayed size in an attempt to take the quote out. If this practice fails to take out the ECN quote, a market maker will then often send another order for a size larger than the ECN's displayed size to try to take out not only the displayed order but also any undisplayed reserved size. Generally, however, ECNs execute SelectNet orders only for the displayed size (*i.e.*, the market maker can only execute 1,000 shares at a time, not the full 10,000 share order.[8] A market maker will, after making these efforts to take out the ECN quote, post the quote it had orginially wanted to post, which often results in market maker and ECN quotations locking or crossing.[9]

Nasdaq believes that this is inappropriate for several reasons. First, an ECN's unwillingness to execute against an order to the full extent of the ECN's reserved size may violate the best execution duty [10] of the broker/dealer that is operating the ECN. Specifically, Nasdaq believes that the broker/dealer sponsoring the ECN may not be complying fully with best execution obligations if that broker/dealer fills the order in small pieces at the displayed size rather than accepting an order that would fill a customer's entire order. This type of piecemeal execution is also economically inefficient and may cause customers to incur unnecessary transaction costs because multiple executions are required to fill the customer's order in full. Additionally, this type of piecemeal execution contributes to locking and crossing problems in Nasdaq, and thus has a negative impact on market quality and the maintenance of orderly markets.

Accordingly, Nasdaq is proposing an amendment to NASD Rule 4623. Under the proposal, if an ECN displays in Nasdaq an order having a reserved size and a market participant attempts to access the ECN's Nasdaq-displayed order by sending (via a Nasdaq-provided means) an order that is larger than the ECN's Nasdaq-displayed size, the ECN

[5] The ECN Rules is embodied in SEC Rule 11Ac1–1 (''Firm Quote Rule''). *See* 17 CFR 240.11Ac1–1.

[6] Each ECN that chooses to link to Nasdaq must sign a contract that imposes certain obligations on the ECN. Among the requirements are: (1) immediate display of orders; (2) rapid and non-discriminatory execution of SelectNet orders that seek to access the ECN's quotation; and (3) provision of system description regarding the operation of the ECN. While in the past the use of contracts has worked successfully in establishing basic standards for ECN operation and activity, as the number of ECNs has increased since January 1997 it is less efficient to attempt to fashion changes to the contract to address the issues described in this filing. Nasdaq has determined that it is appropriate to propose changes to the rules governing ECNs to address uniformly, across all ECNs, the issues described in this filing.

[7] A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

[8] Nasdaq has noted that ECNs have the capability to accept, and fromm time to time will accept, SelectNet orders for more than the displayed size. Telephone Conversation between Gail Marshall-Smith, Special Counsel, Division, SEC and John F. Malitzis, Senior Attorney, Nasdaq, on July 14, 1998.

[9] Market makers and ECNs are required to use reasonable means not to lock or cross the market. The NASD has interpreted ''reasonable means'' to include perferencing a SelectNet order to the firms(s) at the bid or offer. *See* NASD Notice to Members 97–49. *See also* Letter to Joseph R. Hardiman, President, NASD, for Richard R. Lindsey, Director, Division of Market Regulation, SEC, dated November 22, 1996 (noting that, in the OTC market, a Nasdaq market maker holding a limit order that is marketable against another market maker's or ECN's quote may send a SelectNet message to the market maker or ECN displaying the existing quote. However, after using reasonable efforts to execute against the existing quote, the market maker should display the limit order even if it locks the market).

[10] *See* NASD rule 4613(b).

would be required to execute the Nasdaq-delivered order: (1) up to the size of the Nasdaq-delivered order, if the ECN order (including the reserved size and displayed portions) is the same size as or larger than the Nasdaq-delivered order; or (2) up to the size of the ECN order (including the reserved size and displayed portions), if the Nasdaq-delivered order is the same size as or larger than the ECN order (including the reserved size and displayed portions).

3. Locked/Crossed Markets

Nasdaq also is proposing to amend the NASD's rule governing locked and crossed markets, NASD Rule 4613(e). Nasdaq has observed instances of market makers and ECNs entering orders at 9:29 a.m. (prior to the opening when quotes are not firm) that lock or cross the market and then leaving these orders in place at 9:30 a.m. when the market opens and quotes become firm. This effectively locks/crosses the market on the opening and, therefore, disrupts the market's opening.

Although NASD Rule 4613(e) addresses the responsibility to avoid locking and crossing the market during normal business hours, the rule currently does not specifically set out the responsibility to avoid entering and leaving in place quotations that lock or cross the market on open (although Nasdaq believes that it is clear that such activity is contrary to the rule).[11] Accordingly, the NASD and Nasdaq are proposing to amend NASD Rule 4613(e) to clarify that if a market maker or ECN enters, at or after 9:25:00 a.m. Eastern Time, a quotation that locks or crosses the market on the opening, that market maker or ECN has an obligation to take action to avoid locking or crossing the market immediately at the market's open, but in no case later than 30 seconds thereafter (i.e., 9:30:30 a.m.). By including the 9:25 a.m. benchmark, market makers and ECNs will be better able to determine which party entered a market-locking/crossing quotation, and thus which party has the obligation to execute a transaction against a quote to unlock/uncross the market at the opening. The rule further provides that it is the responsibility of the market maker or ECN that entered the locking or crossing quotation at or after 9:25 a.m. to take action (such as sending a SelectNet order to takeout the quotation that will be crossed or locked or taking down its own quotation) to unlock/uncross the market immediately at the open, but in no case later than 9:30:30 a.m. The 30 second period should give a market participant ample time to send a SelectNet message to the party that it locked or crossed or to take down its quote. Additionally, this provision establishes a standard by when the market participant must resolve the locked/crossed market situation—9:30:30 a.m.

Although Nasdaq believes that market participants should always monitor their preopening quotes to ensure that they do not lock/cross the market on the opening, the proposed rule includes a specific time designation of when market participants should begin monitoring their quotes, an allocation of which party is responsible for unlocking/uncrossing the market, and a specific time designation of when the locking/crossing quote must be removed. Without such standards, there could be confusion as to which quote caused the lock/cross and who has the affirmative obligation to unlock/uncross the market.

4. Staff Information Requests

Nasdaq also is proposing NASD Rule 4625 regarding a member's obligation to supply Nasdaq staff with certain information upon request. Nasdaq's MarketWatch and Market Operations departments have day-to-day responsibilities for administering various NASD and SEC rules, as well as for carrying out duties delegated to them by the Association. For example, Nasdaq's MarketWatch Department is responsible for, among other things, initiating trading halts and monitoring locked and crossed market situations, while Nasdaq's Market Operations Department is responsible for, among other things, reviewing ITS trade-through complaints, clearly erroneous transactions, and requests for excused withdrawals or reinstatements from unexecuted withdrawals.

In order to properly rule or to carry out a departmental function, Nasdaq staff often must obtain information on a real-time basis from a market participant. For example, when monitoring for locked and crossed markets, Nasdaq Market Watch routinely will contact the parties to the lock or cross (*e.g.*, a market maker and/or ECN) to request relevant information.[12] Staff then will review this information on a real-time basis and assist in resolving the locked or crossed market situation.[13]

While Nasdaq staff must request information to properly carry out its duties and responsibilities, currently there is no explicit authority in the NASD's rules that allows Nasdaq staff to do so or that requires members to comply with such requests.[14] While in the past, members generally have cooperated with Nasdaq staff and voluntarily provided requested information, recently some members have refused to comply with such requests. The inability to obtain necessary information frustrates the Nasdaq staff's ability to properly administer NASD and SEC rules and frustrates Nasdaq's responsibility of maintaining fair and orderly markets.

To remedy this situation, Nasdaq is proposing the adoption of NASD Rule 4625. This rule will authorize Nasdaq staff to request information in specific circumstances and will obligate members to comply with such requests. Specifically, under NASD Rule 4625 Nasdaq staff would be permitted to request from a member information directly related: to an SEC or NASD rule that the Nasdaq department is responsible for administering; or to other duties/responsibilities imposed on the Nasdaq department by the Plan of Allocation and Delegation of Function or otherwise delegated by the Associated to such department. The rule also states that the failure to provide information could subject the member to a disciplinary action.

5. Statutory Basis

Nasdaq believes that the proposed rule changes are consistent with Sections 15A(b)(6), 15A(b)(11), and 11A(a)(1)(C) of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

[11] Nasdaq has previously noted that it is especially important at the opening that members monitor their quotes as well as any orders placed in ECNs to avoid locking or crossing the market during the opening. *See* Notice to Members 97–49.

[12] Staff may request information on the identity of the customers, trade information, the reason for the lock or cross (*e.g.*, system error), and other information related to the locked or crossed market situation.

[13] In addition to the locks and crosses, there are other instances when staff must gather information from market makers and ECNs on a real-time basis. For example, Nasdaq Market Watch may need to contact a market maker or ECN to determine quickly if a trade, quotation, or series of trades appearing to be aberrations, were caused by a malfunction of a computer system (which could pose a threat to the integrity of Nasdaq from a technological prospective) or by some other source.

[14] While staff of NASD Regulation currently has authority under Rule 8210 to request information from members, such authority may be exercised only in connection with a current investigation, filed complaint, examination, or authorized disciplinary proceeding. Nasdaq staff requests information to administer a rule, and does not request information in connection with a filed complaint.

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to an perfect the mechanisms of a free and open market and a national market system and in general to protect investors and the public interest.[15] Section 15A(b)(11) empowers the NASD to adopt rules governing the form and content of quotations relating to securities in the Nasdaq market.[16] Such rules must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to, among other things, assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure fair competition among brokers and dealers.[17]

Specifically, the reserved size proposal is consistent with Sections 11A(a)(1)(C) and 15A(b)(6). This proposal helps to ensure that members meet their best execution obligations and discourages piecemeal executions, which may be economically inefficient and costly to the customer. Thus, the proposal promotes just and equitable principles of trade and the protection of investors and the public interest. Additionally, the rule helps remove impediments to and perfect the mechanism of a free and open market, and ensures economically efficient executions by discouraging piecemeal executions of large orders.

The proposal to require members to provide Nasdaq staff with information and the amendments to NASD Rule 4613(e) are consistent with Sections 15A(b)(6) and 11A(a)(1)(C). By requiring market makers and ECNs to avoid locks and crosses on the market's opening and to provide Nasdaq staff with information necessary to administer NASD and SEC rules, these proposed rules foster cooperation and coordination with members. These two proposals also ensure the fair and orderly operation of Nasdaq, as they clearly delineate the obligations regarding the entry of quotations that lock/cross the market at the opening and permit staff to gather information necessary to administer particular rules or to discharge particular departmental duties.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days 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 NASD 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. Solicitations 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–01 and should be submitted by August 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Jonathan G.Katz,**

*Secretary.*

[FR Doc. 98–19807 Filed 7–23–98; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78*o*–3(b)(11).

[17] 15 U.S.C. 78k–1(a)(1)(C).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40224; File No. SR–NSCC–98–2]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Allowing Users of NSCC's Mutual Fund Services (''MFS'') Access to Annuity Processing Services (''APS'') and to Allow Users of APS Access to MFS

July 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 12, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change and on March 26, 1998, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change amends NSCC's rules to allow users of NSCC's Mutual Fund Services (''MFS'') access to Annuity Processing Services (''APS'') and to allow users of APS access to MFS.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of such statements.[2]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

The purpose of the proposed rule change is to give users of NSCC's MFS, currently restricted to use by MFS members, access to APS and to give users of APS, currently restricted to use by APS members, the ability to use MFS. Specifically, shared access to MFS and APS will be achieved by combining categories of Annuities Agency Members and Mutual Fund Service Members into a new category to be known as Mutual Fund/Annuity Services Members. No changes are being made to the financial or operational requirements for MFS members or APS members.

The proposed rule change will also permit an Insurance Entity, which may become an APS member but not a MFS member under the present rules, to become a Mutual Fund/Annuity Services Member.

Currently, participants who are MFS members or Fund Members are not permitted to use any NSCC service other than MFS. Similarly, participants who are Annuities Agency Members or Annuities Carrier Members are not allowed to use any NSCC service other than APS. According to NSCC, there is no reason not to permit these participants to use either or both services. The membership criteria for these two categories of membership, (as set forth in Addendum B of NSCC's Rules) are identical.

Because the proposed rule change merely combines different membership types into one, no changes are being made with respect to the clearing fund requirements related to the use of MFS or APS. There will continue to be no clearing fund requirement relating to the use of APS. Mutual Fund/Annuities Service Members that use MFS will continue to be required to deposit the appropriate amount of clearing fund.

The following is a detailed description of the changes made to NSCC's Rules and Procedures

Rule 1: (Definitions)

A new definition entitled ''Insurance Entity'' is added. This term is substituted in NSCC's Rules where a lengthy phrase, which is not the definition of Insurance Entity, was previously used in the text of the Rules.[3] The defined terms ''Annuities Agency Member'' and ''Mutual Fund Services Member'' are deleted and are replaced with the new defined term ''Mutual Fund/Annuity Services Member.'' The definition of ''Mutual Fund/Annuity Services Member''is a combination of the old definitions of annuities Agency Member and Mutual Fund Services Member. A footnote is added to the definition of ''Mutual Fund/Annuity Services Member'' to inform members that this category of membership replaces both the ''Annuities Agency Member'' category and ''Mutual Fund Services member'' category.

Rule 2: (Members)

The language of Sections (iv) and (vi) of Section 1 are replaced with the new defined term ''Insurance Entity.'' The inclusion of a limited liability corporation as a type of entity which can apply for membership is added to Section 1 to make it consistent with the preface to such Section. The paragraphs relating to applicants whose use of NSCC's service is limited to MFS and APS are combined into one paragraph. Section 2(i) is revised to reflect that the Membership Agreement which will be entered into by ''Mutual Fund/Annuity Services Members'' will appropriately restrict their use of NSCC's services to MFS and/or APS.

Rule 4: (Clearing Fund)

Conforming changes relating to the new defined terms are made.

Rule 15: (Financial Responsibility and Operational Capability)

Previously, Annuities Agency Members were required by Section 2(a) to submit to NSCC certain reports filed with state insurance departments. This requirement is now being imposed on Mutual Fund/Annuities Services Members that use APS. Conforming changes relating to the new defined terms are made to Section 2(b).

Rule 29: (Qualified Securities Depositories)

The proposed rule change makes conforming changes relating to the new defined terms.

Rule 51: (Fund Member)

The proposed rule change adds a footnote to Section 2(a) clarifying that Fund Members are not precluded from applying to become an Annuities Carrier Member or Mutual Fund/Annuity Services Member.

Rule 52: (Mutual Fund Services)

The proposed rule change deletes the reference to MFS Member because the term ''Member'', by definition, includes MFS Member, now known as ''Mutual Fund/Annuities Service Member.''

Rule 56: (Annuities Carrier Member)

A footnote was added to Section 2(a) clarifying that Annuities Carrier Members are not precluded from applying to become a Fund Member or Mutual Fund/Annuity Services Member.

Rule 57: (APS—Commissions and Charge Backs)

The reference to Annuities Agency Members in Section 3(f) is replaced with ''Members,'' which by definition includes Mutual Fund/Annuity Services Members.

Procedure XV: (Clearing Fund Formula and Other Matters)

The clearing fund formula for users of MFS, is revised to refer to those Mutual Fund/Annuity Services Members that use MFS. The proposed rule change revises footnote 2 to clarify that Section A.I.(b) only applies to entities whose use of NSCC's services is restricted to MFS and/or APS. The proposed rule change makes conforming changes relating to the new defined terms in Section A.III. Section A.IV. is revised to reflect that, as was the case with Annuities Agency Members, those Mutual Fund/Annuity Services Members that use only APS are not subject to a clearing fund requirement.

Addendum B—(Standards of Financial Responsibility and Operational Capability)

Previously, section B.4 covered applicants whose use of NSCC's services was limited to MFS, and Section B.5 covered applicants whose use of NSCC's services was limited to APS. Because these sections currently contain identical requirements, they are combined into Section B.4. Accordingly, Section B.5. is deleted, and Section B.6. is renumbered. Section I is revised to refer to the new defined term of Mutual Fund/Annuity Services Members. Section J previously prescribed the information required to be filed by Mutual Fund Services Members and Section K previously prescribed the information required to be filed by Annuities Agency Members. Because there is now one membership category, these sections are combined in Section J, with appropriate technical changes,

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] The term Insurance Entity is defined using language that is currently in NSCC's Rules as ''an insurance company, partnership, corporation, limited liability corporation or other organization, entity or person who is licensed to sell insurance products and is subject to supervision or regulation pursuant to the provisions of state insurance law.''

and section K is deleted. Section II.F has been revised to refer to the new defined term of Mutual Fund/Annuity Services Members.

Addendum F—(Statement of Policy in Relation to Same Day Funds Settlement)

Section II is revised to refer to the new defined term of Mutual Fund/Annuity Services Members.

Addendum I—(Standards of Financial Responsibility and Operational Capability for Fund Members)

The lead-in to this Addendum and the lead-in to Section I.A. are revised to clarify that this addendum pertains to Fund Members.

Addendum Q—(Standards of Financial Responsibility and Operational Capability for Annuities Carrier Members)

The lead-in to Section II is modified to clarify that the prescribed information must be furnished by applicants, in addition to current Annuities Carrier Members. Additional modifications which conform to insurance industry terminology are made.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanisms of a national system for the prompt and accurate clearance and settlement of securities transactions.[4] The Commission believes that the rule change is consistent with this obligation because the proposal will reduce the number of memberships an entity would need to have in order to use MFS and APS. Because the requirements for these membership categories are identical, it is duplicative to require participants to obtain two separate memberships to use these services. Therefore, combining the membership categories promote efficiencies and helps promote the development of the national clearance and settlement system.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing because accelerated approval will permit NSCC to make the Mutual Fund/Annuity Services membership category available immediately. Thus, NSCC will be able to reduce the current administrative burdens on both itself and on its participants.

**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, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–98–2 and should be submitted by August 14, 1998.

*It is therefore, ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–2) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98–19752 Filed 7–23–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of Reporting Requirements Submitted for OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before August 24, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and *OMB Reviewer,* Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–6629.

**SUPPLEMENTARY INFORMATION:**

*Title:* 8(a) Export Survey Initiative.
*Form No.:* 2068.
*Frequency:* New Collection.
*Description of Respondents:* 8(a) Firms.
*Annual Responses:* 200.
*Annual Burden:* 33.

Dated: July 20, 1998.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 98–19856 Filed 7–23–98; 8:45 am]

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## DEPARTMENT OF STATE

**[Public Notice 2862]**

## Bureau of Oceans and International Environmental and Scientific Affairs; Government Activities on International Harmonization of Chemical Classification and Labeling Systems; Public Meeting

**AGENCY:** Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

**ACTION:** Notice of a public meeting regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems.

**SUMMARY:** This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted June 16, 1998. (See Department of State Public Notice 2813, on pages 26938–26839 of the **Federal Register** of May 14, 1998.) The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 10:00 a.m. until noon on August 5 in Room S4215 A&B, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC. Attendees should use the entrance at C and Third Streets, NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit written comments or information, please contact Mary Frances Lowe, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street, NW, Washington, DC 20520. Phone (202) 736–4660, fax (202) 647–5947. A public docket is also available for review (OSHA docket H–022H).

**SUPPLEMENTARY INFORMATION:** The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort often referred to as the ''globally harmonized system'' or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the June 16, 1998, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction
2. Reports on recent international meetings
   —First meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/International Labour Organisation Working Group for the Harmonization of Chemical Hazard Communication, June 22, in London, UK. The Working Group elected Dr. Iona Pratt of Ireland as chair and set up a process for developing the terms of reference, work plan and time table for the hazard communication elements of the GHS.
   —12th Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, June 23–24, London, UK. This group provides overall management direction to the development of the GHS. At the June meeting, the group reached consensus on a paper clarifying the scope and application of the GHS discussed at the previous two Coordinating Group meetings, in June and November, 1997. The group also approved a report on a proposed organizational setting within the UN Economic and Social Council framework. Both papers have been forwarded to the Intersessional Group of the Intergovernmental Forum on Chemical Safety for consideration at its November 29–December 4 meeting. The organizational paper was also considered by the UN Subcommittee of Experts on the Transport of Dangerous Goods (UNSCETDG) during its June 29–July 10 session. Copies of the two papers and related documents are in the public docket.
   —Second Meeting of the Organization for Economic Cooperation and Development (OECD) Working Group on Mixtures, June 25–27, in London, UK. This group is charged with developing harmonized approaches for the classification of mixtures. Participants discussed a draft detailed review document outlining the components of major existing hazard classification systems for mixtures, set up a process for revising that document, and reached agreement on some coverage issues.
   —Meeting of the UNSCETDG, June 29–July 10, in Geneva, Switzerland. The Subcommittee has hosted the working group developing classification criteria proposals for physical hazards and largely completed this work in December 1997. It is also involved in consideration of OECD proposals on acute and aquatic toxicity classifications, the institutional framework for the ongoing maintenance of the GHS, and hazard communication issues as they relate to goods in transport.
3. Preparation for upcoming meetings.
   —Seventh Meeting of the Advisory Group on Harmonization of Classification and Labelling, September 1–2, Paris, France. This meeting will focus on discussion of classification criteria proposals for health and environmental endpoints, including skin and eye irritation/corrosion, target organ toxicity, reproductive toxicity, aquatic toxicity, acute toxicity, and the review of an integrated document comprised of introductory sections on cross-cutting issues and individual chapters on each covered endpoint. The goal is to have the integrated proposal and other issues resolved as much as possible before the high level OECD meeting, described below. Key remaining issues involve actue, acquatic reproductive and target organ toxicity and the integrated proposal.
   —OECD High Level Meeting of the Advisory Group, September 3–4, Paris, France. Participants in this meeting will be senior level officials charged with reaching agreement on a packaging of OECD classification criteria for submission to and approval of the OECD Joint Meeting on Chemicals, now planned for November 4–6.
4. Public comments.
5. Concluding remarks.

Interested parties are invited to submit their comments as soon as

possible for consideration in the development of U.S. positions for the international meetings listed above, and to present their views orally and/or in writing at the public meeting. Participants in the meeting may also address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, D.C. (Telephone 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comments received, Questions and Answers about the GHS, a response to comments on the April 3, 1997, **Federal Register** notice, and other relevant documents.

Dated: June 20, 1998.

**Michael Metelits,**

*Director Office of Environmental Policy Bureau of Oceans and International Environmental and Scientific Affairs.*

[FR Doc. 98–19868 Filed 7–23–98; 8:45 am]

BILLING CODE 4710–09–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Cancellation of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of meeting cancellation.

**SUMMARY:** A notice was published in the **Federal Register** dated July 1, 1998, Volume number 63, Notice 126, page 36009, announcing a meeting of the Industry Sector Advisory Committee (ISAC–14) scheduled for July 20, 1998 from 9:15 a.m. to 3:00 p.m. The meeting was to be open to the public from 9:15 a.m. to 11:15 a.m. and closed to the public from 11:15 a.m. to 3:00 p.m. However, due to an insufficient number of responses regarding attendance, the meeting had to be canceled.

**FOR FURTHER INFORMATION CONTACT:** Bill Daley, Office of the United States Trade Representative, (202) 395–6120.

**Pate Felts,**

*Assistant U.S. Trade Representative.*

[FR Doc. 98–19806 Filed 7–23–98; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on April 28, 1998 [63 FR 23337].

**DATES:** Comments must be submitted on or before August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael Robinson, NHTSA Information Collection Clearance Officer at (202) 366–9456.

**SUPPLEMENTARY INFORMATION:**

### National Highway Traffic Safety Administration (NHTSA)

*Title:* 49 CFR Part 576 Record Retention.

*OMB Control Number:* 2127–0042.

*Type Request:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Abstract:* Under 49 U.S.C. Section 30166(e), NHTSA ''reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable [NHTSA] to decide whether the manufacturer, distributor or dealer has complied or is complying with this chapter or a regulation prescribed under this chapter.'' 49 U.S.C. Section 30118© requires manufacturers to notify NHTSA and owners, purchasers, and dealers if the manufacturer (1) ''learns'' that any vehicle or equipment manufactured by it contains a defect and decides in good faith that the defect relates to motor vehicle safety, or (2) ''decides in good faith'' that the vehicle or equipment does not comply with an applicable Federal motor vehicle safety standard. The only way for the agency to decide if and when a manufacturer ''learned'' of a safety-related defect or ''decided in good faith'' that some products did not comply with an applicable Federal motor vehicle safety standard is for the agency to have access to the information available to the manufacturer. Further, 49 U.S.C. Section 30118(a) requires NHTSA to immediately notify a manufacturer if the agency determines that some of the manufacturer's products either do not comply with an applicable Federal motor vehicle safety standard or contain a safety-related defect, and provide the manufacturer with all the information on which the determination is based. Agency determinations of noncompliance are generally based upon actual testing conducted by or for the agency. However, defect determinations depend heavily upon review of consumer complaints submitted to the manufacturer, communications between manufacturers and suppliers, and the manufacturers' analyses of field problems and/or warranty claims. Without these complaints and manufacturer documents, NHTSA would have only limited access to information about vehicle or equipment problems. To ensure that NHTSA will have access to this type of information, the agency exercised the authority granted in 49 U.S.C. Section 30166(e) and promulgated 49 CFR Part 576, Record Retention. This regulation requires manufacturers of motor vehicles to retain one copy of all records that contain information concerning malfunctions that may be related to motor vehicle safety, for a period of five years after the record is generated or acquired by the manufacturer.

*Estimated Annual Burden:* 40,000 hours.

*Number of Respondents:* At least 1,000 vehicle manufacturers of all types.

**ADDRESS:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on July 20, 1998.

**Vanester M. Williams,**

*Clearance Officer, United States Department of Transportation.*

[FR Doc. 98–19795 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Lafayette Regional Airport, Lafayette, Louisiana

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

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before August 24, 1998.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comment submitted to the FAA must be mailed or delivered to Mr. Gregory M. Roberts, Director of Aviation at Lafayette Regional Airport at the following address: Mr. Gregory M. Roberts, Director of Aviation, Lafayette Regional Airport, 200 Terminal Drive, Lafayette, Louisiana 70508–2159.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Lafayette Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On July 14, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 10, 1998.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Charge effective date:* September 1, 1995.

*Proposed charge expiration date:* September 1, 1998.

*Total estimated PFC revenue:* $1,181,900.

PFC application number: 98–02–U–00–LFT.

*Brief description of proposed project:* Projects to use PFC's—Rehabilitate Runway 11/29.

*Proposed class or classes of air carriers to be exempted from collection PFC's:* AirTaxi/Commerical Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Lafayette Regional Airport.

Issued in Fort Worth, Texas on July 15, 1998.

**Naomi L. Saunders,**

*Manager, Airports Division.*

[FR Doc. 98–19855 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–98–4083]**

## Notice of Receipt of Petition for Decision That Nonconforming 1987–1989 Saab 900 S Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1987–1989 Saab 900 S passenger cars are eligible for importation.

**SUMMARY:** This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1989 Saab 900 S passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is August 24, 1998.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm.]

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or

importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1987–1989 Saab 900 S passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1989 Saab 900 S passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1989 Saab 900 S passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1989 Saab 900 S passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1989 Saab 900 S passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1987–1989 Saab 900 S passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that anti-theft devices and components on non-U.S. certified 1987–1989 Saab 900 S passenger cars will be inspected and replaced, where necessary, to comply with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: July 21, 1998.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 98–19794 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Customs Service

### Announcement of General Program Test: Quota Preprocessing

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice announces Customs plan to conduct a test to evaluate the effectiveness of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The tests will be conducted at ports located at New York/Newark and Los Angeles. The new procedure will allow certain quota entries to be processed prior to carrier arrival, thus reducing the quota processing time. This notice informs the public of the new procedure and

eligibility requirements to participate in the test. Public comments concerning any aspect of the test are solicited.

**EFFECTIVE DATES:** Written comments regarding this notice must be received on or before August 24, 1998. This test will commence no earlier than August 24, 1998 and run for approximately a six month time period, with evaluations of the test occurring periodically.

**ADDRESSES:** Applications to participate in the prototype will be accepted prior to and throughout the prototype. Written comments regarding this notice or any aspect of this test should be addressed to Lori Bowers, U.S. Customs Service, QWG Team Leader, 1000 Second Ave., Suite 2100, Seattle, WA 98104–1020 or may be sent via e-mail to preprocessing@quota.customs.sprint.com. Applications should be sent to the prototype coordinator at any of the four following port(s) where the applicant wishes to submit quota entries for preprocessing:

(1) Julian Velasquez, Port of Los Angeles, 300 S. Ferry St., Terminal Island, CA 90731;

(2) Tony Piscitelli, Los Angeles International Airport, 11099 S. La Cienaga Blvd., Los Angeles, CA 90045;

(3) Barry Goldberg, JFK Airport, JFK Building 77, Jamacia, NY 11430; and

(4) John Lava, Ports of New York/Newark, 6 World Trade Center, New York, NY10048.

**FOR FURTHER INFORMATION CONTACT:** Lori Bowers, (206) 553–0452, or Bob Abels, (202) 927–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Description of Proposed Test

*The Concept of Quota Preprocessing*

Many apparel importers have identified a need to reduce the processing time for quota entries. These importers state that the total processing time, as measured from carrier arrival to Customs release, for quota merchandise is longer than for non-quota merchandise. Normally, entry summary documentation for both quota and non-quota merchandise may be preliminarily reviewed by Customs before the arrival of the carrier. For quota-class merchandise, however, the importing carrier must have actually arrived within the port limits and either the estimated duties must have been deposited or a valid scheduled statement date must have been received by Customs via the Automated Broker Interface (ABI) before it is deemed that there has been presentation of the entry summary. Because quota priority and status are determined at the time of presentation, the preliminary review does not reduce the processing time for quota entries. This results in increased costs and delays in receipt of quota-class merchandise. To address this issue a multi-discipline work group, including members from the trade, was formed in partnership with the National Treasury Employees Union (NTEU). Using process improvement methodology, the Quota Processing Work Group (QWG) developed Quota Preprocessing—a new operational procedure regarding the processing of quota-class merchandise—as a solution to the problem.

Quota preprocessing will allow certain quota entries (discussed below) to be filed, reviewed for admissibility, and processed through Customs prior to arrival of the carrier, similar to the methods in which non-quota entries are presently processed. It is believed that such a change in procedures could reduce the processing time for quota entries.

The Quota Preprocessing test is designed to evaluate the effectiveness of this new operating procedure, so that any benefits of processing quota entries prior to carrier arrival can be verified. By prototyping the concept first, Customs can measure the benefits, receive input from the trade, and determine if any future changes are necessary before incorporating Quota Preprocessing into its standard procedures. Should the measurements support the anticipated benefits, action will be initiated to amend certain Customs regulations (see below) so that Quota Preprocessing can be incorporated into the design of Customs future computer system, ACE (Automated Commercial Environment).

The ports of New York/Newark (4701, 4601, 1001) and Los Angeles (2704, 2720) are the test locations for Quota Preprocessing. By prototyping the process first at these ports, Customs can assess whether or not Quota Preprocessing can achieve its stated objectives prior to expanding the process nationally.

*Prototype Objectives*

The goals of the prototype are:

(1) To reduce the processing time of quota entries;

(2) To process quota entries submitted as part of the preprocessing program in the same amount of time as non-quota entries;

(3) To increase the quantity of quota entries released within one calendar day of the arrival of the carrier; and

(4) To equalize the submission of quota entries over the five-day work week.

*Description of the Prototype*

Participants in the prototype may submit quota entries that meet the eligibility requirements specified below to Customs up to five days prior to vessel arrival or after wheels are up on air shipments. Quota entries to be preprocessed must be submitted to Customs during official business hours (*see*, § 101.6, Customs Regulations), and will be reviewed for admissibility and processed prior to the carrier's arrival.

Pursuant to Customs Modernization provisions in the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057, 2170 (December 8, 1993), Customs amended its regulations, in part, to enable the Commissioner of Customs to conduct limited test programs/procedures designed to evaluate the effectiveness of new technology or operations procedures, which have as their goal the more efficient and effective processing of passengers, carriers, and merchandise. Section 101.9(a) of the Customs Regulations (19 CFR 101.9(a)) allows for such general testing. *See*, TD 95–21. This test concerns the processing of merchandise and is established pursuant to that regulatory provision. Public comments concerning any aspect of the prototype are solicited and Customs will review any comments timely received before implementing this test.

The test of Quota Preprocessing is scheduled to run for six months with the starting date targeted for approximately 30 days from the publication of this notice in the **Federal Register**. Once the test is underway, Customs will begin evaluating the test procedure, employing criteria designed to measure the effectiveness of the prototype.

## II. Importer/Entry Eligibility Criteria

Only importers who currently import apparel through the ports of Los Angeles (2704/2740) and/or New York/Newark (1001/4601/4701) may participate in the prototype. Participants will not be permitted to alter their importing patterns in order to take advantage of Quota Preprocessing. During the prototype Customs will monitor import volumes for significant increases through the prototype ports.

Customs will only accept consumption entries of apparel merchandise subject to quota (type 02 and 07) for preprocessing which meet the following criteria:

(1) The entry must be filed using the ABI;

(2) Payment must be made electronically through the Automated Clearinghouse (ACH);

(3) Arriving carriers must use the Automated Manifest System (AMS);

(4) The quota category must be less than 85% full;

(5) The entry must contain at least one line classifiable in Chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS); and

(6) The entry must be submitted at the port of Los Angeles (2704/2720) or New York/Newark (1001/4601/4701).

If an importer submits a quota entry for Quota Preprocessing and it does not meet all of the above criteria the entry summary will be rejected back to the filer and may not be resubmitted to Customs until after the carrier has arrived. Upon arrival of the carrier, merchandise covered by a preprocessed entry will be released unless Customs decides to perform an examination. If an examination of the merchandise is necessary, the examination will occur during the port's regular inspectional hours.

*Regulatory Provisions Affected*

During the six-month test period of this operational procedure, the requirements regarding scheduling of ACH payment, quota status, submission of quota documents, and time of entry, found in §§ 24.25(c)(3), 132.11, 132.11a, 141.63 and 141.68 of the Customs Regulations, will be suspended at the affected ports.

Regarding the submission of an entry under this prototype, when the documents are filed *prior to arrival of the merchandise* the term *''time of entry''* shall be the time the merchandise arrives within the port limits. For purposes of this prototype, the term ''time of presentation'' shall be the time of delivery in proper form of the entry/entry summary for consumption for which a valid scheduled statement date for the estimated duties payable has been successfully received by Customs via the ABI. A valid scheduled statement date must be within 10 days of the estimated date of arrival of the merchandise.

## III. Application

Importers that wish to participate in the Quota Preprocessing prototype must submit a written application that includes the following information:

1. The specific ports located at either New York/Newark or Los Angeles at which they intend to enter quota merchandise;

2. The importer of record number(s), including suffix(es), and a statement of the importer's/filer's electronic filing capabilities;

3. Names and addresses of any entry filers, including Customs brokers, who will be electronically filing entries at each port on behalf of the importer/participant; and

4. The total number of consumption quota entries (type 02 and 07) filed at each of the prototype ports during the preceding 12-month period and the estimated number of eligible entries expected to be filed at each designated port during the Quota Preprocessing prototype. If it is expected that a significantly higher number of eligible entries will be filed during the prototype than were filed during the preceding 12 months, an explanation for the increase is necessary.

Customs will notify applicants in writing of their selection or nonselection in this prototype. If an applicant is denied participation, he/she may appeal in writing to the port director at the port which denied the application.

## IV. Misconduct

A participant may be suspended from the Quota Preprocessing prototype and disqualified from any future phases of this prototype if involved in any of the following acts of misconduct:

1. Shifting the volume of imports clearing through the prototype port(s);

2. Continually overestimating the date of arrival;

3. Continually submitting ineligible entries, *i.e.*, the entry summary is non-ABI, the carrier is non-AMS, payment is not via ACH, and/or none of the merchandise is from HTSUS Chapter 61 or 62;

4. Submitting multiple requests for canceled entries;

5. Participating in any activity to circumvent quota or erroneously gain quota status; or

6. Failing to abide by the terms and conditions of this notice or applicable laws and regulations.

Participants subject to suspension will be notified in writing. Such notice will apprise the participant of the facts or conduct warranting suspension and the date on which the suspension will take effect.

Any decision proposing suspension of a participant may be appealed in writing to the local port director within 15 days of the decision date. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how he/she does or will achieve compliance. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately. Further, Customs has the discretion to immediately suspend a prototype participant based on the determination that an unacceptable compliance risk exists. This suspension may be invoked at any time after acceptance in the prototype. In addition to being suspended, a participant may be subject to penalties, liquidated damages, and/or other administrative sanctions for such action.

## V. Test Evaluation Criteria

Although by no means exclusive, the following evaluation criteria may be used by Customs to assess the merits of the test procedure:

1. Workload impact (workload shifts/volume, cycle times, etc.);

2. Policy and procedure accommodations;

3. System efficiency;

4. Operational efficiency; or

5. Other issues identified by public comment or by the participants.

Also, Customs may survey participants to validate the benefits of this prototype. Results of the test evaluations will be available at the conclusion of the prototype and will be made available to the public upon request.

Dated: July 20, 1998.

**Audrey Adams,**

*Acting Assistant Commissioner, Office of Field Operations.*

[FR Doc. 98–19773 Filed 7–23–98; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF THE TREASURY

## Customs Service

## Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

**AGENCY:** U.S. Customs Service; Department of the Treasury.

**ACTION:** Proposed interpretation; extension of comment period.

**SUMMARY:** On June 15, 1998, a document was published in the **Federal Register** advising the public that Customs is proposing a new interpretation concerning the country of origin rules for certain imported textile and textile products. Customs proposed that 19 CFR 12.130(c) should not control for purposes of country of origin marking of textile and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States does not apply for country of origin marking purposes. The document solicited comments, requesting that comments be received on or before August 14, 1998. This

notice extends the period of time within which interested members of the public may submit comments concerning the June 15 proposal. The comment period is being extended another 45 days.

**DATES:** Comments must be received on or before September 30, 1998.

**ADDRESSES:** Written comments may be addressed to, and inspected at, the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Special Classification and Marking Branch, Office of Regulations and Rulings, (202) 927–1675.

**SUPPLEMENTARY INFORMATION:**

## Background

A document was published in the **Federal Register** (63 FR 32697) on June 15, 1998, advising the public that Customs is proposing a new interpretation concerning the country of origin rules for certain imported textile and textile products. Customs proposed that 19 CFR 12.130(c) should not control for purposes of country of origin marking of textile and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States does not apply for country of origin marking purposes. The document solicited comments, requesting that comments be received on or before August 14, 1998.

Customs has received a request to extend the comment period to allow interested parties to have more time to consider the proposal and to explore how the proposed changes may impact the FTC rules on ''Made in USA''. Customs believes the request for more time has merit. Accordingly, the period of time for submission of comments is being extended 45 days.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the address stated above.

Dated: July 20, 1998.

**Stuart P. Seidel,**

*Assistant Commissioner, Office of Regulations and Rulings.*

[FR Doc. 98–19771 Filed 7–23–98; 8:45 am]

BILLING CODE 4820–02–P

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## DEPARTMENT OF THE TREASURY

## Customs Service

## Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

**AGENCY:** Customs Service, Treasury.

**ACTION:** General notice.

**SUMMARY:** This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning July 1, 1998, the rates will be 7 percent for overpayments and 8 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

**EFFECTIVE DATE:** July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

**SUPPLEMENTARY INFORMATION:**

## Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 98–32 (1998–25 IRB 4, dated June 22, 1998), the IRS determined that the rates of interest for the fourth quarter of fiscal year (FY) 1998 (the period of July 1—September 30, 1998) will be 7 percent for overpayments and 8 percent for underpayments. These interest rates are subject to change for the first quarter of FY–1999 (the period of October 1—December 31, 1998).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

| Beginning date | Ending date | Underpayments (percent) | Overpayments (percent) |
|---|---|---|---|
| Before July | 063075 | 6 | 6 |
| 070175 | 013176 | 9 | 9 |
| 020176 | 013178 | 7 | 7 |
| 020178 | 013180 | 6 | 6 |
| 020180 | 013182 | 12 | 12 |
| 020182 | 123182 | 20 | 20 |
| 010183 | 063083 | 16 | 16 |
| 070183 | 123184 | 11 | 11 |
| 010185 | 063085 | 13 | 13 |
| 070185 | 123185 | 11 | 11 |
| 010186 | 063086 | 10 | 10 |
| 070186 | 123186 | 9 | 9 |
| 010187 | 093087 | 9 | 8 |
| 100187 | 123187 | 10 | 9 |
| 010188 | 033188 | 11 | 10 |
| 040188 | 093088 | 10 | 9 |
| 100188 | 033189 | 11 | 10 |

| Beginning date | Ending date | Underpay-ments (percent) | Overpay-ments (percent) |
|---|---|---|---|
| 040189 | 093089 | 12 | 11 |
| 100189 | 033191 | 11 | 10 |
| 040191 | 123191 | 10 | 9 |
| 010192 | 033192 | 9 | 8 |
| 040192 | 093092 | 8 | 7 |
| 100192 | 063094 | 7 | 6 |
| 070194 | 093094 | 8 | 7 |
| 100194 | 033195 | 9 | 8 |
| 040195 | 063095 | 10 | 9 |
| 070195 | 033196 | 9 | 8 |
| 040196 | 063096 | 8 | 7 |
| 070196 | 033198 | 9 | 8 |
| 040198 | 093098 | 8 | 7 |

Dated: July 20, 1998.

**Samuel H. Banks,**

*Acting Commissioner of Customs.*

[FR Doc. 98–19772 Filed 7–23–98; 8:45 am]

BILLING CODE 4820–02–P

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Object Imported for Exhibition Determination: ''Degas With Christine and Yvonne Lerolle''

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object ''Degas with Christine and Yvonne Lerolle,'' a piece imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, in New York, New York, from on or about July 26, 1998, to on or about October, 1998, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: July 20, 1998.

**Les Jin,**

*General Counsel.*

[FR Doc. 98–19845 Filed 7–23–98; 8:45 am]

BILLING CODE 8230–01–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition Determinations

**AGENCY:** United States Information Agency.

**ACTION:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985).

**SUMMARY:** I hereby determine that the objects to be included in the exhibit **DELACROIX; THE LATE YEARS** (see list), imported from various foreign lenders for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determined that the exhibition or display of the listed exhibit objects at the Philadelphia Museum of Art, Philadelphia, Pennsylvania from on or about September 15, 1998, to on or about January 3, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Carol B. Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: July 20, 1998.

**Les Jin,**

*General Counsel.*

[FR Doc. 98–19775 Filed 7–23–98; 8:45 am]

BILLING CODE 8230–01–M

# Corrections

Federal Register

Vol. 63, No. 142

Friday, July 24, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 532 and 552

**[APD 2800.12A, CHGE 80]**

**RIN 3090–AG47**

### General Services Administration Acquisition Regulation; 10 Day Payment Clause for Certain Federal Supply Service Contracts and Authorized Price Lists Under Federal Supply Service Schedule Contracts

*Correction*

In rule document 98–18816, beginning on page 38330, in the issue of Thursday, July 16, 1998, make the following corrections:

1. The RIN number should read as set forth above.

2. On page 38331, in the first column, in amendatory instruction number 6, in the second line, ''data'' should read ''date''.

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–CE–30–AD; Amendment 39–10637; AD 98–14–03]**

**RIN 2120–AA64**

### Airworthiness Directives; AlliedSignal Inc. KT 76A Air Traffic Control (ATC) Transponders

*Correction*

In rule document 98–17301 beginning on page 35787 in the issue of Wednesday, July 1, 1998, make the following correction:

**§ 39.13 [Corrected]**

On page 35790, in the first column, the entry for ''Cessna Aircraft Company'' should be corrected to read ''Cessna Aircraft Company: 172, 182, R182, T182, 206, P206, U206, TP206, 210, T210, P210, 310, E310, T310, and 421 series airplanes.''

BILLING CODE 1505–01–D

federal register

Friday
July 24, 1998

## Part II

# Department of Health and Human Services

### Administration For Children and Families

**45 CFR Parts 98 and 99**

**Child Care and Development Fund; Final Rule**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Parts 98 and 99**

**RIN 0970–AB74**

## Child Care and Development Fund

**AGENCY:** Administration for Children and Families (ACF), HHS

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the child care provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193) and incorporates technical corrections to PRWORA made by the Balanced Budget Act of 1997 (Pub.L. 105–33). PRWORA appropriates new entitlement child care funds under section 418 of the Social Security Act and requires that these new Federal child care funds be subject to the Child Care and Development Block Grant (CCDBG) Act. The CCDBG program which was created under the original CCDBG Act is a discretionary fund program. PRWORA also reauthorized the CCDBG Act. As PRWORA requires that these child care funds be administered as a unified program, the Administration for Children and Families has named the combined funds the Child Care and Development Fund (CCDF). Parts 98 and 99 are the official regulations for the Child Care and Development Fund.

**EFFECTIVE DATE:** August 24, 1998.

**FOR FURTHER INFORMATION CONTACT:** Barbara Binker, Director, Policy Division, Child Care Bureau, Hubert Humphrey Building, Room 320F, 200 Independence Avenue, SW, Washington, DC 20201, telephone (202) 401–5145. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the child care programs authorized under title IV-A of the Social Security Act—AFDC Child Care, Transitional Child Care and At-Risk Child Care. In addition, PRWORA amended section 418 of the Social Security Act to provide new entitlement Federal child care funds and transferred them to the Lead Agency under the amended Child Care and Development Block Grant Act. The funding under section 418 is now subject to the CCDBG Act. PRWORA also amended the CCDBG Act.

The new statutory provisions, therefore, unified what was a fragmented child care subsidy system. The combined and increased funding becomes part of a holistic and streamlined system for child care. The integrated entitlement and discretionary child care funding has a single, unified purpose. The Department of Health and Human Services has named the combined funds the Child Care and Development Fund (CCDF), to reflect this integration of multiple funding sources. The Department uses the CCDF terminology when corresponding with grantees and the child care field.

### Goals and Purpose of the Rule

The primary goals of this rule are to:

—Amend the CCDBG regulations in light of the child care amendments under title VI of PRWORA,
—achieve a balance between program flexibility and accountability,
—assure the health and safety of children in child care,
—recognize that child care is a key support for work, as envisioned in TANF, and
—clarify, streamline, simplify, and unify the Federal child care program.

The major regulatory decisions were made to assure States have adequate information upon which to base their child care payments; promote public involvement in the Plan process; strengthen health and safety in child care by requiring children receiving CCDF subsidies to be age-appropriately immunized; require coordination between child care Lead Agencies and agencies administering TANF, health, education and employment programs; streamline the CCDF application and Plan; and provide clarifications based on experience operating both the CCDBG program and the now-repealed title IV–A programs.

We received relatively few comments during the comment period—only some 160 organizations and individuals made approximately 500 comments, many of which were duplicative. The content of the comments lead us to believe that we achieved our goal of reaching balance among viewpoints. We made only a few changes as a result of comments to adjust the balance among goals. Of the substantive changes made, we require the Lead Agency to make available to the public, in advance of the public hearing, the plan it proposes to submit to the Secretary. We require the Lead Agency to provide consumer education information to parents and the general public about health and safety requirements and about the full range of providers available to families. We clarified that an independent audit of a Lead Agency shall be conducted by a State agency that meets the generally accepted government auditing standards or by a public accountant who meets the independence standards contained therein. We added provisions regarding tribal consortia in § 98.83. We also added or revised provisions regarding tribal construction at § 98.84 including a requirement regarding the amount a tribe new to the CCDF may spend on construction and a provision regarding treatment of construction planning costs.

We made other changes to conform to the technical amendments to PRWORA by Pub. L. 105–33, The Balanced Budget Act of 1997, primarily in § 98.70 and 98.71. Based on comments, we also made other minor changes to clarify proposed language or codify policy contained in the preamble of the proposed rule.

*Statutory Authority*

Section 658E of the Child Care and Development Block Grant Act of 1990 requires that the Secretary shall by rule establish the information needed in the Block Grant Plan.

### Regulatory Impact Analysis

This rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken is the most cost-effective and least burdensome while still achieving the regulatory objectives.

For the most part, the regulations implement specific requirements under PRWORA.

We are requiring that children be age-appropriately immunized in order to receive services under the Child Care and Development Fund. As most States already include immunizations in their child care standards and provide religious and medical exemptions from immunizations, we do not anticipate that this rule will have a significant negative impact on either grantees or families, since grantees will not be required to provide immunizations directly. The Vaccines for Children Program, an important component of the Childhood Immunization Initiative (CII),

provides immunizations to eligible children, including those without insurance coverage, those eligible for Medicaid, and American Indians and Alaska Natives. In addition, every State receives grant funds for immunization activities, including hiring nurses, expanding clinic hours, assessing coverage levels, and conducting outreach. Immunization levels of children 19–35 months of age are measured by the National Immunization Survey, the most recent survey conducted throughout the U.S. that provides comparable State vaccination coverage estimates.

The immunization provision was considered the most cost-effective and least burdensome approach because: (1) It helps ensure that vulnerable young children are age-appropriately immunized; (2) immunization of such children is highly cost-effective; and (3) it provides flexibility to grantees in determining how to implement the provision.

**Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. The primary impact of this regulation is on State, tribal and territorial governments. To a lesser extent the regulation could affect individuals and small businesses. However, the number of small businesses affected should be limited, and the expected economic impact on these businesses would not be so significant that a full regulatory flexibility analysis is indicated.

The rule contains a number of provisions that could result in some decrease in the regulatory and economic burdens on providers that are small businesses. Because States will be required to operate their programs under a more consistent set of program rules, participating providers will face a simpler and more streamlined set of Federal regulatory requirements.

The providers who would potentially be most affected by this rule are in-home providers. These providers are generally not operating as small businesses, but as domestic employees; thus, any impact on them need not be specifically addressed under this Act.

State, local and tribal governments already have authority to set general regulatory requirements and health and safety standards for child care providers. If States (or other grantees) believe that there is a substantial need for additional requirements (to protect the well-being of children in care), we expect them to act under this general authority.

While States generally have immunization requirements for children in child care, the proposed immunization provision might result in some additional children being subject to immunization requirements or stronger requirements for some children. However, States have flexibility in deciding how immunization requirements are to be implemented. Our rule does not dictate that States impose requirements on providers; rather, States can choose to impose them on eligible families. Thus, the immunization provision in this rule does not necessarily affect small businesses. Further, where States do choose to impose additional requirements on providers related to the immunization provision, such requirements would be basically administrative in nature (e.g., documentation); we expect the costs of immunization to be covered through other funding sources. Thus, this provision would not have a significant economic impact on providers.

For these reasons, we certify that this rule will not have a significant economic effect on a substantial number of small entities, and that a Regulatory Flexibility Analysis is not required.

**Unfunded Mandates Reform Act of 1995**

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

**Congressional Review of Regulations**

This final rule is not a ''major'' rule as defined in Chapter 8 of 5 U.S.C.

**Paperwork Reduction Act**

Sections 98.16 and 98.81 contain the Lead Agency Plan information requirements of the ACF–118 and ACF–118–A respectively. Sections 98.70 and 98.71 contain the information required by both the ACF–800 and ACF–801 child care data collections. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Administration for Children and Families submitted these sections to the Office of Management and Budget (OMB) for its review. The Pre-Prints, ACF–118 and ACF–118–A, have been approved by OMB—OMB Number 0970–0114, expires 5/31/2000. The OMB also approved both data collection forms, the ACF–800 (OMB Number 0970–0150, expires 3/31/2000) and the ACF–801 (OMB Number 0970–0167, expires 11/30/2000).

*Title:* State/Territorial Plan Pre-Print (ACF–118) and Tribal Plan Pre-print (ACF–118–A) for the Child Care and Development Fund (Child Care and Development Block Grant).

*Description:* These legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information will be used for Federal oversight of the Child Care and Development Fund.

*Respondents:* State governments and territories, Tribal organizations.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–118 | 56 | .5 | 30 | 840 |
| ACF–118a | 243 | .5 | 30 | 3,645 |

*Estimated Total Annual Burden Hours:* 4,485.

*Title:* Child Care Annual Aggregate Report—ACF–800.

*Description:* This legislatively mandated report collects program and participant data on all children and families receiving direct CCDF services. Aggregate data will be collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress.

*Respondents:* States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–800 | 56 | 1 | 40 | 2,240 |

*Estimated Total Annual Burden Hours:* 2,240.

*Title:* Child Care Quarterly Case Level Report, ACF–801.

*Description:* This legislatively-mandated report collects program and participant data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participant and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. States are allowed to submit the data monthly if they choose to do so. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF provided respondents sampling specifications which specify a minimum sample size of approximately 200 cases. States are allowed to submit their total monthly population.

*Respondents:* States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ACF–801 | 56 | 4 | 20 | 4,360 |

*Estimated Total Annual Burden Hours:* 4,360.

The Administration for Children and Families considered comments by the public on evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility. Comments regarding specific items are discussed in the preamble. The quality, usefulness and clarity of the information to be collected will be enhanced by the technical assistance provided and the regional meetings that ACF has convened.

**Amended Regulations, 45 CFR Part 98**

We have chosen to present 45 CFR Part 98 as an amended whole. We believe that the publication of the whole text of Part 98 will facilitate understanding of the impact of the amendments on the regulations that are retained. In addition, we made a number of other minor editorial changes throughout the regulations to enhance clarity, to reflect the change of program name from the Child Care and Development Block Grant (CCDBG) to the Child Care and Development Fund (CCDF), and to reflect the change from ''Grantee'' to ''Lead Agency'' for reasons explained in this preamble at § 98.2.

We have made the following changes to the regulations.

*Title/heading:* Part 98.

Subparts—A, E and F.

Sections—98.1, 98.13, 98.15, 98.43, 98.45, 98.51, 98.52, 98.53, 98.61, 98.62, 98.63, 98.64, 98.65, 98.70, 98.71, and 98.81.

*Definitions:* § 98.2 is now an alphabetical listing.

*Removed:* (e), (f), (n), (o), (s), (gg) and (nn).

*Added:* Child Care and Development Fund (CCDF), Construction, Discretionary Fund, Facility, Major Renovation, Mandatory Funds, Matching Funds, Modular unit, Real property, and Tribal Mandatory Funds.

*Assurances and Certifications:* § 98.15 has been reorganized to reflect the statute intent that states ''assure'' they meet certain requirements and ''certify'' that they meet others.

*Tribes:* We have consolidated tribal regulations from §§ 98.16(b), 98.17(b) and 98.60(g) into Subpart I.

The following distribution table summarizes what has been added, removed, revised and redesignated.

| Existing section | Action | New section |
|---|---|---|
| | Added | 98.1(a) |
| 98.1(a) and (b) | Redesignated | 98.1(b) and (c). |
| 98.1(b)(7) | Removed. | |
| 98.1(b)(8) | Redesignated | 98.1(c)(7). |
| 98.2(a), (j), (q), (mm) | Revised | 98.2—Alphabetical. |
| 98.10(b) and (e) | Revised | 98.10(b) and (e). |

| Existing section | Action | New section |
|---|---|---|
| 98.11(a) and (b)(8) | Revised | 98.11(a) and (b)(8). |
| 98.12(a) and (c) | Revised | 98.12(a) and (c). |
| | Added | Introductory. |
| 98.13(a) | Revised | 98.13(a) and (b). |
| 98.13(b) and (c) | Removed. | |
| 98.13(a)(10) | Redesignated | 98.13(c). |
| 98.13(a)(11) | Redesignated | 98.13(d). |
| 98.14(a-c) | Revised | 98.14(a-c). |
| 98.15 | See note above. | |
| 98.16(a) | Redesignated | Introductory. |
| 98.16(a)(1–12) | Revised | 98.16(a-l). |
| 98.16(a)(13–16) | Removed. | |
| | Added | 98.16(m-q). |
| 98.16(a)(17) | Redesignated | 98.16(r). |
| 98.17(a) | Revised | 98.17(a). |
| 98.17(c) | Redesignated | 98.17(b). |
| 98.20(a) | Revised | 98.20(a). |
| 98.21 | Removed. | |
| | Added | 98.30(c)(3). |
| 98.30(c)(3–5) | Redesignated | 98.30(c)(4–6). |
| 98.30(d) | Removed. | |
| 98.30(e-g) | Redesignated | 98.30(d-f). |
| 98.31 | Revised | 98.31. |
| 98.32 | Revised | 98.32. |
| | Added | 98.32(c). |
| 98.33 | Revised | 98.33. |
| 98.40(a) | Revised | 98.40(a). |
| 98.41(a)(1) | Revised | 98.41(a)(1). |
| 98.41(c) and (d) | Removed. | |
| 98.41(e-g) | Redesignated | 98.41(c-e). |
| 98.42(d) | Removed. | |
| 98.43(a) and (b) | Revised | 98.43(a) and (b). |
| | Added | 98.43(c). |
| 98.43(c) and (d) | Redesignated | 98.43(d) and (e). |
| 98.43(e) and (f) | Removed. | |
| 98.45 | Revised | 98.45. |
| 98.50(a) and (c) | Revised | 98.50(a) and (c). |
| 98.50(d) | Removed. | |
| | Added | 98.50(d-f). |
| 98.51(a) and (b) | Revised | 98.51(a). |
| 98.51(c-f) | Removed. | |
| 98.51(g) | Redesignated | 98.51(b). |
| | Added | 98.51(c). |
| 98.52(a) and (b) | Revised | 98.52(a). |
| 98.52(c) | Revised | 98.52(c). |
| 98.53 | Revised | 98.53. |
| 98.54(a) | Revised | 98.54(a). |
| | Added | 98.54(b)(3). |
| 98.60(a), (d) and (f) | Revised | 98.60(a), (c) and (e). |
| 98.60(b) | Removed. | |
| 98.60(c-f) | Redesignated | 98.60(b-e). |
| 98.60(h) | Redesignated, Revised | 98.60(g). |
| 98.60(i-j) | Redesignated | 98.60(h-i). |
| 98.61(a) and (b) | Revised | 98.61(a). |
| 98.62(a-c) | Redesignated | 98.61(b-d). |
| | Added | 98.61(e). |
| | Added | 98.62(a) and (b). |
| 98.63(a) and (b) | Redesignated, Revised | 98.64(b). |
| | Added | 98.63(a-c). |
| 98.64(a-d) | Removed. | |
| | Added | 98.64(a), (c) and (d). |
| 98.65(a) | Revised | 98.65(a). |
| | Added | 98.65(f) and (g). |
| 98.67(c) | Revised | 98.67(c). |
| 98.70 | Revised | 98.70. |
| 98.71 | Revised | 98.71. |
| 98.80 Introductory | Revised | 98.80. |
| 98.80(b) and (f) | Revised | 98.80(b) and (f). |
| 98.81(a) | Revised | 98.81(a). |
| | Added | 98.81(b). |
| 98.81(b) | Redesignated | 98.81(c). |
| 98.82 Introductory | Revised | 98.82 Introductory. |
| 98.83(c-f) | Revised | 98.83(c-f). |
| 98.83(g) and (h) | Removed. | |

| Existing section | Action | New section |
|---|---|---|
| 98.83(i) | Redesignated, Revised | 98.83(g). |
| | Added | 98.83(h). |
| | Added | 98.84. |
| 98.90(e) | Revised | 98.90(e). |
| 98.92(a) | Revised | 98.92(a). |
| 98.92(b) | Removed. | |
| 98.92(c) | Revised | 98.92(b). |
| 98.92(d) and (e) | Redesignated | 98.92(c) and (d). |
| | Added | 98.92(e). |

*Subpart A—Goals, Purposes and Definitions*

Goals and Purposes (Section 98.1)

This section of the regulations includes at § 98.1(a) the goals for the Child Care and Development Fund (CCDF) contained in section 658A of the amended CCDBG Act.

*Comment:* Two commenters suggested the goals include a requirement for parental choice rather than the reference to a promotion of parental choice.

*Response:* The goal at § 98.1(a)(2) uses the language of section 658A of the amended CCDBG Act which is ''to promote parental choice.'' This goal is operationalized by other requirements. Lead Agencies which opt to provide care through grants and contracts in the state child care program are also required to provide certificates to parents seeking child care. Additionally, Lead Agencies are to include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers.

*Comment:* Two commenters suggested goal one include a reference to planning functions as well as program and policy functions.

*Response:* Goal one is stated in the statute as ''to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State.'' Although we agree with the commenter on the importance of planning, we believe the goal at § 98.1(c)(4) of this regulation already discusses planning for delivery of services. Furthermore, the discussion at § 98.14 reflects our belief in the importance of the planning function in the administration of the CCDF within a State.

*Comment:* One commenter suggested goal five be altered to reflect that health, safety, licensing and regulations standards are established by state law and regulations.

*Response:* Goal five of the statute already states ''to assist States in implementing the health, safety, licensing and registration standards established in State regulations.''

*Comment:* One commenter cited one of the stated purposes of the CCDF is to increase quality of child care services. This commenter believed this term should be defined through reference to specific standards of quality, such as the National Association for the Education of Young Children (NAEYC) accreditation standards.

*Response:* We have chosen to not define quality child care in these regulations beyond the language found in section 658G of the Act.

Definitions (Section 98.2)

We adopted the following changes for this section: an updated definition of the Child Care and Development Block Grant Act; an amended definition of a child care certificate reflecting its use as a required deposit for child care services; and an amended definition of relative child care provider which includes great grandparents and siblings (if living in a separate residence) as relative providers.

We substituted the term ''Child Care and Development Fund (CCDF)'' for ''Block Grant'' and also defined the constituent parts of the CCDF: Mandatory Funds, Matching Funds, Discretionary Funds, and Tribal Mandatory Funds.

In light of the new section 6580(c)(6) of the Act which allows Tribes to use CCDF funds for construction and renovation of child care facilities, we also adopted these terms: construction, facility, major renovation, modular unit, and real property.

As proposed, we have replaced separate terms for ''Grantee'' and ''Lead Agency'' with the single term ''Lead Agency.'' We did this for a number of reasons. First, there was not a meaningful difference between those terms. Second, we wished to remove any ambiguity that could result from the use of two different terms. Third, we wanted to emphasize the streamlined administration of all child care programs in a State that resulted from PRWORA. We believe that use of the term ''Lead Agency'' conveyed that sense of unified and expanded responsibility better than the term ''Grantee.'' Lastly, we wanted to avoid any confusion that could arise when the State uses subgrantees in implementing the CCDF. We have replaced the specific term ''Grantee,'' as formerly defined, with ''Lead Agency'' throughout these regulations, although there remain some instances where the word ''grantee'' appears in its common usage. In these final regulations, we also corrected the definition of Lead Agency to include all parts of the definition of grantee which were inadvertently omitted in the proposed rule.

*Comment:* Some commenters on this section questioned definitions for which no changes had been proposed. For example, commenters questioned the distinction between a ''child care provider that receives assistance'' and an ''eligible child care provider'' as well as why the definitions for various providers were based on the location of the care provided (e.g., in-home care) rather than the nature of the care (e.g., formal vs. informal), or was based on the number of providers present (e.g., group home child care provider).

*Response:* Because no changes were proposed for the terms questioned by the commenters, we refer them to the preamble discussion for those terms in the final rule of August 4, 1992. We believe that explanation, found at 57 FR 34359, adequately addresses their specific concerns. Our position, like the definitions themselves, remains unchanged.

*Comment:* One commenter wanted us to clarify that minor remodeling, within the limits set forth in the Act, does not fall under the definition of major renovation.

*Response:* Section 98.54(b)(1) provides that States and others may use CCDF funds for minor remodeling. But, rather than create a separate definition for minor remodeling, State Lead Agencies may assume that an improvement or upgrade to a facility which is not specified under the definition of major renovation adopted in this rule may, by default, be considered a minor renovation and,

therefore, is allowable under the Act. Lead Agencies are cautioned of the distinctions at § 98.54(b)(1) and § 98.54(b)(2) between minor renovations that are permissible for sectarian organizations and those that are permissible for others.

*Comment:* Another commenter wanted us to define ''deposit'' as used in the definition of child care certificate and suggested several components of a definition.

*Response:* Our definition mirrors the language of the Act. We believe that the phrase ''if * * * required of other children'' is sufficiently limiting of the common usage of the word ''deposit'' as to make the other definitions suggested by the commenter unnecessary.

*Comment:* One commenter asked that we expand the definition of certificate to include electronic transfers using an ATM machine, for example, suggesting that recordkeeping could be simplified and payments to providers made more promptly.

*Response:* It is not necessary to change the definition as suggested. The definition already recognizes that a certificate need not be a check, but could be an unspecified ''other disbursement''. Electronic transfers may be considered child care certificates if they meet the requirements of § 98.30(c), i.e., issued directly to the parent, of a value commensurate with the subsidy value of other child care services offered by the Lead Agency, etc.

*Comment:* A commenter asked that the definition of a certificate be broadened to include a check issued in the name of both the parent and the provider, regardless of whether it is sent directly to the parent or provider.

*Response:* It is unclear why this change was suggested. A check (or other disbursement) issued in the name of both the parent and the provider would meet the existing definition. The critical element is that parents can use such a disbursement with any child care provider they choose. If the commenter is suggesting that the parent be limited to only the named provider(s), which the parent may not have chosen, then it is not a ''certificate'' within the meaning of the Act.

*Comment:* One commenter observed that we had not proposed a definition of ''special needs child''.

*Response:* The Lead Agency has complete flexibility to define this term. It should be noted that the Lead Agency may define the term differently for purposes of prioritizing under § 98.44(b) from the definition it uses for purposes of payment rates as discussed at § 98.43. The use of the term is unchanged since the 1992 rule and we are unaware of the need to regulate a definition for ''special needs child'' now.

*Comment:* One commenter thought that our definitions somehow limited ''informal'' care to only that care provided in the child's own home (i.e., in-home care) and that this reduced needed Lead Agency flexibility as well as limited a family's options.

*Response:* We assume that the commenter understood the regulations to allow unregulated care only if it is provided in the child's own home. There is no such restriction in these regulations, nor has there been such a restriction in the past. Any child care that is legal in a jurisdiction, including care that the jurisdiction chooses not to regulate, is an option available under the Act, provided the requirements designed to protect the health and safety of the child are also met.

*Comment:* One commenter observed that the definition of relative is too narrow and that it would exclude some relatives as defined in some Native American cultures, for example, the ''hanai'' system in Hawaii, where family is informally ''adopted'' or related.

*Response:* Any relative who meets applicable state and local requirements, if any, may provide care, not just those listed in our definition. The definition is statutory and is provided solely for the purpose of identifying those relatives who may be exempted—but, only if the Lead Agency chooses to exempt them—from the health and safety requirements at § 98.41. The definition was not created to limit who may provide care.

*Comment:* Finally, a commenter noted that a definition for ''tribal organization'' was no longer included in this section.

*Response:* The PRWORA amendments broadened the definition of ''tribal organization'' to include the following ''other organizations'': (1) A Native Hawaiian organization; and (2) a private nonprofit organization established for the purpose of serving youth who are Indian or Native Hawaiian. However, the ''other organizations'' may only receive Discretionary Funds. Therefore, since not all tribal ''organizations'' are eligible to receive both parts of the CCDF (Discretionary Funds and Tribal Mandatory Funds), we initially decided to omit this definition entirely from this section and specifically define the new terms for ''other tribal organizations'' in the Preamble at § 98.61(c). The definition for tribal organization has been placed back in this section. This is the same definition used in the prior final rule (57 FR 34415, August 4, 1992). Since the ''other tribal organizations'' may only be funded with Discretionary Funds, they are defined and discussed in the Preamble at Subpart G, Section 98.61(c).

*Subpart B—General Application Procedures*

Lead Agency Responsibilities (Section 98.10)

The new statute did not change the responsibilities of the Lead Agency. The amended statute at section 658D(b)(1)(A), however, expands the CCDF Lead Agency's ability to administer the CCDF program through other agencies. This change broadens the ability of the Lead Agency to administer the CCDF program through governmental or non-governmental entities, not just ''other State agencies'' as provided in the original CCDBG Act. These entities could include local governmental agencies and private organizations. The new statute and the Conference Agreement report (H.R. Rep. No. 725, 104th Cong., 2d Sess. (1996)) are silent regarding whether the non-governmental agencies cited in this statutory change must be non-profit organizations, so ACF has not regulated on the characteristics of the agencies through which the Lead Agency may administer the program.

*Comment:* One Lead Agency asked whether the ability to administer the program through other non-governmental agencies meant that the State child care advisory council could have a stronger role in setting standards.

*Response:* The regulations have never limited Lead Agencies from including others in the creation of child care policy or the setting of State standards for child care. However, § 98.11(b)(2) and (8) provide that the Lead Agency shall continue to promulgate rules and regulations governing the overall administration of the program and that all agencies and contractors that determine individual eligibility shall do so according to the rules established by the Lead Agency.

The change in the regulation is to allow entities other than the Lead Agency to administer the day-to-day operation of the program.

*Comment:* Another Lead Agency asked us to delete the requirement at § 98.10(c) which requires consultation with local governments. Barring that, they asked for definitions of ''appropriate representative'' and ''local government''.

*Response:* Congress created the requirement for the Lead Agency to ''consult with appropriate representatives of units of general purpose local government'' at section 658D of the Act, and hence it can not

be deleted. As States and localities differ greatly in their governmental structures, we believe it is inappropriate to attempt to offer all-encompassing definitions for these terms. A Lead Agency may wish to consult its legal counsel if it is unable to determine whom it should consult with to meet this statutory requirement.

Administration Under Contracts and Agreements (Section 98.11)

Under the latest statutory amendments, the Lead Agency remains the single point of contact and retains overall responsibility for the administration of the CCDF program. We have amended this section, however, to reflect the statutory change discussed at § 98.10 regarding the Lead Agency's additional flexibility to administer the program through other governmental or non-governmental agencies.

Further, since we made revisions corresponding to the added administrative flexibility granted to the Lead Agency, we also wanted to align the wording of this section more closely with the statute concerning the overall, lead responsibility of the Lead Agency. Thus, we have re-worded the paragraphs in this section that suggested that the Lead Agency ''shares'' administration of the program with other entities, because the relationship between the Lead Agency and other entities through which it administers the CCDF is not co-equal.

*Comment:* One commenter wanted us to delete the requirement at § 98.11(b)(2) requiring the Lead Agency to ''Promulgate all rules and regulations governing overall administration of the Plan'' contending that when the CCDF is administered through other entities it should be up to the other agency to promulgate the rules for that part which it is administering.

*Response:* We do not agree that this provision should be deleted. The Lead Agency is ultimately responsible for the program irrespective of who administers the day-to-day operations. And, it is the Lead Agency against whom penalties will be assessed even if caused by actions of a subgrantee. It is because we hold the Lead Agency accountable that the provisions in § 98.11 exist.

The requirement for the Lead Agency to promulgate rules does not preclude subgrantees from suggesting, or even creating the policy and procedures by which the program or a part of the program operates. However, those policies and procedures must be issued under the auspices (i.e., promulgated) of the Lead Agency to ensure that they conform with the requirements of the Act and regulations, and the program described by the Lead Agency in the Plan it submits to ACF.

Coordination and Consultation (Section 98.12)

Section 658D(b)(1)(D) of the Act requires the Lead Agency to coordinate the provision of CCDF child care services with other Federal, State, and local child care and early childhood development programs. Coordination is crucial to the successful implementation of child care programs and quality improvement activities. The regulation at § 98.12(a) also requires the Lead Agency to coordinate its child care services with the specific entities required at § 98.14(a) to be involved in the CCDF Plan development process: Temporary Assistance for Needy Families (TANF), public health, employment services, and public education.

The statutory changes under PRWORA significantly heighten the need for enhanced coordination between TANF and child care. TANF imposes increased work requirements both regarding the number of TANF families participating in work and the number of hours they must work. At the same time, the guarantee of child care for families who are in work or approved education and training and guaranteed Transitional Child Care assistance were eliminated when PRWORA repealed the title IV–A child care programs.

Moreover, PRWORA provides new child care funding. It gives the CCDF Lead Agency administrative oversight over both the new funds and the funds authorized under the amended Child Care and Development Block Grant Act. The law requires that States dedicate 70 percent of these new funds to the child care needs of families that receive assistance under a State program under Part A of title IV of the Social Security Act, families that attempt through work activities to transition from such assistance, and families that are at risk of becoming eligible for such assistance. Under the new law, Tribes also receive additional child care funds and have the option to operate TANF programs. Tribes that operated tribal programs under the now-repealed Job Opportunities and Basic Skills Training (JOBS) program, may continue to operate work programs under the newly created Native Employment Works program (NEWP). Considered together, these changes present both an opportunity and a challenge for Lead Agencies to serve the child care needs of TANF families.

It is extremely important that children and their families are linked to a system of continuous and accessible health care services. An ongoing Departmental initiative encourages the linkage between child care and health care. In May 1995, Secretary Shalala initiated the Healthy Child Care America Campaign, which encourages States and localities to forge linkages between the health and child care communities. Recognizing the mutually beneficial roles, we require that the Lead Agency, as part of its health and safety provisions, assure that children in subsidized care be age-appropriately immunized. We believe that children will benefit substantially from this enhanced linkage between child care and health services.

Employment is the goal for most TANF families and employment services are critical to the low-income working families served by the CCDF. Therefore, it is only prudent that the Lead Agency coordinate with those State agencies that are responsible for providing employment and employment-related services. But child care is also emerging as an important workforce development issue for the entire population. As such, we believe that Lead Agencies should undertake policies that support and encourage public-private partnerships that promote high quality child care.

Linkages with education agencies are crucial to leverage additional services and enhance child development. One important aspect of this linkage is the role played by public schools as a critical on-site resource for child care. Although PRWORA repealed section 658H of the Child Care and Development Block Grant Act, which directly addressed before- and after-school child care, in the budget for fiscal years 1997 and 1998 Congress nevertheless set aside $19 million specifically to use for before- and after-school child care activities and child care resource and referral. We, therefore, believe that the repeal of section 658H should not result in a lessening of coordination with before- and after-school programs. We have included requirements to coordinate with public education agencies, both for the purpose of child care planning and development, as well as for more general coordination initiatives.

Aside from requiring Lead Agency coordination with specific entities discussed above, we also strongly encourage coordination with other agencies with potential impact on child care, including: Head Start collaborative offices, child support, child protective services (especially when the Lead

Agency chooses to include children receiving protective services among the families eligible for CCDF subsidies), transportation, National Service, and housing.

The Head Start comprehensive model of health, parent involvement, family support and education, when linked with child care, can provide parents and children with quality comprehensive full day/full year services. Promising models that fund Head Start-eligible children in community-based child care provided in child care centers and homes are emerging across the country. We encourage Lead Agencies to explore and support such efforts.

Partnerships with National Service programs present promising opportunities for collaborations that can expand and enhance child care for both young children and school-aged children. National Service programs have developed several effective and replicable models for providing the tools and skills necessary to build the capacity and sustainability of local child care programs, involving parents and community volunteers in child care activities, and enlisting private sector participation in meeting community needs, including child care.

The availability of transportation is key to enabling families to access child care services and, ultimately, work. Coordination with transportation agencies and planning groups can ensure that child care facilities are located near major transportation nodes for easier access and that systems of public transportation support travel patterns of low-income workers. Alleviating transportation difficulties for child care cuts down on travel time and stress, and allows parents to focus on achieving self-sufficiency through work and education.

Child care and child support enforcement programs serve many of the same families and have a shared mission—to promote self-sufficiency of families and the well-being of children. As a result, we encourage collaborative outreach initiatives between these programs. For example, child care programs can disseminate information to parents about paternity establishment and child support enforcement. We also encourage the two programs to coordinate on policy issues. For example, the programs have a common interest in assuring that the State guidelines used to calculate child support awards adequately consider the cost of child care.

Coordinating with housing agencies is crucial for the millions of TANF recipients and low-income workers who receive child care subsidies and reside in public housing. Locating child care facilities in or near public housing makes services more accessible, and can provide parents with a more stable and familiar environment for their children's care. Lead Agencies can work with public housing authorities to identify opportunities where co-located housing and child care can serve as an employment or entrepreneurial strategy, and a support service for residents.

We also wish to highlight that the regulation at § 98.12(c), which requires States to coordinate, to the maximum extent feasible, with any Indian Tribes that receive CCDF funds has new meaning in the context of the changes made by PRWORA. As we have noted above, Tribes are eligible to directly receive additional child care funding, and to operate TANF as well as continue to operate work programs (NEWP)—if the Tribe operated a JOBS program in 1994. Nonetheless, the new law did not amend section 6580(c)(5), which specifically provides tribal children with dual eligibility for both tribal and State child care programs funded under CCDF. A broad range of options for implementing and designing programs is available to both States and Tribes. States and Tribes, therefore, have a mutual responsibility to undertake meaningful coordination in designing child care services for Indian families.

*Comment:* A few commenters thought that our coordination requirement was statutorily unfounded or unnecessary because it may fail to include the most critical partnerships.

*Response:* It seems unlikely that a CCDF program could successfully meet two of the goals of the Act—providing child care to parents trying to achieve independence from public assistance, and assisting States in implementing State health, safety and licensing standards—without involving, at a minimum, the additional agencies added at § 98.14 in this rule. In fact, since the inception of the program, we have been told by Lead Agencies and the public that coordination with Federal, State, and local child care and early childhood development programs, and the four additional agencies listed is critical to the ongoing successful delivery of quality child care in a State. This requirement recognizes that the coordinative process helps maximize existing resources and avoid duplicative efforts which can result in more positive outcomes for the families and children served by all of the programs involved.

*Comment:* A number of commenters suggested other agencies with which the Lead Agency should be required to coordinate, for example, representatives of the American Academy of Pediatrics, the National Association for the Education of Young Children, the State special education preschool program administrator, the early intervention lead agency, and the child welfare agency, among others.

*Response:* Many Lead Agencies already collaborate with some or all of the agencies suggested and we encourage others to do so as well. However, we do not believe it is prudent to expand the coordination requirement at § 98.14 to include those entities with whom many Lead Agencies are already voluntarily collaborating. We kept our required list to a critical core of agencies. This is not intended to diminish the importance of other collaboration efforts. It would not be reasonable to create an all-inclusive list of potential collaborative agencies. We have confined the regulations to the core required collaboration.

*Comment:* Several commenters asked if our intention was to limit coordination only to governmental entities. In this regard, others asked that the reference to the public education agency be expanded to specifically include private and sectarian schools and early education programs.

*Response:* Our requirement recognizes that the impact for the greatest number of families is likely achieved by coordination at the State level. The regulation attempts to maximize the coordination by including those agencies whose activities impact most of the eligible or potentially eligible families in a State. It is not our intention, however, to limit coordination to only governmental entities. And, we encourage Lead Agencies to coordinate with private and sectarian schools and early education programs, especially since such institutions and programs are already utilized by many families.

*Comment:* One commenter thought that use of the phrase ''at a minimum'' in § 98.14(a) weakens the intent of broader coordination with additional entities.

*Response:* We agree and have reworded the regulation.

Applying for Funds (Section 98.13)

The requirements for Tribes applying for funds have been moved to Subpart I and are discussed there. We have separated the tribal requirements in order that the discussion of tribal requirements may be more focused and coherent.

We simplified the application process for States and Territories in order to reduce the administrative burdens of duplicative information requests and to

provide budget information in the CCDF Plan, which is a public document. Heretofore, the regulations required an annual ''application,'' separate from the Plan. This separate application indicated the amount of funds requested, broken down by proposed use (e.g., direct services, administration, quality activities, etc.). A Plan that describes the entire child care program in detail is also required, but only once every two years. In the past, the Plan did not provide a ''fiscal context'' for the program, since it does not include budgetary information.

In the past, the separate application requested extensive budget information, largely due to the requirements related to the now-discontinued 25 percent setaside of funds for quality and supply building. Because we knew that the budget data was preliminary, we had not required its inclusion in the Plan or made it subject to the compliance process. More importantly, the budget information was not subject to the public hearing process.

We believe that the Lead Agency, in setting the goals and objectives of the program and in determining how to achieve them, must consider the allocation of funds, as well as the program and administrative activities that will be undertaken. We also believe that public knowledge of how funds might be allocated among activities and eligible populations is critical to the planning process. Therefore, we are requiring the Lead Agency to include in its Plan an estimate of the percent or amount of funds that it will allocate to direct services, quality activities, and administration. These estimates are for the public's consideration in the hearing process; they will not be used to award funds. At § 98.13(a) we have retained the requirement that the Lead Agency apply for funds. The ACF–696 is the formal vehicle for providing estimates to ACF for the purpose of awarding funds. We intend to use the financial form ACF–696 to fulfill this requirement, so that the need for a separate application is obviated.

The Plan estimates will be macro-level estimates. That is, the Plan will reflect an estimated amount (or percentage) of funds that the Lead Agency proposes to use for: all direct services, for all quality activities and for administration. We will not ask that these estimates be broken down into subcategories as we had in the separate application.

*Comment:* One commenter objected to the use of estimates thinking that the form for formally requesting funds from DHHS, which replaces the application process, was at least two years from being utilized.

*Response:* That form, the ACF–696, was under OMB review when the proposed rule was published and has since been approved and is already in use.

*Comment:* Although our proposal to restructure the application process received almost universal support, some commenters wanted assurances that States would not be held accountable if estimates are incorrect as a result of future policy or budget changes. Another commenter wanted us to require that future Plans include a comparison between the amounts estimated in prior Plans with the actual expenditures for those periods.

*Response:* As we said in the proposed rule, we recognize that these are estimates and, as such, will not be subject to compliance actions. Similarly, approval of a Plan will not be withheld based on the Lead Agency's allocation of funds among activities, unless the Plan indicates that the requirements for administrative cost or quality expenditures will be violated.

We considered the suggested requirement to compare past estimates with actual expenditures for the same period but rejected it for a number of reasons. First, such a requirement would call into question our assertion that the estimates supplied in the Plan are, in fact, estimates and that ACF will not take compliance actions based on them. Second, because expenditure periods for funds overlap Plan periods a full statement of actual expenditures would not be forthcoming until several years after the original estimate, when the persons responsible for the estimates may no longer be in a position to be ''accountable'' to the public for those estimates. Lastly, interested parties can always request that the Lead Agency make public its spending on various activities. In any event, the Lead Agency is already required to provide information on the actual use and distribution of funds to ACF, pursuant to section 658K of the Act.

We continue to request the various certifications and assurances that are required by other statutes or regulations and that apply to all applicants for Federal financial assistance, specifically:

- Pursuant to 45 CFR part 93, Standard Form LLL (SF–LLL), which assures that the funds will not be used for lobbying purposes. (Tribal applicants are not required to submit this form.)
- Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the grantee provides a drug-free workplace.
- Pursuant to 45 CFR 76.500, certification that no principals have been debarred.
- Assurances that the grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended).

Section 98.13 requires the Lead Agency, not the Chief Executive Officer, to supply the requested information. Since the Chief Executive Officer designates the Lead Agency, we feel that it is unnecessary for the Chief Executive Officer to thereafter apply for funding each year. This change gives grantees the flexibility to simplify the application process further.

In summary, the CCDF application process for States and Territories consists of the two-year CCDF Plan as required in § 98.17 and such other information as may be specified by the Secretary. For the second year of the Plan, the Lead Agency uses the ACF–696 to provide ACF with its estimates of funds needed quarterly—there is no longer a separate ''application'' needed from States and Territories in the second year of the Plan period.

*Comment:* One commenter objected to discontinuing the separate application because it contained information on the mix of certificates and grants/contracts which could be used to monitor a Lead Agency's compliance with Section 658(c)(2)(A) of the Act concerning the availability of certificates.

*Response:* The regulations at § 98.13 never required that the Lead Agency's application provide information on the use of certificates. In the past, policy Program Instructions requested such information to ensure that Lead Agencies met the statutory requirement to provide certificates. This was necessary because some Lead Agencies had never provided certificates prior to the CCDBG Act and the Act required all Lead Agencies to have a certificate program in place by October 1, 1992. ACF looked to the information in the application as a indication of the Lead Agency's compliance with this requirement.

In the years since that deadline, certificates have become an integral part of every Lead Agency's program, in fact many State programs are totally

certificate-based. We are satisfied that all Lead Agencies are in conformity with this provision of the Act. It should be noted that Lead Agencies are required to report to ACF the actual numbers of children receiving certificates per § 98.71(b)(2).

Plan Process (Section 98.14)

Section 658D(b) of the Act requires the Lead Agency in developing the Plan to: (1) Coordinate the provision of services with Federal, State and local child care and early childhood development programs; (2) consult with appropriate representatives of local governments; and (3) hold at least one hearing in the State with sufficient time and statewide notification to provide an opportunity for the public to comment on the provision of child care services.

In amending the CCDBG Act to require that the Lead Agency provide ''sufficient time and Statewide distribution'' of the notice of hearing, Congress established a higher standard for public comment than previously existed in the Act. Affording the public a meaningful opportunity to comment on the provision of child care services advances public participation, Lead Agency accountability and the overall goals of welfare reform. Accordingly, we have established a minimum 20-day notice-of-hearing requirement at § 98.14(c). That is, the Lead Agency must allow a minimum of 20 days from the date of the statewide distribution of the notice of the hearing before holding the hearing. Many Lead Agencies have ongoing planning processes with broad community involvement that convene regularly during the year. We applaud such broad participatory approaches as they are especially responsive to changing needs and these approaches may fulfil the requirements of § 98.14.

*Comment:* Some commenters preferred the previous requirement for ''adequate notice'' for public hearings and were unaware of problems or inadequacies of that process. Others argued for a longer notice period and a requirement for additional hearings in a State.

*Response:* Congress clearly envisioned something different from the existing ''adequate notice'' process when it amended the Act to require ''sufficient time and statewide distribution'' of the public hearing notice. We also have received reports that some Lead Agencies provide such short notice of hearings as to effectively preclude broad public participation.

In the interest of State flexibility, we have established only a minimum amount of time—20 days—that the public should be notified of the hearing. However, we encourage Lead Agencies to consider providing longer lead times that would allow the public more time to prepare for hearings, especially when only a single hearing is held in the State. Although the Act requires the Lead Agency to hold only one public hearing, the Lead Agency may, of course, hold additional public hearings. Because of technological changes which might allow for public comment via the Internet or linking sites across a State via satellite, we have not regulated an additional number of hearings that must be held since Lead Agencies may find other approaches for public input that are equally effective and less costly than additional hearings.

As stated in the proposed rule, we considered establishing regulations around the newly added statutory language that requires ''statewide distribution of the notice of hearing.'' Clearly, the expanded Child Care and Development Fund potentially impacts a much wider segment of the population than may have been the case under the CCDBG. In light of the stronger statutory language about public hearings, we considered, for example, a regulation to require the Lead Agency to employ specific media in publicizing its hearing or to ensure that specific portions of the population be potentially exposed to the hearing notice.

We rejected these and other alternatives as restricting State flexibility. Nevertheless, we remain concerned that some Lead Agencies may not respond to the heightened statutory requirement. We, therefore, require the Lead Agency to describe how it achieved statewide distribution of the notice of hearing in its description of the hearing process required in the Plan by § 98.16(e). We received no comments on this proposal.

Similarly, we have not established a specific requirement concerning written comments from the public as suggested by some commenters. We believe, however, that a meaningful public comment process must consider written comments from persons or organizations, especially those who are unable to attend a hearing.

At § 98.14(c)(2) we require that the public hearing be held before the Plan is submitted to ACF, but no earlier than nine months prior to the effective date of a Plan. We recognize that States may have established public comment mechanisms that coincide with their budgetary cycle but not within our usual time frames for public hearings and Plan submittal. Therefore, we wish to clarify our intention in this area.

ACF does not believe that the public hearing is held for the purposes of ''approving'' the Plan as it will be submitted, but rather to solicit public comment and input into the services that will be provided through the CCDF. For this reason, we have created a flexible process that does not create an undue burden on Lead Agencies, yet insures that the statutorily required public input is obtained.

The Plan that is submitted to ACF must reflect the program that will be conducted and must incorporate any changes to the program that the Lead Agency chooses to adopt as a result of the input received during the public hearing. We advise the Lead Agency to retain a copy of the draft Plan that it made available for public comment in fulfillment of this requirement. We also remind Lead Agencies that substantive changes in their programs, after their Plans are submitted to ACF, must be reflected by amending the Plan per § 98.18(b).

*Comment:* A few commenters suggested that the Lead Agency be required to specifically respond to comments raised at the public hearing or at least to those comments on the Plan that are submitted in writing, others suggested that the Lead Agency be required to provide a summary of all comments received on the Plan.

*Response:* We decline to require Lead Agencies to summarize or respond to comments received during the public hearing process. The Act does not suggest such a requirement and it is unclear what would result from it. We also believe that this would be an especially resource-intensive activity for the Lead Agency which would not necessarily further the goals of the Act.

*Comment:* Some commenters objected to any regulation around public input stating that they had ongoing mechanisms for coordination or input, such as quarterly child care steering committee meetings, others felt that a State legislative or budget hearing would fulfill the requirement. Still others argued that the public hearings are poorly attended or not helpful.

*Response:* At section 658D(b)(2) of the Act, Congress clearly ties together the hearing and the State Plan with the expectation that the public be afforded an opportunity to comment on the content of that Plan. The Act requires a hearing ''to provide the public an opportunity to comment on the provision of child care services under the State plan.''

Ongoing mechanisms, such as those suggested by the commenters may, in fact, meet the requirements of the Act when they allow for the public to comment on the provision of services under the State Plan. Some legislative

oversight or budget hearings, in contrast, may not meet this statutory requirement if they do not allow for public comment (i.e., the public is not afforded an opportunity to comment as when only the State Administrator or legislators are allowed as witnesses). Similarly, a single state budget hearing held for the purpose of discussing the entire State budget may not afford any opportunity to specifically address child care services in the State, especially in the detail set forth in the Plan, as required by the Act. It is not the auspices under which the hearing is held that is important, but whether the hearing allows for the necessary public input required by the Act.

Regarding attendance or participation at public hearings in the past, we believe that public hearings, designed for broad public participation and held with sufficient notification can nevertheless become meaningful forums for State child care policy discussions, especially in future years.

*Comment:* A few commenters objected to the requirement that the hearing be held no earlier than 9 months prior to submission of the Plan to ACF as unnecessarily prescriptive.

*Response:* We maintain that the requirement that hearings be held no earlier than 9 months before the Plan is submitted to ACF is a balanced approach which allows the Lead Agency to conduct its hearing up to a full year in advance of the effective date of the Plan. Allowing complete latitude in setting the date for the public hearing might make the hearing requirement less meaningful and creates a disconnect—the further from the effective date of the Plan that the hearing is held.

*Comment:* A number of commenters argued that the child care Plan must be made available before the public hearing is held for there to be meaningful public input. They suggested various timeframes and formats for making Plans available.

*Response:* We agree that meaningful public comment on the ''provision of child care services under the State plan'' as required by the Act is hampered, if not impossible, without knowledge of the contents of that Plan. For example, the Act now requires the Lead Agency to provide ''detailed descriptions'' of various child care policies such as parental access, parental complaints, and payment rates among others. In order to meaningfully comment, the public must know what those policies are. We believe this can only be accomplished by providing the public with the Plan that the Lead Agency proposes to submit to ACF. Therefore, at § 98.14(c)(3) we are requiring that the Lead Agency make the Plan available in advance of the required hearing.

We decline to regulate on the timeframes or formats for making the Plan available to the public but remind Lead Agencies of their obligations under the Americans with Disabilities Act for accessibility of public information.

*Comment:* One commenter asked for flexibility in the format of the Plan that is to be submitted to the public in advance of the hearing suggesting that various topics such as parent fees, eligibility and payments rates be presented, but not necessarily in the format of the preprint that ACF requires.

*Response:* We agree that the Plan that is presented in advance of the public hearing need not be in the format of the preprint. However, as a practical matter, this may be the easiest format for the Lead Agency to use. That is because the Act requires comments on child care services under the ''State plan''—the requirements for which are outlined at § 98.16. As long as all of the elements of the Plan as described at § 98.16 are provided in advance of the hearing, then the requirement is satisfied. We note that many of the Plan elements, such as most of the newly statutorily-required ''detailed descriptions'' probably will not change from Plan to Plan, hence the preprint format may not be as burdensome as the commenter imagines.

*Comment:* A number of commenters opposed having amendments to the Plan subject to the public hearing. They also objected to applying the hearing requirement to those Plans which were to become effective on October 1, 1997.

*Response:* The proposed rule neither required nor suggested that Plan amendments are subject to a public hearing. As has been the policy since the inception of the program, this final rule also does not require a public hearing for amendments to approved CCDF Plans. Although an amendment to the Plan is not subject to the Federal regulatory hearing requirement, we recognize that State rules or Lead Agency practice may, nevertheless, require a hearing or public comment period or both.

The preamble to the proposed rule provided that the new CCDF Plans due to ACF in 1997 were subject to the statutory requirements—not the proposed regulatory requirements—for a hearing i.e., at least one hearing with sufficient time and statewide distribution of the notice. Although that issue is now moot we wish to reiterate that both the public hearing and the coordination and consultation processes must be undertaken each time the entire Plan is required to be submitted. The regulations provide that the entire Plan is only required to be submitted at the beginning of each Plan biennium.

As discussed above at § 98.12, we believe that ongoing coordination and consultation processes are vital to the design of a successful program. Therefore, at § 98.14(a) we have included a minimum list of State agencies with which the Lead Agency must coordinate the provision of services under the CCDF.

The requirement to coordinate with specific agencies includes a provision that the Lead Agency describe the ''results'' of the coordination. In the proposed rule, we did not elaborate on this requirement as we thought it self-evident. Because we did not give context to this requirement, some commenters ascribed purposes or expectations that we did not intend. Therefore, we wish to elaborate on this part of the coordination requirement.

Prior to this rule Lead Agencies were required to provide a ''description'' of the coordination and collaborative processes they engaged in during the preparation of the State Plan. This description in the Plans, however, was frequently merely a list of agencies with which the Lead Agency had met. Often these descriptions did not change over long periods, or the dates of the meetings listed remained unchanged from Plan to Plan. The ''description'' gave the impression that there was little progress resulting from the coordinative efforts of the Lead Agencies—that little was happening. We knew this to be an inaccurate picture.

The Plan is not just a public document describing the State's approach to child care for the purpose of its hearing process. It also serves as a guide for other Lead Agencies about promising practices, different approaches to common problems and can be an indicator of issues that others may face in the future. Because of the multiple uses of the State Plan, we wanted the ''description'' of the coordinative effort to more accurately reflect what we knew was the reality in the States. No other purpose is contemplated or intended in asking that the Plan reflect the ''results'' of the coordination activities.

We recognize that coordination may not have quantifiable results, especially in the short term. Because coordination is an ongoing process, an explanation of the intended outcomes of a Lead Agency's current and planned coordination activities would be an appropriate ''results''. Similarly, a compilation of the useful lessons learned from the coordination activities

would meet our intent in asking that the ''results'' be described in the State Plan.

Additional comments relating to the coordination and consultation requirement and processes are addressed in the discussion at § 98.12

Assurances and Certifications (Section 98.15)

The PRWORA amendments made a number of changes to the assurances under the CCDBG. In several instances the term ''assure'' was replaced by the term ''certify.'' Also, as described below, the amendments changed the content of two of the former assurances and some assurances were eliminated.

While ACF believes that there is no practical difference between an assurance or certification, when both are given in writing, we have grouped the assurances together at § 98.15(a) and the certifications together at § 98.15(b).

Regarding specific substantive changes, the new section 658E(c)(2)(D) of the Act replaces the former assurance regarding consumer education. The corresponding regulatory amendment at § 98.15(b)(3) uses the statutory language requiring the Lead Agency to certify it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.''

The new section 658E(c)(2)(E) does not contain prior language requiring Lead Agencies to have in place a registration process for unregulated care providers that provided care to children receiving subsidized care under the CCDBG Act. We, therefore, removed the assurance formerly found at § 98.15(i). We note, however, that the Lead Agency has the flexibility to continue to maintain a registration process for providers if it chooses. This process has enabled States to maintain an efficient payment system. In addition it has provided a means to transmit relevant information, such as health and safety requirements and training opportunities, to providers who might otherwise be difficult to reach.

The Act also revises the requirement that providers meet all licensing and regulatory requirements applicable under State and local law. The revised requirement at § 98.15(b)(4) mirrors the new statutory language that there be ''in effect licensing requirements applicable to child care services provided within the State.''

For tribal programs, the amendments specifically provide that, ''in lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter'' (section 658E(c)(2)(E)(ii)). ACF is in the process of arranging those consultations.

The PRWORA deleted requirements formerly found in the statute at section 658E(c)(2)(H), (I), and (J). These provisions, which related to reporting reductions in standards, reviewing State licensing and regulatory requirements, and non-supplantation were deleted.

Finally, § 98.15(a)(6) requires that States provide an assurance that they have not reduced their level of effort in full-day/full-year child care services if they use pre-Kindergarten (pre-K) expenditures to meet the MOE requirement. Comments relating to this assurance, and the use of pre-K in the CCDF in general, are discussed further at § 98.53.

*Comment:* One commenter suggested strengthening the certification at § 98.15(b)(3) by requiring that the consumer education be provided through community-based organizations. The commenter also wanted us to clarify that such consumer education be made available to the general public throughout the State.

*Response:* We agree that community-based organizations may, in fact, be the best way of providing consumer education as discussed at § 98.33. However, in the interests of State flexibility, we decline to limit the Lead Agency's options so narrowly. We note that the certification already requires dissemination of consumer education materials ''to the general public'' and it is our expectation that such materials are widely made available and not limited just to families applying for or receiving CCDF subsidies.

*Comment:* Another commenter asked that the certification at § 98.15(b)(7) be clarified to define equal access as also meaning timely payment of the provider by the State. The commenter wanted a certification that payments to providers would be processed within a state-established timeframe, claiming that lengthy delays in payment made providers reluctant or unwilling to accept subsidized children, thereby effecting equal access.

*Response:* We agree that the Lead Agency should establish timely payment processing standards for the reasons stated by the commenter. However, there is no statutory basis for requiring such standards and we decline to change the regulation.

*Comment:* One commenter noted that § 98.15(a)(5) contained an incorrect citation.

*Response:* We have corrected the citation to read, ''pursuant to § 98.30(f).''

Plan Provisions (Section 98.16)

We have amended § 98.16 to reflect changes in the Plan resulting from PRWORA. For example, we have deleted the language on registration and the calculation of base-year level-of-effort previously found at § 98.16(a)(13), (14) and (16). We substituted for them the statutory requirements for the Lead Agency to provide detailed descriptions of its parental complaints process at § 98.16(m) and its procedures for parental access at § 98.16(n). Similarly, we have modified some language to reflect new statutory language. For example, § 98.16(h) now discusses the additional purposes for which funds may be used, and § 98.16(l) now requests the summary of facts upon which payment rates were determined, including the conduct of a market rate survey. Section 98.16(c) has been expanded to identify the entity designated to receive private donated funds pursuant to § 98.53(f). We have also modified the language at § 98.16(g)(2) to reflect broader flexibility concerning the use of in-home care. We received many comments on these provisions. Those comments are more appropriately discussed in the related sections that follow.

We take this opportunity to correct the wording of § 98.16(j), formerly § 98.16(a)(10), concerning health and safety requirements. We have removed the word ''minimum'' here since the legislation contains no such qualification, nor do our regulations limit the flexibility to establish such requirements. We note that § 98.41 remains unaffected by this correction since that section did not include the use of the word ''minimum.''

We have also required at § 98.16(p) that the Lead Agency include in the CCDF Plan the definitions or criteria used to implement the exception to TANF work requirement penalties that applies when a single custodial parent with a child under age six has demonstrated an inability to locate needed child care. Among others, the definitions or criteria would include ''appropriate child care,'' and ''affordable child care arrangements.'' We elaborate on this requirement, and the many comments received about it, in the discussion of consumer education at § 98.33.

Finally, § 98.16(q)(1) provides that the Lead Agency describe State efforts to ensure that pre-K programs, for which

any Federal matching funds are claimed, meet the needs of working parents. At § 98.16(q)(2) we codified the provision found in the preamble of the proposed rule at § 95.53. This section provides that, should the Lead Agency use public pre-K funds to meet more than 10% of either the MOE or the Matching requirements, the Plan will reflect this. The Plan must also describe how the State will coordinate its pre-K and child care services to expand the availability of child care when the Lead Agency uses public pre-K funds to meet more than 10% of either the MOE or the Matching requirements. These requirements are discussed at § 98.53.

The Administration on Children will issue appropriate amendments to the State CCDF plan preprint (ACF–118) and the Tribal CCDF plan preprint (ACF–118A) in Program Instructions, which will also provide guidance on when Lead Agencies would be required to submit amendments. The Program Instructions will take into consideration appropriate lead times for implementation.

*Comment:* One commenter objected to including TANF definitions in the State child care Plan because then the child care Plan would have to be amended every time TANF changed its definitions.

*Response:* Including TANF definitions in the child care Plan is not burdensome because those TANF definitions are unlikely to change frequently over the two-year life of the Plan. In any event, changes to the TANF definitions would not appear to be a ''substantial change'' in the CCDF program. Hence, an amendment to the Plan would not be required as discussed in the preamble to the 1992 rule at 57 FR 34367. We repeat that the purpose of this provision is for public education about the requirements upon, and options available to, low-income working parents as discussed in the preamble at § 98.33.

*Comment:* Another commenter felt that States should not have to ''justify'' limits on in-home care in the Plan. She suggested that a listing of the limits on in-home care and the policy reasons for those limits should be sufficient.

*Response:* We agree. It was not our intent to make States justify the limits they place on in-home care. Rather, we want the Plan to reflect their basis for doing so, in order for the public and ACF to better understand the State's policy. We have accordingly changed the wording of the regulation. The preamble discussion at § 98.30 remains essentially the same as we did not use the word ''justify'' in that discussion of in-home care, from which the Plan requirement is derived.

*Comment:* A commenter observed that the statute does not require that the Lead Agency itself maintain the records of substantiated parental complaints, but rather requires the State to maintain such records.

*Response:* We agree and have changed the wording of § 98.16(m) to reflect the requirement as discussed at § 98.32.

Period Covered by Plan (Section 98.17)

The statute was amended at section 658E(b) to eliminate the three-year initial period for State Plans. The rule provides that all Lead Agencies for States, Territories, and Tribes must submit new Plans every two years beginning with the Plans for Federal Fiscal Years 1998 and 1999.

*Comment:* One commenter observed that two years is too short a period for meaningful comprehensive planning and that such a period may not coincide with State legislative sessions. The commenter asked for the ability to prepare longer range plans, such as 3 to 5 year plans, with provision for annual updates.

*Response:* We agree that a longer plan period might better suit some Lead Agencies' planning cycles. However, this requirement is statutory.

*Subpart C—Eligibility for Services*

A Child's Eligibility for Child Care Services (Section 98.20)

*General eligibility.* The amended statute at 658P(4)(B) expands the definition of ''eligible child'' to include families whose income does not exceed 85 percent of the State median income for a family of the same size. Therefore, § 98.20(a)(2) reflects that change.

We retained the State flexibility at § 98.20(a)(1)(ii) regarding the option to serve dependent children age 13 and over who are physically or mentally incapacitated or under court supervision. States may elect to serve children age 13 or older who are physically or mentally incapacitated or under court supervision up to age 19, if they include the age limit in their CCDF Plan.

*Foster care and protective services.* Grantees have the flexibility to include foster care in their definition of protective services in their CCDF Plan, pursuant to § 98.16(f)(7), and thus provide child care services to children in foster care in the same manner in which they provide services to children in protective services.

A child in a family that is receiving, or needs to receive, protective intervention is eligible for child care subsidies if he or she remains in his or her own home even if the parent is not working, in education or in training. In these instances, child care serves the child's needs as much or more than the parent's needs. Likewise, child care services may also be necessary when a child is placed in foster care. Therefore, if Lead Agencies do not include foster care in their definition of protective services, they must tie eligibility for CCDF child care of children in foster care to the status of the foster parent's work, education or training.

*Comment:* One commenter suggested that the option to include foster care within the definition of protective services should be included in the regulatory section.

*Response:* We agree. Therefore, we amended § 98.20(a)(3)(ii) and § 98.16(f)(7) to ensure that States carefully consider inclusion of this option when developing and implementing their CCDF Plan.

*Comment:* Most commenters were pleased that children in foster care could be eligible for child care services since many States do not differentiate between foster care and child protective services. However, some commenters felt that we should include foster care in the regulatory definition of eligible child so that all children in foster care would be eligible.

*Response:* The statute did not specifically provide for foster care as an eligibility criteria. As states have varying policies regarding services for children in foster care and protective services, we have not included foster care in the regulatory definition. Rather we will allow States flexibility in determining if, and how, they will serve children in foster care and protective services. Therefore, a State must indicate its intention of providing child care services to children in foster care—on the same basis as children in protective services—by including foster care in their definition of protective services in the CCDF Plan.

*Comment:* Several commenters believed that the child's eligibility for child care services should not be based on the income of the foster parents.

*Response:* States continue to have the flexibility to consider a child in foster care as a family of one, for purposes of determining income eligibility under § 98.20, on a case-by-case basis.

*Respite care.* We further clarified that respite child care is allowable for only brief, occasional periods in excess of the normal ''less than 24 hour period'' in instances where parent(s) of children in protective services—including foster parents where the Lead Agency has defined families in protective services to

include foster care families—need relief from caretaking responsibilities. For example, a child care arrangement by someone other than the custodial parent for one weekend a month to give relief to the custodial parent(s) of children in protective services is acceptable. We believe that this kind of respite child care, if necessary for support to families with children in protective services, would be an acceptable use of CCDF funds.

If a State or Tribe uses CCDF funds to provide respite child care service, i.e., for more than 24 consecutive hours, to families receiving protective services (including foster care families when defined as protective services families), the CCDF Plan must include a statement to that effect in the definition of protective services. We note this definition of ''respite child care'' may differ from how States or Tribes define it for other purposes (e.g., child welfare). Thus, respite child care must be specified in the Lead Agency's Plan if it is to be considered an allowable expenditure under CCDF.

*Comment:* Several commenters felt that States should be required to provide respite care for children with disabilities.

*Response:* Since respite care is provided to give parents time off from parenting, rather than care to allow the parent to participate in work or in education or training, the CCDF cannot be used for respite care for children with disabilities unless the child also needs or is receiving protective services.

*Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities*

Parental Choice (Section 98.30)

*Cash as a certificate.* Since welfare reform has raised issues about methods of paying for child care, we wish to provide clarification with respect to child care certificates provided in the form of cash. In defining the term ''certificate,'' the statute at 658P(2) says, ''The term'' child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government * * * directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider.''

With a certificate or two-party check, the Lead Agency can ensure that money is paid to a provider who meets applicable health and safety requirements. This is not the case when a Lead Agency provides cash to a parent. We strongly discourage a cash system, because providers must meet health and safety standards, and we believe that the use of cash can severely curtail the Lead Agency's ability to conform with this statutory requirement.

If, nevertheless, a Lead Agency chooses to provide cash, it must be able to demonstrate that: (1) CCDF funds provided to parents are spent in conformity with the goals of the child care program as stated at section 658A of the Act, i.e., that the money is used for child care; and (2) that child care providers meet all applicable licensing and health and safety standards, as required by section 658E(c)(2) (E) and (F) of the Act. Lead Agencies, therefore, may wish to consider having parents who receive cash attest that the funds were used for child care and to identify the provider. Such a statement would help assure that the funds were expended as intended by the statute and lessen the possibilities for fraud. Finally, Lead Agencies are reminded that they must establish procedures to ensure that all providers, including those receiving cash payments from parents, meet applicable health and safety standards.

*Comment:* One commenter was concerned that we ''strongly discourage'' the use of cash. She felt that this stifled State innovation in piloting new service delivery systems and ran counter to the purposes of PRWORA in instilling personal responsibility. In recognizing that providing cash can only be successful with intense parent and provider education, the commenter argued for State flexibility to experiment without sanctions from ACF.

*Response:* We appreciate the commenter's thoughtful approach to the question of providing cash. Like the commenter, we believe that without appropriate safeguards, such as intense consumer education and the provisions discussed above, the provision of cash may not fulfill the goals of either PRWORA or the CCDBG Act. While we continue to discourage the use of cash, we recognize that the Lead Agency retains the flexibility to use it.

*Availability of certificates.* We received an unexpectedly large number of comments on our proposed clarification concerning the availability of certificates; many with strongly argued positions. Some comments favored the clarification, but most opposed it.

Even though we proposed no changes to the regulatory language at this Part, the comments revealed a fundamental belief that we were proposing to lessen the emphasis on parental choice. That is not the case. However, because of the depth of reaction around this topic, we have decided to withdraw the proposed clarification rather than try to explain it again in different words. Therefore, concerning the availability of certificates, the preamble to the 1992 Final Rule continues to apply and the regulatory language remains unchanged.

*In-home care.* Child care administrators have faced a number of special challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. For that reason, we give Lead Agencies complete latitude to impose conditions and restrictions on in-home care. We have revised § 98.16(g)(2) to require that Lead Agencies, in their CCDF Plans, specify any limitations on in-home care and the reasons for those limitations.

The Lead Agency must continue to allow parents to choose in-home child care. However, since this care is provided in the child's own home it has unique characteristics that deserve special attention. In-home care is affected by interaction with other laws and regulations. For example, in-home providers are classified as domestic service workers under the Fair Labor Standards Act (FLSA) (29 U.S.C. Section 206(a)) and are therefore covered under minimum wage. As employees, in-home child care providers are also subject to tax requirements. In highlighting these special considerations, we also note that whenever the FLSA and other worker protections apply, ACF is committed to maintaining the integrity of these protections. A strong commitment to work, and therefore to worker protections, is critical to welfare reform.

We are mindful that in-home care plays a valid and important role in meeting the needs of working parents, and that many participants in subsidized care programs rely on such care to meet their family needs. Access to care that meets the needs of individual families is critically important to parents and children, to schools and the workplace, and to other community institutions that interface with the family. While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts,

weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general scarcity of school-age child care in many communities, in-home care may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also reflects important cultural values and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

We urge child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may play in the ability of parents to manage work and family life. Although in-home care does not represent a large share of the national supply, it fills an important niche in the structure and functioning of local child care markets by extending the ability of parents to care for children within their own families, closing gaps in the supply of community facilities, and creating a bridge between adult care and self- or sibling-care as children near adolescence.

Some Lead Agencies may choose to limit in-home care because of cost factors. For example, a State might determine that minimum wage requirements result in payments for in-home care serving only one or two children that are much higher than the payments for other categories of care. Therefore, the Lead Agency could elect to limit in-home care to families in which three or more children require care. The payment to the in-home provider would then be similar to the payment for care of the three children in other settings. This ability to limit in-home care allows Lead Agencies to recognize the same cost restraints that families whose care is unsubsidized must face.

However, since in-home care has proven to be an important resource, we expect Lead Agencies to consider family and community circumstances carefully before limiting its availability. For that reason, CCDF Plans must specify any limitations placed on in-home care and the reasons for those limitations.

ACF recognizes that giving Lead Agencies complete latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory child care arrangements and thus their ability to participate in work, education or training. We also recognize the challenges of implementing health and safety requirements in the child's own home, monitoring in-home providers, and complying with Federal wage and tax laws governing domestic workers.

*Comment:* Several commenters thought we were interpreting the FLSA and, therefore, wanted the discussion about it deleted. Others wanted us to say that in-home child care providers were independent business contractors and not domestic employees.

*Response:* We have not interpreted the FLSA: we have simply restated the FLSA's characterization of in-home child care providers as domestic service workers. ACF cannot determine that in-home child care providers are to be considered independent business contractors.

Interpreting the FLSA, and other wage and tax laws, is the responsibility of other Federal agencies, such as the Department of Labor, the Department of the Treasury and the Social Security Administration, as noted by several of the commenters. While we have not regulated that the minimum wage must be paid to in-home providers, as some commenters thought, we would be extremely remiss in not alerting Lead Agencies to the existence and possible applicability of other laws. Nor can we ignore violations of those laws simply because their enforcement is the purview of another Federal agency.

We continue to work with the responsible Federal agencies to help clarify issues around the use of in-home child care providers and will work with the other appropriate Federal agencies to provide guidance to Lead Agencies. We also recognize that there have been instances where the Federal or State agency responsible for determining the applicability of the FLSA and the minimum wage requirements have reached very different conclusions in seemingly similar cases. Therefore, we encourage Lead Agencies to work with the appropriate local representatives of the other Federal agencies to resolve or clarify the State-specific questions they may have regarding the applicability of other laws and regulations.

*Comment:* One tribe wanted us to exempt tribes from paying the minimum wage to in-home providers.

*Response:* As discussed above, ACF does not determine the applicability of the FLSA and cannot make exceptions to it.

*Comment:* One commenter wanted us to define in-home child care providers as any legally-exempt provider who is otherwise not regulated but who is specially authorized to provide care in the child's home or in the provider's home.

*Response:* It is unclear why it would be useful to define in-home care in this way. As discussed above, the unique characteristic of in-home is its location, not the regulatory status of the care.

*Comment:* One commenter wanted us to require that in-home providers meet health and safety requirements. Another commenter wanted us to state that Federal law does not require that CCDF subsidies be given to parents or providers known to be operating inconsistently with applicable laws and regulations. In this vein, the commenter suggested that we encourage Lead Agencies to require provider documentation of compliance with applicable laws, such as worker compensation, unemployment compensation, income tax withholding for employees.

*Response:* In-home care must meet the requirements established by the Lead Agency for protecting the health and safety of children pursuant to § 98.41. In-home care, as a category of care, is not exempt from health and safety standards. And, relatives who provide in-home care are not exempt from health and safety requirements unless the Lead Agency specifically chooses to exempt them, as provided for at § 98.41(a)(1)(ii)(A).

The regulations at § 98.54(a)(2) require that CCDF funds ''shall be expended in accordance with applicable State and local laws.'' Payments made to parents or providers who are not in compliance with applicable laws are subject to disallowance in accordance with § 98.66.

*Comment:* Several commenters stated that the Lead Agency should have the ability to define limits and regulate the use of in-home care as they see fit and that no further requirements, beyond the description of the limits, should be imposed.

*Response:* This comment mirrors our policy. The Lead Agency has complete flexibility to define the limits and regulate the use of in-home care. As a point of clarification, while the Lead Agency may impose limits on the use of in-home care, it cannot flatly prohibit the use of in-home care. In-home care remains an option that must be offered to parents, pursuant to § 98.30(e), subject to the limits established by the Lead Agency.

Parental Access (Section 98.31)

We have amended the regulations at §§ 98.31 and 98.16(n) to reflect the new statutory requirement at section 658E(c)(2)(B) that Lead Agencies have in effect procedures to ensure unlimited parental access and to provide a detailed description of those procedures. We have also amended § 98.15(b)(1) to reflect the statutory change to certify, rather than assure, that procedures are in effect to ensure unlimited access.

*Comment:* One commenter asked that we clarify this requirement as it relates to parents who have limited contact or custody rights as a result of a court order. The commenter suggested that Lead Agency procedures may restrict access to only those persons identified in the provider's records as authorized to remove the child(ren) from the facility.

*Response:* We agree that the Lead Agency should address these situations and should establish their procedures in light of court ordered restricted parental contact or custody. However, we do not believe that it is necessary to revise the wording of the regulation nor do we believe that Congress intended that we create such a detailed Federal requirement on the Lead Agency.

Parental Complaints (Section 98.32)

We have added paragraph (c) to the regulations at § 98.32 and amended § 98.16 by adding paragraph (m) to reflect the new statutory requirements at 658E(c)(2)(C) on parental complaints. Under the changes, Lead Agencies must provide a detailed description of how a record of substantiated parental complaints is maintained and made available to the public on request. We have also amended the regulation at § 98.15(b)(2) to reflect the requirement of the statute at 658E(c)(2)(C) that a Lead Agency ''certify'' rather than ''assure'' that it will maintain a record of substantiated parental complaints.

*Comment:* Some commenters questioned whether the Lead Agency had to maintain the record of substantiated complaints, since this function may occur at another part of State government.

*Response:* We corrected the language of this section to reflect that it is the State, but not necessarily the Lead Agency, that must maintain the record of substantiated complaints and make information regarding such parental complaints available to the public on request. However, in the Plan, the Lead Agency must, nevertheless, provide the detailed description of how such a record is maintained and made available.

*Comment:* One commenter, in supporting the requirement, recommended that any substantiated complaint, whether submitted by a parent or by someone else, be included.

*Response:* We agree that informed parental decisions would be enhanced by making all complaints, irrespective of their source, available to the public. And, we encourage the Lead Agency to make all substantiated complaints available to the public on request. However, the Act requires only that a record of substantiated parental complaints must be maintained. Parental complaints may include substantiated complaints which originate with persons acting in loco parentis, for example a foster parent or other guardian, not just a biological or adoptive parent.

*Comment:* Another commenter was concerned about the release of confidential, libelous and/or inappropriate material in the fulfillment of this requirement. The commenter voiced the expectation that we would ensure that the State created very structured procedures for maintaining and guaranteeing that only substantiated complaints are released to the public.

*Response:* The requirement clearly states that only substantiated complaints are to be released. As we stated above, we do not believe that Congress intended for us to create detailed Federal requirements here. States have the flexibility to create their own procedures in this area, provided the required statutory outcome is achieved.

Consumer Education (Section 98.33)

We have amended the regulation at §§ 98.33 and 98.15(b)(3) to reflect the statutory requirement at section 658E(c)(2)(D) that the Lead Agency ''certify'' that it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.'' It is important to emphasize that the use of the words ''collect and disseminate'' is more proactive and forceful than the former requirement that consumer education ''be made available'' to parents and the public. We also believe that by changing the wording, Congress wished to emphasize the importance of consumer education as a service to be provided by Lead Agencies. This emphasis is also stressed by the third goal of the CCDF, listed at section 658A(b) of the amended CCDBG statute, ''to encourage States to provide consumer education information to help parents make informed choices about child care.'' Moreover, the amendment to the reporting requirements at section 658K(a)(2)(D)—reflected in the revised regulations at § 98.71(b)(3)—requires Lead Agencies to report annually on the manner in which consumer education information was provided to parents and the number of parents that received such information.

The statute previously specified the type of consumer education information that the Lead Agency had to provide: ''licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.'' The statute now is less prescriptive. Consumer education information is defined as that which ''will promote informed child care choices.'' Thus, the statute leaves it up to the Lead Agency to determine the type of information that will help the public and parents make informed child care choices.

In the comments to the proposed rule, however, we received numerous comments advising us to strengthen the consumer education requirement. Two themes arose from the comments. One frequently voiced comment was that parents need to be informed that the full range of providers is available to them, especially when they receive certificates. Included in the full range of providers are sectarian and religious providers, and we take this opportunity to remind Lead Agencies that such providers must be available to parents. The second theme we heard was that parents need to be aware of the importance of health and safety standards, and the extent to which various categories of care or types of providers provide health and safety protections for children.

Additionally, in a report issued in February 1998 by the Office of Inspector General of the Department of Health and Human Services, it was noted, ''Good consumer education is critical to making the child care market function properly. If parents are not able to make informed choices, their access to the market is limited. Further, if parents demand safe and quality care, providers are more likely to supply it.'' The study report, ''States' Child Care Certificate Programs: an Early Assessment of Vulnerabilities and Barriers'' (OEI–05–97–00320), which makes note of Congress' strengthening of the consumer education requirements in the CCDBG Act, has recommended that ACF take steps to help States improve their consumer education efforts.

We weighed these comments and the new Inspector General report against comments we received which generally opposed any regulations at all on any of the provisions we proposed and those

that wanted consumer education provisions in addition to the two addressed above. We believe that informed parental choice—which is the reason for the consumer education provisions—is supported by the information suggested by these two comments. We have, therefore, reworded the regulation at § 98.33(a). That section now specifies that Lead Agencies must certify that consumer education information given to parents so they can exercise their right to choose the type of care that best meets their needs must, at a minimum, include information about the full range of providers available and on health and safety requirements. States have discretion in developing the content of the consumer information materials in these two areas; the regulations only require that they be addressed.

While Lead Agencies have flexibility in providing consumer education, ACF strongly encourages Lead Agencies to promote informed child care choices by offering information about: the various categories of care; the Lead Agency's certificate system; the rates for the various categories of care; the sliding fee scale; a checklist of what to look for in choosing quality care; providers with whom the Lead Agency has contracts for care; the licensing regulations that some providers must meet; the State's policy regarding substantiated complaints by parents that is available upon request as required by § 98.32; and local resource and referral agencies that can assist parents in choosing appropriate child care.

The best child care arrangements are developed in one-on-one consultation with trained or experienced counselors. Professional help with locating child care is time- and cost-efficient for both families and Lead Agencies. Thus, it may be in the Lead Agency's interest to invest in strategies such as co-location of child care resource and referral counselors in work development offices or agencies. Economists make the argument that good consumer information is critical to making the child care market function more like other markets. Moreover, experience has shown that printed materials alone may not always be a sufficient information source, particularly if parents have low literacy skills.

*Comment:* Several commenters wanted us to require that consumer education specifically include information about the availability of sectarian providers and that parents may use certificates with religious providers.

*Response:* It was partly in response to these comments that we expanded the requirement for consumer education to now include information about the full range of providers available to parents. As the ''full range of providers'' includes sectarian and religious providers, we do not believe it is necessary to specify them—or other types of providers—in regulation. Since certificates, by definition, may be used with any provider, including sectarian providers, it seems unnecessary to be more prescriptive.

*Exception to individual penalties in the TANF work requirement.* Title I of the PRWORA amends Title IV–A of the Social Security Act and replaces the Aid to Dependent Children (AFDC) with a new block grant program entitled Temporary Assistance for Needy Families, or TANF. The new section 407(e)(2) addresses an exception to the work requirement in the TANF program and provides that a State may not reduce or terminate TANF assistance to a single custodial parent who refuses to work when she demonstrates an inability to obtain needed child care for a child under six, because of one or more of the following reasons:

(1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(2) Unavailability or unsuitability of informal child care by a relative or under other arrangements;

(3) Unavailability of appropriate and affordable formal child care arrangements.

The TANF penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the unavailability of appropriate, affordable child care can create unacceptable hardships on children and families. Since Congress provided that the new Mandatory and Matching child care funding be transferred to the Lead Agency under the CCDF and also provided that at least 70 percent of the new funding must be spent on families receiving temporary assistance, in transition from public assistance, or at risk of becoming eligible for public assistance, the Lead Agencies will be playing a critical role in providing the child care necessary to support the strong work provisions found in TANF. It is therefore critical that CCDF Lead Agencies help disseminate information about the TANF exception. Knowledge of this exception, at least on the part of parents who receive TANF, will be very important in promoting informed child care choices.

Therefore, we require that Lead Agencies include information about it in the consumer education information they provide to TANF recipients. This responsibility entails informing parents that: (1) TANF benefits cannot be reduced or terminated for parents who meet the conditions as specified in the statute and as defined by the TANF agency; and (2) assistance received during the time an eligible parent receives the exception will count toward the time limit on Federal benefits stipulated by the statute at section 408(a)(7).

In order for a Lead Agency to comply with this requirement, it will need to understand how the TANF agency defines and applies the terms of the statute to determine that the parent has a demonstrated inability to obtain needed child care. The elements that require definition consist of: ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.''

In our pre-regulatory consultations, some groups urged us not only to ensure that the CCDF agency disseminates information about the TANF penalty exception but to regulate the content of the definitions or criteria used to determine if a family is unable to obtain needed child care. The approach we have taken in this rule provides flexibility and strikes an appropriate balance between the roles of the CCDF and TANF agencies. We recognize the authority and flexibility of the TANF program to define the terms established by the statute. However, we strongly encourage TANF agencies to define ''appropriate care,'' at a minimum, as care that meets the health and safety standards of the CCDF program, specified at § 98.41.

We are requiring, under § 98.12 of the regulations, that Lead Agencies coordinate with TANF programs to ensure, pursuant to § 98.33(b), that TANF families with young children will be informed of their right not to be sanctioned if they meet the criteria set forth in the statute and Plan. As part of this coordination, at § 98.16(p) we are requiring that the Lead Agency include in its Plan the definitions or criteria the TANF program has adopted in implementing this exception to the work requirement.

The new section 409(a)(11) of the SSA specifies that if the TANF program sanctions parents who are eligible for this exception to the individual penalties associated with the TANF work requirements, it may incur a penalty of up to five percent of its grant. Therefore, coordination between the Lead Agency and the TANF program in this matter serves the best interests both of the recipients of TANF benefits and the service agencies themselves. ACF

issued proposed rules on the TANF penalty provisions on November 20, 1997.

*Comment:* We received few comments in support of our proposal to require Lead Agencies to provide information regarding the TANF penalty provisions. Most commenters observed that this was a TANF, not a child care issue, and that the notice was an administrative notice, not consumer education. Others suggested that, in singling out TANF families, this provision merely continues the stigma associated with welfare.

*Response:* We respect the commenters' views. And, we have changed the requirement so that the information on the penalty provision need only be given to TANF families—not all families. We have also amended the regulation to recognize that other agencies, not necessarily the Lead Agency, may provide the information.

In light of the pressures of work participation requirements on the TANF agency, and ultimately on TANF families, we believe that TANF families need strong reinforcement of their right to safe, affordable and appropriate care. Informed consumer education means that parents must not feel that they must accept any child care, especially care that they believe threatens the well-being of their child.

*Comment:* Some commenters suggested that Lead Agencies should be required to provide consumer education only through child care resource and referral (CCR&R) agencies.

*Response:* While CCR&Rs may be the best providers of consumer education information, there is no statutory basis for limiting State flexibility in this way.

*Comment:* Several commenters objected to including the TANF penalty definitions or criteria in the CCDF Plan, arguing that these belonged more appropriately in the TANF Plan.

*Response:* A State's definition of ''appropriate child care,'' ''reasonable distance,'' etc., is germane to the provision of child care in a State. And, it is the overall provision of child care in a State that the CCDF Plan is intended to present to the public. Because there is no fixed format for a TANF plan, the definitions may not be included there and thus may not be part of the TANF 45 day notice process. Therefore, these definitions and criteria may not become publicly known. We do not believe that the requirement is either burdensome or excessive since the TANF agency must develop the criteria and definitions in order to implement that program.

*Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements*

Compliance With Applicable State and Local Regulatory Requirements (Section 98.40)

We have amended the regulations at § 98.40(a) to reflect a change in Section 658E(c)(2)(E)(i) of the Act. The amendment requires Lead Agencies to certify that they have in effect licensing requirements applicable to child care services, and to provide a detailed description of those requirements and of how they are effectively enforced. This change is also reflected in §§ 98.15 and 98.16. The statute notes, however, that these licensing requirements need not be applied to specific types of providers of child care services.

Because amendments to section 658P(5)(B) have eliminated the requirement for registration of unlicensed providers serving families receiving subsidized child care, we have deleted the former regulation § 98.40(a)(2) requiring registration. This change, however, does not prevent Lead Agencies from continuing to register unlicensed or unregulated providers, and we encourage them to do so. Those Lead Agencies that choose not to have a registration process will be required to maintain a list of providers. We discuss this in more detail at § 98.45.

Health and Safety Requirements (Section 98.41)

Section 658E(c)(2)(F) of the Act requires a Lead Agency to certify that there are in effect within the State, under State and local law, requirements, designed to protect the health and safety of children, that are applicable to providers serving children receiving CCDF assistance. The applicable requirements set forth in the Act include ''the prevention and control of infectious diseases (including immunizations).''

Section 658E(c)(2)(F) further provides, however, that nothing in the health and safety requirements shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject on the date of enactment of the Act, under State and local law, to health and safety requirements in the categories described in the Act. The regulations at § 98.41(a) reflect the prohibition against establishing additional requirements if existing requirements comply with the Act.

As proposed originally on May 11, 1994 (59 FR 24510) and again in 1997 on July 23, 1997 (62 FR 39647), we amended the regulation at § 98.41(a)(1) to require that States and Territories include as part of their health and safety provisions for the control and prevention of infectious diseases (by reference or otherwise) the latest recommendations for childhood immunizations of their respective State or territorial public health agency.

Based on comments received on the most recent proposed rule, however, we modified the final rule at § 98.41(a) to delete language that, unintentionally, could have caused some commenters to believe that ACF was exceeding the Act. Specifically, we deleted language that related to establishing immunization requirements. Based on another comment, we also revised the rule to clarify that immunizations are not the only focus of the statutory requirement on the prevention and control of infectious diseases.

The immunization regulation at § 98.41(a)(1) applies only to States and Territories. Consistent with the amended Act, which requires the Secretary to consult with Tribes and tribal organizations to develop minimum child care standards that are applicable to Tribes and tribal organizations that receive CCDF funds, we have not extended the immunization requirement to Tribes and tribal organizations due to the anticipated development of tribal health and safety standards.

Until tribal health and safety standards are issued, however, Lead Agencies for Tribes and tribal organization must meet the three basic health and safety requirements specified in the Act and these amended regulations, including the basic regulation on the prevention and control of infectious diseases (including immunizations). They do not, however, have to meet the specific immunization requirement that applies to States and Territories under these final rules. We anticipate that tribal immunization requirements will be considered in the consultation on the development of the minimum child care standards with Indian Tribes and tribal organizations.

While many State and territorial public health agencies adopt the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC), we wish to emphasize that this amendment to the regulations does not impose Federal standards for immunization. Rather, it allows the individual State or Territory to apply its own immunization recommendations or standards to children receiving CCDF services. All States and Territories have recommendations or standards

regarding immunization of individual children.

The immunization provision at § 98.41(a)(1) is intended to ensure that States address the statutory provision on immunization as part of the statutorily-mandated CCDF health and safety standards.

Currently 22 percent of children in the U.S. under the age of two are not age-appropriately immunized. Since a large percentage of children receiving child care assistance are under five years of age, we believe that the immunization requirement will have a positive impact in reducing the incidence of infectious diseases among preschool age children. Surveys of licensed child care facilities indicate that the majority of States require some proof of immunizations for children enrolled in licensed or regulated child care centers and family day care homes. However, individual States differ in their specific requirements and regulatory approaches, and requirements for the immunization of children in child care settings that are exempt from licensure or other regulatory provisions vary widely.

Vaccines are the most cost-effective way to prevent childhood diseases. Nationally, approximately $13.00 is saved in direct medical costs for every dollar spent on the measles/mumps/rubella (MMR) vaccine, $29.00 is saved for every dollar spent on the diphtheria/tetanus/pertussis (DTP) vaccine, and $6.00 is saved for every dollar spent on the oral polio vaccine (OPV).

In requiring children to be age-appropriately immunized, we considered that parents may not always be able to access immunizations easily. However, a number of national initiatives are under way to promote immunizations for all children. In response to disturbing gaps in the immunization rates for young children in America, a comprehensive Childhood Immunization Initiative (CII) was developed. CII addresses five areas:

—Improving immunization services for needy families, especially in public health clinics;
—Reducing vaccine costs for lower-income and uninsured families, especially for vaccines provided in private physician offices;
—Building community networks to reach out to families and ensure that young children are vaccinated as needed;
—Improving systems for monitoring diseases and vaccinations; and
—Improving vaccines and vaccine use.

The CDC and its partners in the public and private sectors are working to build a comprehensive vaccination delivery system. The goals of the CII are to ensure that at least 90 percent of all two-year-olds receive each of the initial and most critical doses, to reduce diseases preventable by childhood vaccination to zero, and put in place a system to sustain high immunization coverage. Since 1994, the National Immunization Survey (NIS) has been used to provide immunization coverage estimates for all 50 States and 28 large urban areas.

As part of the efforts in the CII, immunization programs on the State and local level are collaborating with WIC programs (Special Supplemental Food Program for Women, Infants, and Children) to focus on children's immunization. For example, local WIC clinics check the immunization records of WIC participants, assist families to find a primary health care provider, and provide immunization information. On-site immunization services are sometimes also provided at local WIC clinics.

On September 30, 1996, the CDC awarded funds ranging from $130,000 to $250,000, to education agencies in four States (New York, South Dakota, West Virginia, and Wisconsin) to deliver immunization services to preschool-aged children in health centers at elementary schools. Over the past four years, welfare reform waivers were granted to 18 States to allow them to require parents to immunize their children as a condition of receiving assistance.

Lead Agencies for the CCDF have the flexibility to determine the method they will use to implement the immunization component of these regulations. For example, they may require parents to provide proof of immunization as part of the initial eligibility determination and again at redetermination, or they may require child care providers to maintain proof of immunization for children enrolled in their care. Lead Agencies have the option to exempt the following groups:

- Children who are cared for by relatives (defined as grandparents, great grandparents, siblings—if living in a separate residence—aunts and uncles);
- Children who receive care in their own homes;
- Children whose parents object on religious grounds; and
- Children whose medical condition contraindicates immunization.

While families are taking the necessary actions to comply with the immunization requirements, Lead Agencies shall establish a grace period during which children can continue to receive child care services—unless, in keeping with the statutory provisions applicable to the CCDF, existing State or local law regarding immunizations required for the particular child care setting would not allow for such a period.

Finally, we encourage all Lead Agencies to consider requirements that provide for documenting regular updates of a child's immunizations.

Section 98.30(f)(2) and (3) prohibit any health and safety requirements from having the effect of limiting parental access or choice of providers, or of excluding a significant number of providers. We do not think these new immunization requirements will have such an effect. Rather, we are convinced that, when applied to all providers, they will have the effect of enhancing parental choice of providers, since all providers will have the same requirements. More importantly, however, the requirements will promote better health for children, their families, and the public.

Pursuant to section 658P(5)(B) of the amended Act, we have added ''great grandparents, and siblings (if such providers live in a separate residence)'' to the list of relatives who, at State option, may be exempted from the health and safety requirements at § 98.41(e) and to the definition of ''eligible child care provider'' at § 98.2.

We received many comments on the revised health and safety provisions from all types of commenters who made a wide variety of observations. Several commenters, including three Lead Agencies, expressed their unqualified support for the immunization provision. A number of States who wrote to comment on other provisions in the proposed rule were silent regarding the proposal, as were a couple of State organizations. Other States expressed support of the principle of assuring that very young children are age-appropriately immunized. They, however, had various concerns about the proposed amendments to the rule concerning health and safety provisions as noted in the comments below. Some States and State organizations supported an alternate approach as noted below. A number of children's organizations supported the provision, but asked for it to be strengthened as noted below.

*Comment:* Some commenters said that the proposed rule exceeded the authority granted to the Secretary under PRWORA and did not respect congressional intent regarding the Act. The commenters did not identify which statutory provisions they believed were exceeded. Additionally, however, they pointed to the proposed State options for exempting children receiving CCDF

services as evidence that ACF, not the State, was establishing a health and safety standard.

*Response:* The statutory language regarding the establishment of health and safety requirements for children served by the CCDF essentially was unchanged by PRWORA. The statute clearly requires the State to establish health and safety standards in three areas. One of those areas, the control and prevention of infectious diseases, specifically includes immunizations in health and safety requirements for child care. We think that the commenters may have focused on the provision at 658E(c)(2)(F) that states, ''Nothing in this [provision] shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described [in the Act] on the date of enactment of this subchapter under State or local law.''

The rule we adopted does not violate this caveat to the health and safety requirements of the Act. ACF is not requiring States to establish additional standards regarding immunization for children receiving CCDF services where those standards exist for all children (CCDF-subsidized or not) in a category of care. Rather, we are ensuring that States follow the statutorily-mandated requirement, which specifically includes immunizations. The statute requires immunizations in the case of all care available to children receiving CCDF services—not just to those caregivers who are subject to existing State requirements regarding immunization of children in child care settings. The regulation clarifies that immunizations must be part of the health and safety standards for all providers.

We revised the final rule to delete the phrase that might inadvertently have led some to conclude that the regulation exceeded the statute by seeming to require new State immunization standards. The provision now indicates that Lead Agencies shall assure that the State's existing immunization standards apply to all children receiving services under the CCDF.

Further, the exemption options should not be considered as evidence that ACF is requiring specific health and safety standards. Rather, the options reflect recognition of the State's authority to determine the content of health and safety standards and to exempt statutorily specified relatives from the health and safety requirement generally.

*Comment:* Several commenters suggested that ACF adopt an alternate approach to the immunization requirement. Specifically, they suggested that instead ACF adopt a provision requiring a State to describe in its CCDF Plan its efforts to increase immunization rates in relationship to their child care programs and with respect to outreach to children in informal care.

*Response:* The alternative proposed does not serve the objective of assuring that the statutory provision is met.

*Comment:* Several States opposed the CCDF rule regarding immunizations on the grounds that they already have requirements regarding immunizations in child care settings.

*Response:* As explained in the response to the first comment in this section, where a State has rules for immunization of children in child care settings, these rules do not impose additional or different requirements. These rules apply in instances where a State has not established the statutorily required health and safety immunization requirements for a particular child care setting.

*Comment:* Two commenters noted that the requirement for a grace period for families to have their children receiving CCDF services age-appropriately immunized could conflict with existing State rules regarding children entering child care. They asked for the rule to take into account instances where States have existing immunization standards for child care settings that do not allow for a grace period.

*Response:* In the 1994 proposed rule, when we only encouraged States to have a grace period and recommended that Head Start guidelines for an immunization grace period of 90 days be considered, we received a significant number of comments asking that we incorporate a grace period into the CCDF rule on immunization. In 1994, an overwhelming majority of comments opposed tying the immunization requirement to initial eligibility. The view was that requiring immunizations to be up to date before the child care could start would be a barrier to working. Commenters at that time voiced concern that many low-income parents might not immediately be able to acquire the necessary immunizations and could therefore lose access to crucial child care services.

A significant number of commenters in 1994 recommended that we strengthen the language to require Grantees to establish a grace period as part of the immunization requirement. With welfare reform's stronger emphasis on work, we believe that the grace period is even more critical than we envisioned in 1994. We, therefore, retained the provision on the grace period. States should understand, however, that the provision at Section 658E(c)(3)(F), which is reflected at § 98.41(a) of these regulations, would apply. That provision prohibits the establishment of new or additional standards if they exist for a particular child care setting. We believe that the complete regulation at § 98.41(a) adequately conveys the principle, so that no special modification of the rule regarding the grace period is needed.

*Comment:* Some States commented that the issue of immunizations is a much larger issue than just for children receiving CCDF subsidies. Some of these commenters observed that in care settings that States do not regulate there could be children who are not required to be immunized because they are not receiving CCDF services and not subject to other rules regarding immunization. One commenter specifically noted that the CCDF provision fragments efforts of States that are seeking to develop a comprehensive immunization plan.

*Response:* The fact that the immunization issue is a bigger issue than just within the CCDF should not argue against using the CCDBG statutory requirements in order to assist with the need for very young children to be age-appropriately immunized. We do not believe that this rule will conflict with any other State initiative to immunize young children. We encourage all States to coordinate all child care and public health services in order to foster an importance linkage to fulfilling immunization needs.

*Comment:* Some States commented that they saw difficulties in administering, tracking, or monitoring the immunization requirement. There were comments indicating that assumptions were being made that a cumbersome verification process would be required of Lead Agencies.

*Response:* As we indicated in the preamble to the proposed rule and in the preamble above, we have not imposed implementation requirements for this provision. States have the flexibility to implement the provision in a manner that is not burdensome. Lead Agencies are not required to provide immunizations directly to children receiving child care services. Nor are Lead Agencies required to cover the cost of the vaccines.

We anticipate that Lead Agencies would incur most of the administrative burden during the initial child care application process when follow-up is needed on children whose immunizations are not current. However, this burden should be greatly

reduced as a result of the Childhood Immunization Initiative. Under this initiative, States will receive funds that can be used to develop statewide information systems which remind parents when immunizations are due. Lead Agencies for the CCDF should work with their State immunization program to develop comprehensive immunization registries that will assist in the implementation of the child care immunization requirement.

To help ease the burden during the initial application process, Lead Agencies could consider: incorporating tracking and follow-up into existing redetermination procedures; flagging the files of children who are not yet immunized and allowing parents to submit documentation by mail; or including proof-of-immunization information in the periodic report that providers are already required to submit to the Lead Agency. These processes could be considered for both regulated and unregulated providers.

States may also find that providing parents with educational materials on the importance of immunization can play a key role in reducing administrative burdens. While many parents are aware that immunizations are needed by school age, they may not realize that children should receive most vaccines before their second birthday.

*Comment:* One commenter stated that adding more specificity to only the immunization part of the CCDF health and safety standard on prevention and control of infectious diseases could send an unintended message that having immunization provisions alone would fulfill that statutory provision. The commenter suggested that to ensure a balance there should be more rules regarding the scope and structure of the statutory standard. Another commenter suggested that ACF require or encourage criminal background checks of providers of CCDF services.

*Response:* We agree with the commenter that the statutory provision encompasses more than immunizations. The law says that the State's standards in this area shall include immunizations. The law would not be understood to consist only of the aspect of immunization in the prevention and control of infectious diseases. Not all diseases can be prevented by immunizations. However, there is a specific mention of immunization in that provision in the Act that in our experience has not been addressed by all States in implementing the provision, while other ''prevention and control'' issues were addressed in at least some minimal way in State Plans. Based on the comment, we reviewed the regulatory language and revised the regulation to make it less likely to be interpreted as the commenter did but did not further regulate the statutory language.

With respect to criminal background checks, ACF considers such checks to fall under the building and physical premises safety standard in the statute. Unlike the statutory requirement on prevention and control of infectious diseases, which specifically mentions immunizations, the statute does not specify any particular component that would be part of the provision on building and physical premises safety. Therefore, we do not propose to further regulate that health and safety provision. We would agree with the commenter that it is appropriate to encourage States to adopt criminal background checks as part of their effort to meet CCDF health and safety standards.

*Comment:* Some commenters stated that there should be no exemption option to requiring immunizations for children receiving relative and in-home care. Several recommended that the requirement be implemented without any possible exemptions.

*Response:* The Act and regulations allow Lead Agencies the option to exempt grandparents, great grandparents, siblings (if the sibling lives in a residence other than the child's home), aunts and uncles from health and safety requirements. Although this exemption is allowable by statute, the statute does not require States to make the exemption; States may choose to require relative caregivers to meet the same immunization requirements as established for other providers.

In allowing an exemption for in-home care, we considered that these children are not cared for in a communicable group setting but in the privacy of their own home, and therefore would be at a more limited risk of contracting diseases or spreading diseases than they would be if in a group care setting with children from different families. We therefore think the in-home exemption option is an appropriate reflection of the statutory scope of the health and safety requirement.

Finally, the regulation reflects the basic exemption provisions (religious and medical reasons) that States apply to child care settings and school settings where States have set immunization standards. The regulation allows the State similar flexibility in implementing the statutorily-mandated CCDF health and safety requirements where it does not have existing immunization requirements for all children in a care setting. States have the flexibility to determine which of the optional exemptions to allow. However, they may not expand the exemptions beyond the categories outlined in the preamble and regulation.

*Comment:* One commenter from an Indian Tribe said that when a child is in foster care, the foster care home should be considered the child's home for the purpose of the exemption option regarding in-home care.

*Response:* We agree with the commenter. A foster care home would be considered the foster child's home for the purpose of the CCDF immunization exemption option regarding in-home care. The State may choose to include in-home care in a foster home in the exemption for in-home care, or it may choose to not include it. Tribes and tribal organizations are reminded that the rule on immunizations does not apply to tribal child care, however, since ACF is collaborating with Tribes to develop tribal-specific health and safety standards.

*Comment:* One commenter said that ACF should require States to follow the immunization recommendations of the CDC, not the requirements of their own State health agency, with respect to these regulations.

*Response:* As we stated in this section, while many State and territorial public health agencies adopt the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the CDC, we wish to emphasize that this regulation does not impose Federal standards for immunization. Rather, it allows the individual State or Territory to apply its own immunization recommendations or standards to children receiving CCDF services.

*Comment:* A few commenters said they thought that the immunization regulation does not reach children in ''informal care arrangements.'' One of them observed that black children would be disproportionately under-served by the requirement, because black families tend to use a disproportionate amount of informal care. One of the commenters said that the rule would not reach children where the provider does not receive direct payment.

*Response:* With the exception of the four optional exceptions that the regulation gives States the flexibility to adopt independently of each other, the immunization component of the CCDF health and safety requirements must be followed. To the extent relative or in-home care is considered to be

''informal'' and a State exercises its option to exempt those settings from the immunization regulation, a child in those settings would not be required to be age-appropriately immunized under the CCDF. ACF strongly encourages States to take full advantage of the requirement to see to it that the immunization needs of very young children are met. Unless a State chooses to exempt care in one of the specified settings from CCDF immunization provisions, however, it must have a mechanism for carrying out the provision, no matter how its payment system is organized.

*Comment:* A number of commenters stated with varying emphases their perception that the immunization rule places burdens on parents or providers and could be a deterrent to parents or providers using or participating in CCDF services.

*Response:* As explained above, there is an array of resources and approaches available to States to ensure access to immunizations by parents as well as State flexibility to design a process for implementation of the rule that is not burdensome on providers. To meet the needs of individual States to design the most appropriate method of meeting the rule, ACF intentionally left flexibility in the regulation. We encourage States to ensure that the requirement is met in a manner that both fulfills the statute and the rule as well as places minimum burdens on families or the supply of all categories and types of care.

*Comment:* Two commenters raised issues relating to the possible adverse side effects of immunizations. They requested that States exempt children receiving CCDF services from immunization after parents have received information about the risks and choose not to immunize their children.

*Response:* All immunization providers are required to inform parents of potential side effects. Only a very minute fraction of children receiving immunizations experience harmful side effects attributable to immunizations, and the National Vaccine Injury Compensation Program (NVICP) is available to assist families whose children have been harmed. Information on the NVICP is available on 1–800–338–2382. On balance, families that do not appropriately immunize their children place them in greater harm than the immunizations do. Therefore, we do not agree with the recommendation to allow another exemption to the immunization regulation for children receiving CCDF services.

*Comment:* A few commenters noted that for effective implementation of the rule, States should be required to provide information—to parents of CCDF-eligible children and to unregulated providers of services to children receiving CCDF subsidies—about both the necessity for immunizations and how to access free immunizations. One commenter offered the idea of mandating linkages between the child care subsidy system and public health clinics and other health professionals. One commenter asked that States be required to coordinate with their State public health agency.

*Response:* We concur that effective implementation would require States to ensure parents and unregulated providers have access to the kind of information described by the commenter. In keeping with the overall objective of these revised rules to achieve a balance between flexibility and accountability, ACF believes that regulation on this point is not necessary. It is inherent for meeting the rule. Moreover, nearly all States participate in the Secretary's successful Healthy Child Care America campaign. This campaign has a goal of linking child care providers with the health community and is one of the many venues for coordination between the child care community and the health community.

Additionally, this final rule includes two requirements that will enhance coordination and informational activities concerning immunization under the CCDF. First, with respect to State-level coordination, the final rule at § 98.14(a) requires that CCDF Lead Agencies shall coordinate with the State agency responsible for public health, including the agency responsible for immunizations. Second, based on a large number of comments on consumer education, we adopted at § 98.33 a specific requirement that the Lead Agency will collect and disseminate consumer education information that will promote informed child care choices, including information about health and safety. We consider immunization information to be an important part of such health and safety information.

Further, developing partnerships between the child care and health community will help facilitate the immunization process and ensure that the health needs of children and families are being met. We encourage States to utilize existing service delivery systems and networks to assist parents in meeting immunization requirements.

The President's Childhood Immunization Initiative recognizes the important role of States and local organizations in identifying their particular needs. In 1992, the Federal government began helping States design individually tailored Immunization Action Plans. Outreach consultants in each region assist States, local organizations, and health professionals in enhancing and expanding partnerships with public and private organizations. For more information on partnerships with State and local immunization programs, contact the State Health Department or the CDC's National Immunization Program, Program Operations Branch at 404–639–8215.

*Comment:* One commenter said States should be required to certify that effective procedures are in place to ensure that child care providers comply with immunization requirements.

*Response:* We believe that the regulation at § 98.41(d) suffices. It requires Lead Agencies to certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable health and safety standards described in § 98.41(a). We think that the provision does not require modification to cover immunizations, to the extent that a Lead Agency, in implementing the immunization requirement at § 98.41(a) places requirements on providers. We remind commenters that the immunization rule gives Lead Agencies implementation flexibility.

*Comment:* One commenter stated that the categories of relatives who are exempt from CCDF health and safety standards should be left up to the Lead Agency.

*Response:* Our response remains as stated in the Final Rule of August 4, 1992, that the intent of the statute was to give grantees the option to exempt certain relatives from the health and safety requirements that all other CCDF child care providers must meet. The amended statute extends this exemption to great grandparents and siblings (if living in a separate residence) and we have amended the regulations accordingly. There is no statutory authority to extend this exemption to other types or categories of providers.

Sliding Fee Scales (Section 98.42)

For a further discussion of copayments, see Section 98.43.

Equal Access (Section 98.43)

The Act requires Lead Agencies to certify that payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to families that do not receive subsidies. Section 658E(c)(4)(A) requires the Lead Agency to provide a

summary of the facts relied on to determine that its payment rates are sufficient to ensure equal access.

The regulation at § 98.43(b) requires a Lead Agency to show that it considered the following three key elements in determining that its child care program provides equal access for eligible families to child care services:

1. Choice of the full range of categories and types of providers, e.g., the categories of center-based, group, family, in-home care, and types of providers such as for-profit and non-profit providers, sectarian providers, and relative providers as already required by § 98.30.

2. Adequate payment rates, based on a local market survey conducted no earlier than two years prior to the effective date of the current Plan; and

3. Affordable copayments.

These elements must be addressed in the summary of facts submitted in a Lead Agency's biennial Plan, pursuant to § 98.16(l).

*Comment:* Some commenters felt that Lead Agencies should simply be required to summarize the facts they relied on in setting payment rates, without addressing the three key elements mentioned above.

*Response:* Lead Agencies are free to include additional facts they used in determining rates that ensure equal access. As discussed below, we are convinced that a Lead Agency cannot establish rates that ensure equal access without reference to the three required elements.

*1. Full range of providers.* All working parents, regardless of income, need the full range of categories of care and types of providers from which they may choose their child care services. This is because child care needs vary considerably according to the child's age and special needs, the parents' work schedule, provider proximity, cultural values and expectations. Therefore, we believe that the statutory requirement of equal access means that low-income working parents receiving CCDF-subsidized care must have a full range of the categories and types of providers from which to choose care that they believe best meets their needs and those of their children. This element helps secure the parental choice requirements at § 98.30 which already require that parents who receive certificates be afforded such variety.

*2. Adequate payment rates.* PRWORA eliminated the requirement that, in establishing payment rates, the Lead Agency take into account variations in the cost of providing care in different categories of care, to different age groups, and to children with special needs. While eliminating the requirement for different payment rates for different categories of care, Congress added a requirement that Lead Agencies provide ''a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such [equal] access.''

The statute indicates that if families receiving child care subsidies under the CCDF are to have equal access to child care, the payment rates established by a Lead Agency should be comparable to those paid by families who are not eligible for subsidies. In other words, the payment rates should reflect the child care market. Although the requirement for specified rate categories has changed, the reality remains that the market reflects differences along several dimensions, and we do not believe that Congress expected Lead Agencies to establish a single payment rate for all types of child care and all children irrespective of age.

The focus of PRWORA on work further highlights the need for CCDF Lead Agencies, which now are required by statute to administer the new Mandatory and Matching Funds, to establish payment rates that support work. Child care is often the major factor which determines whether families are able to work—and access to a variety of child care arrangements is necessary both to support today's increasingly diverse workforce and workplace demands, and to ensure that the healthy development of children is not compromised.

The major variable in the charges for child care is the age of the child, especially the added expense of caring for infants and very young children. And, payments that do not realistically reflect the charges of caring for very young children will frustrate the ability of families to work. Under PRWORA, many more families with infants and pre-school-aged children will be required to participate in work activities for longer hours per week. In providing the exception to the individual penalties under TANF for single custodial parents with a child under age six who cannot obtain needed child care, Congress recognized the special difficulties of locating affordable care for young children.

We anticipate that market rate surveys will also show variations in rates among categories of care, and we expect any significant variations to be reflected in the Lead Agency's payments.

A system of child care payments that does not reflect the realities of the market makes it economically infeasible for many providers to serve low-income children—undermining the statutory and regulatory requirements of equal access and parental choice. Experience with the now repealed title IV–A child care programs and the CCDBG suggests that providers limited their enrollment of children with subsidies because the subsidy payments were too low. Similarly, failing to compensate providers timely or not reimbursing them for days when children are absent also causes providers to refuse care to children with subsidies.

Section 98.43(c) prohibits different payment rates based on a family's eligibility status or circumstances. This provision means that the Lead Agency may not establish payments for TANF families that differ from the payments for child care for the working poor, or for families in education or training, for example. We believe that use of different payment rates, based on an eligibility status, precludes the statutorily-required equal access to child care for families receiving CCDF subsidies. Additionally, different payment rates would frustrate one of the main intents in amending the Act in 1996—to have a unified child care system with a single set of rules. This purpose would be undercut if different payment rates based on eligibility criterion were permitted.

If payments for child care are to be sufficient to provide equal access to child care services in the open market, then the payments must be established in the context of market conditions. We are convinced that a survey of market rates is essentially the only methodologically sound way for Lead Agencies to ascertain whether the payment rates they establish provide equal access.

A market survey must be conducted in the context of reasonably current market conditions to ensure that the payment rates continue to provide equal access. Therefore, the regulations at §§ 98.43(b)(2) and 98.16(l) require a biennial market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan.

Surveys should not be a burden to States, which were required to conduct market surveys in the past. States have had a number of years' experience with the survey process. States have complete flexibility to design such surveys; we have not proposed a survey methodology. We note, however, that surveys may not be appropriate for establishing payments for children with special needs due to their need for services on a highly individualized basis and the effect of the Americans with Disabilities Act on providers' charges.

In establishing payment rates we suggest a benchmark for States to consider. Payments established at least at the 75th percentile of the market would be regarded as providing equal access. States have already recognized that rates set at the 75th percentile—the payment level formerly required in the title IV–A child care programs—provide equal access. Comparisons of past State CCDBG and IV–A child care plans revealed that the majority of States used the same payment rate—the 75th percentile IV–A rate—for both program even though there was not a requirement to pay at the 75th percentile for CCDBG-funded care, only the requirement that CCDBG rates provide equal access. This same requirement continues unchanged in these regulations for the CCDF.

*Comment:* We received many comments about the requirement for a market survey; more comments favored the requirement than opposed it. Most of those favoring it wanted an annual survey or additional requirements around the timing of the survey or implementation of the survey results.

*Response:* While we concur with the commenters that it would be ideal to conduct surveys more frequently, we believe that a biennial survey balances several considerations: that the rates reasonably reflect the state of the market, that Lead Agencies have flexibility in designing and implementing the survey to establish rates, and that the administrative burden and expense of conducting the survey should be minimized. The Lead Agency may conduct a complete survey more frequently; it may also conduct targeted subsamples in specific areas as frequently as it deems necessary. However, we choose not to require more than a biennial survey.

*Comment:* Those commenters who opposed the requirement maintained that ACF had no authority to require a survey; that the statute's only requirement is for ''the facts relied on by the State to determine'' that rates are sufficient to ensure equal access.

*Response:* An executive branch agency charged with administering a statutory program has general authority to interpret the statutory provisions as needed in its administration of the program. As discussed above, we are convinced that a survey of market rates is the only methodologically sound way for Lead Agencies to ascertain whether the rates established are realistic, thus providing the statutorily required access.

*Comment:* A number of those opposing the survey requirement said it stifled State initiative in setting rates. For example, one commenter said that relying on frequent reports from resource and referral agencies or the State licensing bureau of provider shortages and making quick adjustments to rates to develop more capacity in effected areas would be a better, more responsive alternative to biennial surveys. Another commenter suggested using computer modeling in lieu of a survey.

*Response:* A survey, in that it reflects market realities, is an essential and critical factor—but not the only factor—that must be considered when the Lead Agency establishes rates. It is because survey findings are so central to understanding and gauging what level of payment might provide equal access that we have made the requirement.

However, we are concerned that commenters may have assumed restrictions we did not intend, and have not created, in requiring a survey. And, we caution Lead Agencies, providers, and others against narrowly interpreting our survey requirement. For example, as suggested, up-to-the-minute vacancy data from CCR&Rs or licensing bureaus could be used in conjunction with market rate survey information to make quick and frequent adjustments to the payments to providers. In setting or adjusting rates, we remind Lead Agencies of the general principle that Federal subsidy funds can not pay more for services than is charged to the general public for the same service.

Computer modeling or simulation still needs to be based on some parameters reflective of market realities if it is to produce rates that provide equal access. Although many commenters who opposed the survey requirement seemed to imply that the realities of the market could be ignored in setting rates that provide equal access, no plausible alternatives to the survey were offered.

Nevertheless, we will remain open to alternative methodologies to surveys and revisit this regulation in light of advancing technologies. At this time, however, we believe that a survey is an essential part of the ''facts'' upon which payment rates are established.

*Comment:* A few commenters observed that surveys may not produce rates where there are few, if any, providers of certain care, such as in non-traditional hours.

*Response:* As discussed above, the survey is not the only determinant of rates, it is just one of the many ''facts'' to be considered. Clearly, States have the flexibility to establish rates for care that is needed.

*Comment:* One commenter suggested that a standard index, such as the rate of inflation, be used to adjust rates gathered two, three, or four years in the past in lieu of a biennial survey.

*Response:* Use of a standard index alone, such as the Consumer Price Index (CPI) or other measures of inflation, is not an accurate indicator of actual provider charges in the child care market. The use of broad indices, such as the CPI could vastly underestimate changes in the child care market. For example, in a large urban area the demand for child care may drive up child care charges faster than the broad inflation indices would suggest. While States are free to use such adjustments in conjunction with surveys, especially in years when a survey is not conducted, they should be used with an understanding of their limitations.

*Comment:* One commenter observed that the 75th percentile is a term held over from days of IV–A child care (and as such was repealed by PRWORA). Another called the 75th percentile an arbitrary limit with no basis in fact or statute.

*Response:* We have used the 75th percentile as a reference point against which the Lead Agency can judge if its payment rates afford equal access. It must be presumed that a rate that provides access to at least three-quarters of all care does, in fact, provide equal access. We have not, however, required that payments be set at the 75th percentile, hence, it cannot be characterized as an arbitrary limit.

It should be noted, for example, that Lead Agencies have greater flexibility under these regulations to recognize and compensate higher quality child care facilities and providers, including those that have obtained nationally or locally recognized accreditation or special credentials, than they had under the title IV–A regulations that limited payments to the 75th percentile.

*Comment:* A number of commenters wanted it clarified in the preamble that Lead Agencies can pay rates higher than the 75th percentile.

*Response:* Lead Agencies may pay rates higher than the 75th percentile as we have not established the 75th percentile as the payment standard or limit. Rather, rates established at the 75th percentile would be considered to ensure equal access, although such rates may be too low to purchase some child care services, for example, where there are acute shortages during non-traditional hours.

*Comment:* Several commenters urged ACF to require that payment rates reflect variations for different categories of care.

*Response:* When establishing rates, we expect that the Lead Agency will take into account survey results

showing variations in charges for different categories of care. But, because there may be other facts that the Lead Agency considers, we believe such a prescriptive requirement would contradict the intent of the statute.

*Comment:* A number of commenters wanted us to clarify whether providers can charge amounts above the payment rates established by the Lead Agency; and if so, how this might deny equal access.

Similarly, a few commenters wanted a clarification of how a combination of low payment rates and high copayments can limit or deny equal access.

*Response:* A payment rate which provides for equal access does not necessarily provide access to every provider, irrespective of the provider's charge. There is no statutory basis for preventing a family from choosing a particular provider whose charges exceed the Lead Agency's payment rate. Nor is there an obligation on the part of the Lead Agency to pay an amount that is higher than the rate it determined is sufficient to provide equal access. In cases such as these, some States have created a contractual requirement that the provider will not charge the family the difference between its usual charge and the Lead Agency's rate. By offering the provider speedy, assured payments, the Lead Agency has been able to convince the providers to accept this stipulation.

The statute requires that the payment rate alone must ''be sufficient to provide equal access.'' We separately discuss the question of copayments below.

*Comment:* One commenter said that market rates should reflect current market conditions on a sub-state basis, rather than on a statewide basis.

*Response:* We believe that surveys will reflect appreciable sub-state variations in rates, if any, which the State must then consider in establishing its rates.

*Comment:* One commenter wanted it clarified that children with disabilities would not be adversely affected by a Lead Agency's payment rates.

*Response:* Payments for child care services for children with disabilities must also provide for equal access.

*3. Affordable copayments.* The third essential element of equal access is that any copayment or fee paid by the parent is affordable for the family and sliding fee scales should not be designed in a way that limits parental choice. We wish to emphasize that Lead Agencies have flexibility in establishing their sliding fee scales. However, in our view, copayment scales that require a low-income family to pay no more than ten percent of its income for child care, no matter how many children are in care, will help ensure equal access.

Recent reports by the Census Bureau indicate that families with income below the poverty level pay a disproportionate share of their income—18 percent—for child care; whereas families above the poverty level pay only seven percent of their income for child care. The size of the fee paid by a low-income working parent can be crucial in determining whether she and her family become, and remain, self-sufficient. When devising the fee scale Lead Agencies should try to ensure that small wage increases do not trigger large increases in copayments, lest continuation on the path to self-sufficiency be jeopardized for any family. The size of a fee increase is an especially important consideration because recent changes in the Food Stamp, housing assistance, Medicaid, SSI, and the Earned Income Credit programs may also affect the resources now available to a low-income working family.

Recent studies have shown that some child care providers are unwilling to accept children from families that receive subsidies for child care because the rates are too low. Faced with such a situation, a parent must seek care from a relative or other provider who perhaps accepts the child unwillingly and is unable to provide quality child care. Fifty-five percent of low-income parents use informal care arrangements, whereas only 21% of non-poor families do. The options to low-income families in selecting child care are limited to a higher degree by financial constraints than are the options for families with higher income. If, in addition to low rates, the family must pay a high fee from an already limited income, the family can hardly be said to be on the way to total self-support. And in such a situation, a family cannot be said to have equal access to child care. The limited access to providers for these low-income families also tends to promote unevenness of care, and this is an additional hazard to the child's development.

There is a relatively low supply of child care for infants, for children with disabilities and for children of parents who work during non-traditional hours. For families in these categories, a combination of low payments and high fees can limit the choice to an even greater extent, because they encourage parents to choose less expensive and lower quality child care, or even not to accept the subsidy at all.

Sliding fee scales must continue to be based on family size and income, as § 98.42(b) has not changed. We note that this regulation provides Lead Agencies with the flexibility to take additional elements into consideration when designing their fee scales, such as the number of children in care. However, as was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed (57 FR 34380). Similarly, multiple fee scales based on factors such as a family's eligibility status would be precluded.

*Comment:* A number of States indicated that there is no statutory basis for limiting the fee to ten percent of a family's income, or that such a limit is unnecessarily prescriptive.

*Response:* We would agree with the comments if the regulations, in fact, established a limit on copayments. They do not.

Lead agencies have the flexibility to set the copayment. We have suggested, not required, that a family's fee be no more than ten percent of its income. This benchmark is offered as a reference point for Lead Agencies to consider when designing fee structures for affordable care.

*Comment:* A few commenters felt that ten percent should be the upper limit charged as a fee or observed that any fee, however low, can be a deterrent to self-sufficiency to families below the poverty level. Others thought that the reference to a ten percent copay seemed to conflict with the Lead Agency's right to waive the fee.

*Response:* As indicated above, the ten percent of family income is offered as a benchmark, not a limit on the Lead Agency.

A family is required by the statute at section 658E(c)(5) to share in the cost of subsidized child care, unless the Lead Agency waives the fee pursuant to § 98.42(c) and § 98.20(a)(3)(ii). Those sections allow copayments to be waived for those whose income is at or below the poverty level and for children in protective services on a case-by-case basis. The State has flexibility in deciding the amount of the fee charged and whether to waive the fee.

*Comment:* One State commented that a State should be allowed to categorically waive the fee if a family receives TANF.

*Response:* The fee can be waived, at a State's option, only if a TANF family's income is at or below the poverty level. If TANF families' incomes are always at or below poverty, then the State can categorically waive the fee. In contrast, fees may be waived for child care in protective services cases only on a case-by-case basis.

*Comment:* One commenter thought the preamble should define ''affordable.''

*Response:* As in 1992, we decline to establish a regulatory standard for ''affordability.'' However, as discussed above, we feel that a fee that is no more than 10 percent of a family's income would generally be considered to be an affordable copayment.

We decided, again, not to prescribe a definition for ''affordable'' because we felt that any definition would unnecessarily undermine a Lead Agency's ability to establish service priorities, be administratively difficult to monitor and enforce, and preclude the variation that is inherent in the nature of block grants.

*Comment:* Several commenters asked that the Lead Agency have the authority to categorically waive the fee for protective services and foster care, and not just on a case-by-case basis.

*Response:* We do not believe that it is consistent with the intent of the statute to categorically waive the fee for protective services or foster care cases. However, we recognize that the nature of protective service cases can be different, and that in an individual case it might further the purpose of the statute to increase the availability of child care. Therefore, § 98.20(a)(3)(ii) gives Lead Agencies the authority to waive income eligibility and fees for children in protective custody on a case-by-case basis, or after consultation with an appropriate protective services worker.

As discussed in the preamble to the regulations published on August 4, 1992, there is a basic distinction between protective services cases and foster care cases. However, as discussed in the preamble to § 98.20 in the 1992 regulations, Lead Agencies have the flexibility to treat foster care cases as a family of one and thus effectively reduce or eliminate the fee in most foster care cases (57 FR 34369), but not categorically.

*Comment:* Several commenters believed there is a contradiction between the ten percent benchmark and the regulation that gives Lead Agencies the flexibility to waive copayments on a case-by-case basis for families at or below the poverty level or for children in protective services.

*Response:* These policies are not contradictory, nor are we implying that a fee of ten percent of a family's income is appropriate for every very low-income family, since such a fee might effectively prevent many low-income families from taking advantage of the child care subsidy. We view ten percent as the appropriate upper limit for co-payments; and as stipulated in the regulations, a Lead Agency can waive the co-payment for families at or below the poverty level (§ 98.42(c)), or for children in protective services (§ 98.20(a)(3)(ii)).

Priority for Child Care Services (Section 98.44)

Although we proposed no changes to this section, we received a number of comments regarding serving children with disabilities which indicated a need to provide some clarification about priority for children with ''special needs.''

As we stated in the 1992 preamble, for the purpose of prioritizing services, States have the flexibility to define children with ''special needs'' in the CCDF Plan. ''Special needs'' can mean groups other than children with physical or mental disabilities. States can and do prioritize services for children of teen parents, homeless children and other groups by providing definitions in the CCDF Plan. Refer to 57 FR 34382 for a detailed discussion of the three contexts in which the term ''special needs'' is used in these regulations.

List of Providers (Section 98.45)

Any Lead Agency not having a registration process must maintain a list of the names and addresses of all unregulated providers. It is essential that Lead Agencies have some simple, standardized system to record the names and addresses of unlicensed providers in order to pay them and to provide them with pertinent information about health and safety regulations and training.

The regulations no longer specifically require Lead Agencies to have a registration process for providers not licensed or regulated under State or local law before paying them for child care services. However, Lead Agencies should note that they may continue such a system, and we strongly encourage them to do so.

*Comment:* A number of commenters opposed requiring States to maintain a list of providers and felt States should be given options.

*Response:* We know that States have developed various processes for registering unregulated providers and that maintaining a list of these providers is essential to effectively managing their child care program. We do not expect States to set up a separate list if their current system provides the means to identify and communicate with unregulated providers.

*Comment:* Other commenters wanted the regulation strengthened to require the State to make the list of providers available to all parents as a means of providing them with more possibilities for care.

*Response:* Many unregulated providers are providing care for friends or relatives, and may not be providing child care services to the public. Some unregulated providers who are in the child care business, but exempt from State licensing, may want their names included on a list given to families. However, others may not. These are State and local government decisions. We will not regulate further regarding the list of providers.

*Subpart F—Use of Block Grant Funds*

Child Care Services (Section 98.50)

*The 70 percent requirement.* Section 418(b)(2) of the PRWORA specifically requires the State to ensure that not less than 70 percent of the funds received by the State under this section of the statute are used to provide child care assistance to families who are receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition off of such assistance program and families that are at risk of becoming dependent on such assistance program. By statute, the 70 percent requirement applies only to the Mandatory and Matching Funds. Further, the amended statute at 658E(c)(2)(H) requires the State to demonstrate in its CCDF Plan the manner in which the State will meet the specific child care needs of these families. These statutory provisions are found in these regulations at § 98.50(e) and (f).

*Comment:* Several commenters noted that in the Plan provisions we ask the Lead Agency to ''describe'' how it will meet the child care needs of the families specified at § 98.50(e), whereas at § 98.50(f) we require the Lead Agency to ''specify'' how they will meet those needs.

*Response:* We do not believe the terms are inconsistent. The statute asks that States ''demonstrate the manner in which the State will meet the specific child care needs'' of those families. We believe that a description would provide States the opportunity to present specific information which would demonstrate how they are serving this population.

*Serving other low-income working families.* Section 658E(c)(3)(D) directs the State to ensure that a ''substantial portion'' of the amounts available (after a State has complied with the 70 percent requirement discussed above) is used to provide assistance to low-

income working families other than those who are receiving assistance, transitioning off assistance or at risk of becoming dependent on assistance under Part A of title IV of the Social Security Act. The amounts in question include the remaining Mandatory and Matching Funds (provided under Section 418) as well as the Discretionary Funds.

Since the income level for eligible families is increased in the statute to 85 percent of the State median income, it is clear that Congress intended for child care assistance to be available to more low-income working families than were previously eligible. We believe, however, that families whose income is less than 85 percent of the State median income may well be at risk of becoming dependent on assistance. Thus the two populations overlap.

The regulation at § 98.50(e) provides the statutory description of the families who are to be served under the 70 percent provision. In addition § 98.50(f) requires the State, pursuant to the statute, to describe in its Plan how the State will meet the needs of these families. We believe, based on our consultations, that the circumstances of low-income working families (whose income is below 85 percent of the State median income) are generally no different than the families specifically mentioned in these regulations and thus would expect that they would be treated similarly. If a State elects to have a specific description of at-risk families, it could, for example, be included when defining very low income or in providing additional terminology related to conditions of eligibility or priority in the CCDF Plan.

*Comment:* Some commenters related the ''substantial portion'' requirement to the 70% requirement and are concerned that there is very little funding for low-income working families.

*Response:* As noted above, the 70% requirement applies only to the Mandatory and Matching Funds. States must then use a ''substantial portion'' of any remaining Mandatory and Matching funds as well as a ''substantial portion'' of Discretionary funds to serve families whose incomes are below 85% of SMI.

*Comment:* Several commenters noted that § 98.50(d) was inconsistent with § 98.52(a) in that it addressed funds that were awarded rather than expended.

*Response:* We have corrected § 98.50(d) to be consistent with our intent that the administrative costs be based on amounts expended. Refer to Administrative Costs (§ 98.52) for a more detailed discussion of this issue.

Activities to Improve the Quality of Child Care (Section 98.51)

*Not less than four percent.* Section 658G of the CCDBG Act directs that a State that receives CCDF funds shall use not less than four percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities to increase parental choice, and activities designed to improve the quality of child care and availability of child care (such as resource and referral services). We refer to this requirement collectively as ''Activities to Improve the Quality of Child Care.'' Section 98.51(a) provides that the not less than four percent requirement for quality applies to the aggregate amount of expenditures (i.e., Discretionary, Mandatory, and both the Federal and State share of Matching funds); it need not be applied individually to each of the component funds. Section 98.51(a) also provides that the four percent requirement applies to the funds expended, rather than the total of funds that are available but not used. Lead Agencies, however, have the flexibility to spend more than four percent on quality activities. Section 98.51(c) provides that the quality expenditure requirement does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

The regulations at § 98.51(a)(1) are based on the broad statutory language, while § 98.51(a)(2) keeps, as examples, the options for specific activities formerly contained in the Act. Resource and referral programs, grants or loans to assist in meeting state and local standards, monitoring of compliance with licensing and regulatory requirements, training, and compensation are allowable quality activities under this minimum four percent requirement. We will continue to collect, in the Plan, descriptions of activities to improve the quality of child care services. We encourage Lead Agencies to evaluate the success of their efforts to improve quality and we will disseminate promising practices.

*Comment:* Some commenters wanted us to remove from § 98.51(a)(2)(i) the words ''operating directly'' as they felt that resource and referral can be done most effectively at the community level rather than by state government.

*Response:* We agree that local resource and referral activities are important to child care services. However, by removing the words ''operating directly,'' we would be reducing the options available to the State. Therefore we have retained the wording in the regulation in order to ensure State flexibility in delivering those services.

Administrative Costs (Section 98.52)

Section 658E(c)(3)(C) of the amended Act limits the amount of funds available for the administrative costs of the CCDF program to ''not more than five percent of the aggregate amount of funds available to the State.'' Section 98.52(a) provides that the five percent limitation on administrative costs applies to the funds expended, rather than to the total of funds that are available but not granted or used. Thus, Lead Agencies may not use five percent of the total funds available to them for administrative costs unless they use all the available funds including Matching Funds.

This provision also makes clear that the five percent limitation applies to the total Child Care and Development Fund. The five percent limitation need not be applied individually to each of the component funds—the Discretionary, Mandatory, and Matching (including the State share) Funds. We believe this flexibility will streamline the overall administration of the Fund. The limitation does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

Section 98.52(a) lists administrative activities and is derived from the prior regulations as modified by the PRWORA amendments and the Conference Agreement (H.R. Rep. 104–725 at 411). While the statute does not define administrative costs, it does preclude ''the costs of providing direct services'' from any definition of administrative costs.

The Conference Agreement specifies that the following activities ''should not be considered administrative costs'':

(1) Eligibility determination and redetermination;

(2) Preparation and participation in judicial hearings;

(3) Child care placement;

(4) The recruitment, licensing, inspection, reviews and supervision of child care placements;

(5) Rate setting;

(6) Resource and referral services;

(7) Training [of child care staff]; and

(8) The establishment and maintenance of computerized child care information systems.

The regulation's list of administrative activities at § 98.52(a) omits the following three activities that were listed as administrative costs in the 1992 CCDBG rule: determining eligibility, establishing and operating a certificate program, and developing

systems. ''Establishing and operating a certificate program'' was not specifically listed by Congress as a non-administrative cost. However, we omitted this activity because the components of a certificate program would not be considered to be administrative costs under the Conference Agreement exclusions. For example, certificate programs must determine and redetermine eligibility, provide the public with information about the program, develop and maintain computer systems, place children, offer resource and referral services, etc.—all items which the Conference Agreement lists as not administrative costs. All costs, then, of these three activities: determining eligibility, establishing and operating a certificate program, and developing systems, are now considered non-administrative costs.

While these regulations reflect the Conference Agreement language, we are nevertheless concerned that States will misinterpret the intent of the change and re-direct a disproportionate amount of expenditures on these redesignated activities rather than on direct services to children. We wish to emphasize that services to children is the purpose for which the CCDF was created. Therefore, we would not expect a large increase in costs to activities that are not direct services to children. We will closely monitor such expenditures to determine if States are overspending for such activities at the expense of services. As one method of monitoring, the required CCDF financial reporting form, the ACF–696, separately collects the amounts that are expended on determining eligibility, establishing and operating a certificate program, and developing systems. If we determine that there are problems, we reserve the right to re-visit the policy and regulate in the future.

Lastly, we clarify in § 98.52(c) that the non-Federal expenditures required of the State in order to meet its maintenance-of-effort threshold for receiving matching funds are not subject to the five percent limitation on administrative costs. Nevertheless, audits of State reports of maintenance-of-effort expenditures should indicate that administrative expenditures included in those MOE amounts are reasonable, necessary for carrying out the services provided, and consistent with other provisions of law.

*Comment:* Many commenters objected to applying the five percent administrative limitation to the amounts expended, rather than to the amounts allocated to the State, saying that administrative costs might be incurred in one year for expenditures that occur in another.

*Response:* We have clarified § 98.52(a) to reflect that the limit applies to the amounts expended from the total allocated, not to the amounts expended in a single fiscal year. We understand that it might be necessary to use more funds for administration during the initial start-up of an activity, or that the period when administrative costs are incurred may not coincide with when the funds are actually liquidated. And, the provision was not intended to limit Lead Agency flexibility in the short term.

The choice of the word ''expend'' in the regulation, rather than ''available'' as in the statute or ''allocated'' as in the comment, is meant to address only one situation. Section 98.52(a) is meant to ensure that when a State that does not expend—within the applicable timeframes provided for at § 98.60—the full amounts allocated to it, the State does not receive a windfall in administrative cost allowances. For example, two States are each allocated a total of $100 million in the CCDF. At the end of the expenditure periods, State A has spent $50 million while State B has expended all $100 million. It would be unfair to allow both States to receive $5 million in administrative allowances since State B's program (in terms of dollars expended) is twice the size of State A's.

*Comment:* Some felt that the tone of this section was threatening. They objected to the suggestion of further regulations in this area if Lead Agency reports indicate disproportionate expenditures on the activities that had been redesignated as non-administrative costs, i.e., determining eligibility, establishing and operating a certificate program, and developing systems.

*Response:* We did not intend to threaten Lead Agencies. The preamble discussion is intended to reflect our obligations to taxpayers for prudent management of the resources Congress has allotted for the purpose of providing child care services.

*Comment:* One commenter observed that there was no definition of ''implementation'' in § 98.52(a)(1) and was concerned that some might make judgments about when implementation began or ended.

*Response:* Implementation in this context refers to the ongoing conduct or execution of the program and does not imply a fixed period or a process with a beginning and/or ending date. It would be incorrect, for example, for an auditor to determine that implementation of an activity had ended.

*Comment:* One commenter, noting that the regulations clearly provide that the 5% administrative cap did not apply to State MOE, stated that the preamble then clouded the issue by suggesting that ACF would monitor MOE reports in relation to administrative expenditures.

*Response:* In the preamble to the proposed rule, we did not propose specifically to monitor MOE expenditures. Rather, we did express the expectation that audits of the CCDF program should indicate that administrative expenditures contained in MOE amounts would be reasonable, necessary for carrying out the services provided, and consistent with other provisions of law.

*Administrative costs for Tribes.* We have specifically noted at § 98.52(b) that the five percent cap on administrative costs does not apply to Tribes, and tribal organizations; it applies only to the entities defined as ''States.'' Tribes, however, are subject to the requirements at § 98.83(g) regarding limits on administrative expenditures.

Matching Fund Requirements (Section 98.53)

*Terminology and general requirements.* In this section we have used the phrase ''expenditures in the State'' to encompass not only local expenditures on child care but also private, donated funds that meet the requirements at § 98.53(e)(2), as explained below. Whenever the term ''State funds,'' ''State expenditures'' or ''non-Federal expenditures'' is used it should be understood to include State, local or permissible private donated funds that meet these requirements and are expended for allowable child care purposes. And, the language of § 98.53(e) reflects this.

Section 418(a)(2)(C) of the Social Security Act creates a two-part matching requirement. First, a State must expend an amount that at least equals its allowable expenditures for the title IV–A child care programs during 1994 or 1995, whichever is greater. We refer to this amount as the ''maintenance-of-effort'' (MOE) threshold.

Changes to PRWORA contained in P.L. 105–33 provide that for fiscal years 1998 and after, a State's expenditures in excess of its MOE threshold, up to a maximum determined by the statute, are matched at the applicable year's Federal medical assistance percentage (FMAP) rate. (For FY 1997, state expenditures were matched at the 1995 FMAP rate.) The total amount that can be matched rises each year and is equal to the sum appropriated for that year, less the amounts of the Mandatory Fund, the tribal allocation and the allocation for

technical assistance. The maximum to be matched for each State is its share of that total based upon the proportion of the State's children under age 13 to the national total of children under age 13, based on the best data available to the Secretary for the second preceding year.

Section 98.53(c) lists the requirements that States must meet if they wish to claim Federal Matching Funds. In summary, this section requires that the State obligate all of its Mandatory Funds by the end of the fiscal year (FY) they are granted. Mandatory Funds need not be obligated before Matching Funds are claimed, provided that all Mandatory Funds will be obligated by the end of that FY. Second, they must expend State-only dollars in an amount that equals the State's MOE threshold described at § 98.53(c)(1). And third, they must obligate the Federal and State share of the Matching Fund by the end of the FY.

*Comment:* Some commenters thought that there was a point beyond which Matching funds would no longer be available to them and wanted us to clarify that as long as the State meets the statutory requirements that the Matching funds would be available throughout the fiscal year.

*Response:* Matching funds are available throughout the fiscal year, and disbursements to the State are based on the ACF–696s submitted by the Lead Agency. Those non-Federal expenditures (exceeding the MOE threshold) for which the State wishes to claim monies from the Matching Fund must be obligated before the end of the fiscal year.

*State expenditures allowable for MOE and Federal Matching funds.* State expenditures on any activity or service that meets the goals of the CCDBG Act and that is described in the approved CCDF Plan, if appropriate, may be used to meet the MOE requirement or may be claimed for Federal Matching funds (§ 98.53(b) and (c)(2)). For MOE, these regulations offer greater flexibility than we offered in our interim guidance provided in our Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996. However, as provided at § 98.53(d), the same expenditure still may not be counted for both MOE and match purposes.

Under these regulations, States will have flexibility to define child care services, so long as those services meet the requirements of the statute. For example, State expenditures for child care for those populations previously served by the title IV–A or CCDBG child care programs would be eligible for Federal match. Similarly, State investments in child care through the use of State funds to expand Head Start programs or to otherwise enhance the quality or comprehensiveness of full-day/full-year child care would also be eligible for Federal Matching funds since these activities meet the goals of the Act.

Sections 98.53(e) and (f) contain additional qualifications on what constitutes an expenditure in the State for purposes of this Part. These qualifications are the same that generally apply to Federal programs that provide for matching State expenditures, with two important clarifications.

First, § 98.53(e)(1)(i) allows a public agency, other than the Lead Agency, to certify its expenditures as eligible for Federal match. This provision allows States, for example, to use pre-K expenditures to meet the MOE requirement (when the regulatory provisions for use of pre-K funds are met) and/or receive Federal Matching funds. The second clarification, at § 98.53(f), concerns the treatment of private donated funds. It provides greater flexibility than previously offered as interim guidance under ACF Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996.

Regarding the MOE requirements, the same State expenditure may be used to meet both the CCDF and TANF MOE requirements provided the expenditure meets the requirements of both programs. However, the amount of State CCDF MOE expenditures that may count for TANF MOE purposes is limited to the amount of the State's share of expenditures for the programs described at section 418(a)(1)(A) of the Social Security Act (i.e., the now repealed title IV–A child care programs) for FY 1994 or FY 1995, whichever is greater.) Section 409(a)(7)(B)(iv)(IV) specifically provides that State expenditures used to meet the CCDF MOE requirement—and/or for which CCDF Matching funds were received—may be included in meeting the TANF MOE requirement up to the amount set at section 418(a). Any additional State expenditures for child care in excess of the amount of the CCDF MOE requirement, and for which CCDF Matching funds are not claimed, may also be counted in meeting the TANF MOE requirement when the expenditures meet the requirements of TANF.

In addition, pursuant to section 409(a)(7)(B)(iv)(I) of PRWORA, State expenditures for child care may not be included as part of the State MOE for TANF if the funds originated with the Federal government. Hence, Federal funds transferred from TANF to the CCDF would not count towards the TANF MOE. Further, those funds could not be used to receive CCDF Matching funds under the general rule Federal funds may not be used as a match without statutory authority.

*Comment:* Several commenters objected to the prohibition on using in-kind expenditures for State match, contending that this runs counter to the regulations for the pre-TANF title IV–A programs on which much of the CCDF funding is now based.

*Response:* The pre-TANF title IV–A programs did not allow for the unlimited use of in-kind match as the comments suggest. Only a small part of the total JOBS funding (that part equal to the State's WIN or WIN Demonstration allotment for fiscal year 1987) could be matched with in-kind contributions. The match rate for these funds was 90%; meaning the State's share was only 10%. The Social Security Act, at section 403(l)(1)(B), specifically provided for in-kind contributions in this limited instance only.

There is no indication that Congress contemplated the use of in-kind match, either in the CCDBG Act or the child care provisions in PRWORA. In fact, in specifying that the Secretary shall reimburse expenditures, the provision precludes the claiming of in-kind match.

*Comment:* One commenter asked whether State expenditures for Kindergarten services could be counted in meeting the MOE requirement or claimed for match.

*Response:* Compulsory State education services cannot be used to meet the MOE requirement or to claim matching funds. Non-compulsory services are subject to the limits at § 98.53(h).

*Comment:* One commenter asked for clarification of the relationship between child care expenditures used to meet the TANF MOE requirement and used to claim CCDF matching funds. The commenter observed that Section 409(a)(7)(B)(iv) of the Act precluded using the same State expenditure for claiming CCDF Matching funds and for meeting the TANF MOE requirement.

*Response:* That section in the Act was amended by the Balanced Budget Act of 1997 to allow certain State expenditures to be used to claim CCDF Matching funds and be used to meet the TANF MOE requirement. We updated the above discussion to reflect those changes. Use of the same expenditure for both purposes is subject to certain qualifications discussed above.

*Use of a private agency to receive donated funds.* Historically, private

donations to State-level programs have been very limited; locally controlled donations have been somewhat more prevalent. Frequently cited reasons for this lack of public support for seemingly worthwhile programs have included suspicion of government, in general, especially government outside the immediate community, coupled with regulations that appeared to limit the State's ability to assure the donor that the donated funds will be used in a specific area or for the donor's intended purpose.

At a time when child care programs face increased demands, and State budgets face constraints, we have reexamined prior ACF policies on donated funds. We have tried to respond to the issues that we were told have inhibited private donations in the past by including in the definition of State expenditures donated funds that meet the qualifications at § 98.53(e)(2), even though such funds are not under direct State control. The regulations at § 98.53(f) provide that private donated funds need not be transferred to or under the administrative control of the Lead Agency to be eligible for Federal match. Instead they may be donated to the entity designated by the State to receive donated funds. Both the Lead Agency and the entity designated by the State to receive donated funds must, however, certify that the donated funds are available and eligible for Federal match. In addition to this dual certification requirement, we want to ensure Lead Agency accountability for funds that may not be under its direct control. Therefore, the fiscal reporting form, the ACF 696, requires that the Lead Agency separately report the amount of private donated funds it uses as match. And finally, Lead Agencies should be aware that private donated funds used as match are also subject to the audit requirements at § 98.65.

This rule will allow Lead Agencies to cooperate more closely with various organizations, foundations, and associations that already support high quality child care and related activities. It will also allow the Lead Agency to leverage private funds in order to serve more families, while working within State and Federal budget restrictions.

We also take this opportunity to clarify the regulation at § 98.53(e)(2)(i) which requires that private funds be donated without restriction on their use for a specified individual, organization, facility or institution. Under this clarification a donor could designate a specific geographic location for the receipt of funds. Such a geographic specification can be broad, such as within the limits of a specific city, or extremely narrow, such as a single neighborhood. Such geographic specification is possible whenever funds are donated, whether the funds are donated to the Lead Agency or to an entity specially designated to receive private donations.

Lead Agencies will be asked to identify the entity that is designated to receive private donated funds and the purposes for which those donated funds are expended in their Plan, pursuant to § 98.16(c)(2).

*Comment:* Several commenters wanted us to limit the use of pre-K and or donated funds to only those States that had used such funding prior to FY 1997.

*Response:* It is not clear why the commenters proposed such a limitation. The regulation is designed to give Lead Agencies additional flexibility in maximizing child care funding while ensuring ongoing commitments to existing programs. We see no benefit to limiting the use of pre-K or donated funds as suggested.

*Comment:* The same commenters wanted us to require that States submit quarterly reports listing the entities receiving donated funds and the uses of those funds.

*Response:* We have required that the Lead Agency identify in its Plan the single entity designated to receive donated funds and the allowable child care services for which the funds will be used. We believe that additional requirements, such as those proposed would be burdensome for the Lead Agency and serve no useful purpose in light of the policy that provides for a single entity to receive donated funds.

*Comment:* Several commenters suggested that individual programs or providers would be accepting donated funds.

*Response:* We want to clarify that the regulation provides for the designation of a single entity in each State to receive donated funds. We settled on this for a number of reasons. First, it would be burdensome for the Lead Agency to have to deal with hundreds of individual providers or programs all claiming to have receive donated funds which are allowable. Since the Lead Agency is ultimately responsible for the allowability of the donated funds we did not want to create such a burden on them. More importantly, we did not want to create a mechanism wherein individual programs, providers or jurisdictions might be forced to compete with each other for donated funds. Nor did we want to create a situation wherein the Lead Agency might tie the availability of certificates, grants or contracts to a jurisdiction, provider or program's ability to attract donated funds. We believe that allowing for the designation of only a single entity to receive donated funds, at least initially, is a reasonable policy choice.

*Claims for pre-K expenditures for MOE and match purposes.* Many States fund pre-K programs for young children. These are important early childhood services that contribute to school readiness. Expenditures for State-funded public pre-K services to children from families who meet the CCDF eligibility criteria (as outlined in the Plan) may meet the requirements for allowable child care services expenditures for MOE and match purposes. The pre-K program must meet each of the following four conditions:

- Attendance in the pre-K program must not be mandatory.
- The pre-K program must meet applicable standards of State, local or tribal law.
- The pre-K program must allow parental access.
- The pre-K program must not be Federally funded (unless funded with ''exempt'' Federal funds for matching purposes), and its State funding may not be used as basis for claiming other Federal funding.

In addition, pre-K expenditures claimed may be only for those families who are at or below 85 percent of the State median income (SMI) (or lower SMI established as the CCDF eligibility criterion by the Lead Agency) and who meet other State eligibility criteria.

During our consultations we heard the full range of issues around allowing States to use their pre-K expenditures to meet the matching and MOE requirements of the CCDF. We came away from those consultations with some reservations about the use of pre-K expenditures, but we also came away with increased respect for the importance of these programs.

A chief concern to working parents is that many pre-K services are only part-day and or part-year and such programs may not serve the family's real needs. Some have expressed concerns that an excessively broad approach to counting pre-K expenditures might result in a real reduction in full-day child care services to potentially eligible working families. The potential exists for a State with a sufficiently large pre-K program to divert all state funds away from other child care programs and fulfill its MOE and Matching requirements solely through pre-K expenditures. On the other hand, allowing pre-K expenditures to be counted toward MOE or match could provide a critical incentive for States to more closely link their pre-K and child care systems. This could

result in a coordinated system that would better meet the needs of working families for full-day/full-year services that prepare children to enter school ready to learn. We struggled with these issues and considered various alternative approaches to counting pre-K expenditures in the CCDF.

In the end, we decided on a policy that attempts to balance concerns about the use of pre-K expenditures in meeting CCDF requirements. At § 98.53(h)(3) and (4) we have addressed our concerns about balance by establishing a maximum amount of State expenditures for pre-K services that can be claimed for match or MOE. Expenditures for pre-K programs may constitute no more than 20% of the State's expenditures which are matched. Similarly, expenditures for pre-K programs may constitute no more than 20% of the State's expenditures counted in fulfilling the MOE requirement. However, if a State intends to fulfill more than 10% of either its MOE or matching requirements with pre-K expenditures, its CCDF Plan must reflect that intent. Additionally, if a State intends to fulfill more than 10% of either the MOE or matching requirement with pre-K expenditures, the CCDF Plan must describe how the State will coordinate its pre-K and child care services to expand the availability of child care. We established the 20% limits because they approximate the proportion of pre-school age children nationwide currently receiving services under the CCDBG. (This level also approximates the average monthly proportion of pre-school age children of JOBS participants who received child care assistance in the past.)

States may count only those pre-K expenditures that meet the criteria as allowable child care services explained above (i.e., attendance is not mandatory, the program meets applicable standards, allows parental access, serves CCDF eligible families as provided in the Plan, etc.). The Lead Agency is required to separately report on the ACF–696 the amount of pre-K expenditures it claims as match or uses to meet the MOE requirement.

In addition, for MOE purposes, § 98.53(h)(1) provides that States cannot reduce their level of effort in full-day/full-year child care services if they use pre-K expenditures to meet the MOE requirement. And, States are required to provide an assurance of this, pursuant to § 98.15(a)(6). This requirement reflects the fact that although the statute eliminated the non-supplantation requirement formerly found at section 658E(c)(2)(J) of the CCDBG Act, another non-supplantation requirement was created by section 418(a)(2)(C) of the Social Security Act. That non-supplantation requirement—the MOE requirement—requires States to continue to spend at least the same amount on child care services that they spent on the repealed title IV–A child care programs, in order to receive the new Matching Fund. Such a provision would be meaningless if States used MOE expenditures for services that were not responsive to the real child care needs of working families that the CCDF was intended to assist, i.e., the State ''buys out'' with pre-K expenditures the full-day/full-year child care services it previously provided under title IV–A. In the interest of State flexibility we have not otherwise regulated on the types of services that may be counted in meeting the MOE requirement and, as discussed below, have eased the burden on the State in calculating the amount of pre-K expenditures that may be used to meet the MOE and matching requirements.

In contrast, there is not a similar requirement if pre-K expenditures are claimed for match. Since the Matching Fund is ''new money'' it is not subject to the same requirements that expenditures used to meet a non-supplantation (MOE) requirement must meet. However, §§ 98.16(q) and 98.53(h)(2) require that States describe in their CCDF Plan any efforts they will undertake to ensure that pre-K programs meet the needs of working parents if pre-K expenditures are claimed for match. Our different treatment of pre-K expenditures in the MOE and matching requirements, then, reflects a balance between the principles of non-supplantation and state flexibility.

Furthermore, ACF will permit States to use a different method for calculating the amount of pre-K services claimed for both MOE and matching purposes than was required under the former title IV–A child care programs. Under the now repealed title IV–A child care programs, ACF required States wishing to claim Federal match for their pre-K expenditures to base their claim on the number of title IV–A-eligible (or potentially eligible) children who actually participated in the pre-K program. As many school districts did not have the information to identify whether pre-K participants were members of IV–A-eligible families, it was difficult for States to claim Federal matching funds for these programs. In fact, only a handful of States claimed Federal Match under title IV–A for their pre-K expenditures. In our consultations we were asked to loosen this child-by-child approach to counting pre-K expenditures.

In the interest of easing administrative burdens on the Lead Agency, we have adopted the following policy toward calculating pre-K expenditures for purposes of claiming MOE and Matching funds. For pre-K expenditures to be claimed, States must ensure that children receiving pre-K services meet the eligibility requirements established in the CCDF Plan. In cases where States do not have child specific information, however, they must develop a sound methodology for estimating the percentage of children served in the pre-K program who are also CCDF-eligible. Expenditure claims must reflect these estimates.

Although the methodology should be documented, we will not require that the methodology be submitted to ACF for prior review or approval. In documenting their methodology, Lead Agencies are reminded of the requirement at § 98.67(c), which provides that fiscal control and accounting procedures must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the Act or regulations.

*Comment:* Some commenters argued against any restriction on the amount of pre-K that could be used to satisfy the MOE requirement saying that States may lower or end investments in pre-K because of the limit. Others agreed with the 20% cap, while still others wanted a lower cap or the exclusion of pre-K from meeting the MOE requirement.

*Response:* We anticipated these reactions and specifically requested comments on the pre-K limit in the proposed rule. However, none of the commenters who argued for unrestricted use of pre-K addressed our concerns about ''buying-out'' existing child care services with pre-K programs. The argument that a State may limit pre-K is not convincing since States usually fund pre-K for a variety of programmatic reasons—not because it may be an allowable match for another program.

This regulation still gives States more flexibility than in the past and opens new sources of match not heretofore available. Accordingly, as a matter of balance, we have retained a reasonable limit on using State pre-K expenditures to meet the MOE requirement.

*Comment:* Some commenters objected to linking the use of pre-K to meet the MOE requirement with maintaining expenditures on full-day/full-year child care services. They felt that the increase in TANF recipients accepting part-time employment will affect the need for full day/full year care.

*Response:* We do not believe that true economic self-sufficiency is readily achievable through part-time employment. While part-time employment of families may have increased at the outset of TANF, the operation of time limits on those same families will require increased hours of employment just to maintain income levels when their TANF benefits cease. We believe, then, that it is prudent to retain this requirement at this time.

*Comment:* A commenter asked if we intended to limit pre-K programs to families at or below 85% of the State's median income (SMI).

*Response:* We did not intend to limit State's ability to provide pre-K to all families, regardless of their income. However, only expenditures for those services provided to families at or below 85% of the SMI (i.e., whatever limit the Lead Agency establishes as the eligibility criteria for CCDF-funded child care) may be counted in meeting the CCDF MOE requirement or to receive Matching funds. We have revised the discussion above to make this point more clearly.

*Family fees and the matching fund.* Section 98.53(g)(2) clarifies that family contributions to the cost of care as required by § 98.42 are not considered eligible State expenditures under this subpart. This policy is based on the fact that family fees are not State expenditures.

Restrictions on Use of Funds (Section 98.54)

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the three title IV–A child care programs—the AFDC child care program, the Transitional Child Care program and the At-Risk Child Care program. However, in appropriating new child care funds under section 418 of the Social Security Act, the PRWORA provides that these funds must be spent in accordance with the provisions of the Child Care and Development Block Grant Act as amended. This requirement is incorporated into § 98.54(a). This section also provides that TANF funds that are transferred to the Lead Agency under the provision of the new section 404(d) of the Social Security Act are treated as Discretionary Funds for the purposes of § 98.60.

Other Federal funds expended for child care, unless transferred to the Lead Agency, are not required to be spent in accordance with the amended CCDBG Act. This means, for example, that child care provided with title XX funds or TANF funds that are not transferred to the Lead Agency might be subject to different requirements. However, ACF cautions States about the administrative and policy problems associated with operating a variety of Federally-funded child care programs, e.g., one program subject to CCDBG requirements and others not. The amendments to the CCDBG Act contained in the PRWORA are intended to create a single child care program with consistent standards and requirements and to counteract the fragmentation and conflicting requirements that had arisen under prior law.

We have also added a new section at § 98.54(b)(3) which clarifies the special provisions on use of funds for construction that apply to Tribes and tribal organizations under the PRWORA amendments.

*Comment:* One commenter felt that allowing expenditures for minor remodeling for non-sectarian providers, while limiting such expenditures for sectarian providers to only those instances where remodeling was needed to meet health and safety requirements, would increase the workload of the Lead Agency, in that it will be necessary to track the nature of an organization requesting funds for minor remodeling.

*Response:* We did not propose any change in this regulation which has been in effect since 1992. The regulation implements section 658F(b) which does require that Lead Agencies distinguish between sectarian and non-sectarian providers in providing CCDF funds for minor remodeling. Nevertheless, we are unaware that this provision has been burdensome on Lead Agencies.

*Subpart G—Financial Management*

Availability of Funds (Section 98.60)

Section 418 of the Social Security Act, which was added by PRWORA, requires that all Federal child care funds appropriated therein be spent in accordance with the provisions of the amended Child Care and Development Block Grant. In consolidating the Federal child care programs under a single set of eligibility requirements, Congress nevertheless instituted three funding sources. We have chosen to refer to the combined funding as the Child Care and Development Fund—CCDF. This term recognizes the different sources of Federal monies flowing into child care but the common purposes for which they may be expended.

Section 418 of the Social Security Act appropriates Federal funds for the 50 States, the District of Columbia and Indian Tribes in the form of formula grants which we refer to as the Mandatory Fund. A specified amount of Federal funds is also made available under a different formula to the 50 States and the District of Columbia to match their allowable child care expenditures. We refer to this amount as the Matching Fund. Section 658B of the Child Care and Development Block Grant (CCDBG) Act authorizes funds to States, Tribes and Territories according to a third formula. We refer to the funds authorized under the CCDBG Act as Discretionary Funds. The formulas for allocating each of the Funds and requirements unique to each Fund are discussed at §§ 98.61, 98.62 and 98.63.

Both the Mandatory and Discretionary Funds are 100 percent Federal Funds—no match is required to use these Funds. Section 418(a)(2)(C) of the Social Security Act, however, makes the availability of Matching Funds contingent on a State's child care expenditures.

We have deleted the regulation formerly at § 98.60(g) concerning start-up planning costs associated with the initial implementation of the CCDBG and have redesignated the remaining regulations. All of the States began operating a CCDBG program in FY 1991, therefore the regulation at § 98.60(g) is obsolete since the time frames for obligating and expending start-up funds have passed. We recognize that there still may be Tribes that wish to begin a CCDF program and for which the question of start-up funds still applies. Accordingly, we have addressed the availability of funds for planning purposes for new Tribal Lead Agencies at § 98.83(h) in subpart I.

We have also clarified the wording of § 98.60(f) to indicate that 31 CFR part 205 applies only to State Lead Agencies.

*Obligation period/liquidation periods.* The following table shows the obligation and liquidation periods for the various Funds and the maintenance-of-effort (MOE) requirements.

| These funds | Must be OBLIGATED by the end of the | AND, must be LIQUIDATED by the end of the |
|---|---|---|
| Discretionary | 2nd FY | 3rd FY. |
| Mandatory (State) | 1st FY—only if Matching is requested | NA, no limit. |
| Mandatory (Tribes) | 2nd FY | 3rd FY. |

| These funds | Must be OBLIGATED by the end of the | AND, must be LIQUIDATED by the end of the |
|---|---|---|
| Matching | 1st FY | 2nd FY. |
| MOE | 1st FY, *and* expended in that FY | NA, must be liquidated in 1st FY. |

The PRWORA amended the CCDBG Act to require States and Territories to obligate their Discretionary allotments in the fiscal year in which they are received, or in the succeeding fiscal year. These amendments return the statutory language to its status before the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102–586). Since the final regulations which would have incorporated the changes from the Juvenile Justice and Delinquency Prevention Amendments of 1992 were never published, no change is needed in the regulatory language.

The FY 1997 Health and Human Services appropriation (Pub. L. 104–208) changed the date that the CCDF Discretionary Funds will become available from September 30 of the fiscal year in which the funds are appropriated to October 1 of the following fiscal year. As a result, when existing regulatory language is applied, States and Territories have two full fiscal years to obligate their CCDF Discretionary Funds, instead of the year and a day which resulted under earlier appropriations. States and Territories continue to have until the end of the third fiscal year to liquidate these funds.

Section 418(b)(1) of the Social Security Act provides that the Mandatory Fund is available without fiscal year limitation. However, section 418(a)(2)(C) of the Social Security Act, which describes the conditions for receiving Matching Funds, indicates they are paid to a State for expenditures that exceed the State's Mandatory grant and MOE level, and are only available on an annual basis. Moreover, section 418(a)(2)(D) of the Social Security Act requires that Matching Funds that are not used in the fiscal year be made available for redistribution in the following fiscal year. Therefore, a State wishing to claim Matching Funds must obligate its Mandatory Funds before the end of the fiscal year for which the Mandatory Funds are awarded. States not wishing to claim Federal Matching Funds have no obligation or liquidation deadline for their Mandatory Funds.

Also, the amount of a State's MOE requirement must be obligated and liquidated before the end of the fiscal year for which Matching Funds are awarded. Non-Federal expenditures (exceeding the MOE threshold) for which the State wishes to claim monies from the Matching Fund must also be obligated before the end of the fiscal year for which they are awarded.

The same obligation and liquidation periods that apply to the State Discretionary Funds apply to the tribal funds. While the FY 1997 appropriation changed the date Discretionary Funds become available, under the revision Tribes will continue to have two full years to obligate the child care funds they receive. Further, under these regulations, Tribes will receive an additional year to liquidate these Funds. Retaining the previous regulations would have had the consequence of providing three full years to obligate and liquidate tribal child care grants.

The amendments to the Discretionary Fund under PRWORA for the first time provide that tribal funds are subject to reallotment. The two-year approach to obligation will encourage Tribes to plan for the timely commitment of funds and, at the same time, make uncommitted funds available on a timely basis to those Tribes that are in need of additional child care monies.

Section 98.60(d)(3) lists the obligation and liquidation periods for States that receive Matching Funds. In order to accommodate the redistribution required by section 418(a)(2)(D) of the Social Security Act, the regulation requires that Matching Funds must be obligated in the fiscal year in which they are granted and liquidated within two years.

*Returned Funds.* As a result of the changes made by PRWORA and the change in the date of availability of the CCDF Discretionary Funds made by the FY 1997 HHS appropriation, § 98.60(g) requires that funds returned to the Lead Agency after the end of the applicable obligation period must be returned to the Federal government. Under this provision, however, and as previous regulations permitted, funds returned during the obligation period may be re-obligated for activities specified in the Plan, provided they are obligated by the end of the obligation period. This provision was inadvertently deleted in the proposed rule but has been added back in the final rule at section 98.61(g)(1). The re-obligation of funds will not result in any extension of the obligation period.

The 1992 regulations allowed States to follow State or local law or procedures regarding funds returned after the end of the obligation period. The provision was applicable only to what now are the Discretionary Funds part of the CCDF. It recognized that although section 685J(c) of the Act provided for a two-year obligation period for those funds, the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1991 (Pub. Law 101–517) provided that FY 1991 funds became available on September 7, 1991. The impact of that appropriation was that CCDBG funds (now called Discretionary Funds) were available for obligation only for barely over a year, instead of for two full years. The now-superseded provision regarding returned funds reflected ACF's desire that States not be put in the position of having to make premature decisions regarding obligations in a new program due to a truncated obligation period. Also, our reasoning for the former provision included the consideration that, even though the Act contained a reallotment provision for these funds, there appeared to be little likelihood that the States would return them for redistribution since they were 100 percent Federal funds.

The FY 1992 HHS appropriation (Pub. Law 102–170) moved the availability of CCDBG funds to the last day of the fiscal year, and the CCDBG funds continued to be paid on the last day of the fiscal year in subsequent years, until the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1997 (Pub. Law 104–208) again changed the date of the availability of these funds. The 1997 appropriation provides that, starting with the FY 1998 Discretionary Funds, Discretionary Funds will be made available on the first day of each fiscal year. The result of this change is that there now will be two full years to obligate Discretionary Funds.

Further, the regulations at the former § 98.60(h) would have been inappropriate to the new Mandatory and Matching Funds provided under PRWORA. The law, at section 418 of the Social Security Act, requires redistribution of the Matching Funds to other States, if the State to which they were granted does not use them in the fiscal year in which they are granted. Also, the Secretary must determine the amount of Matching Funds available for redistribution by the end of the first quarter of the fiscal year following the

year the grant was awarded. The law links use of Matching Funds to use of the Mandatory Funds—and, as provided in the regulations at § 98.60, Mandatory Funds must be obligated in the year in which they are granted if a State requests Matching Funds. Unlike the Discretionary and Mandatory Funds, the Matching Funds are not 100 percent Federal funds, and there seems to be a greater possibility that some of these funds would be returned for redistribution. Thus, the former returned funds regulations would not have been workable for these funds, and were changed.

*Comment:* Although not addressed in the proposed regulations, many commenters objected to our policy of allocating Discretionary and Mandatory Funds on a quarterly basis, rather than as a single grant at the beginning of the fiscal year. They felt that such a policy should be applicable to matching grant programs only, not to entitlements to the States, such as the Discretionary and Mandatory Funds.

*Response:* The Office of Management and Budget has determined that each of the individual CCDF funds are to be apportioned to the States quarterly. We note that other non-matching grant programs, such as title XX, are also subject to such quarterly apportionments.

*Comment:* Some commenters suggested that we allow unlimited obligation and expenditure periods for Tribal Mandatory funds, citing the unlimited periods for State Mandatory funds (if the State does not use Matching funds).

*Response:* We have kept the proposed obligation and liquidation time frames for Tribal Mandatory funds. Although there is a statutory exception for State Mandatory funds to the normal one-year obligation period (unless the State uses Matching funds), Tribal Mandatory funds are not analogous to State Mandatory funds and have no such statutory exception. Furthermore, in the past, a significant number of Tribes have returned funds to the Federal Treasury. Therefore, we believe that the required obligation/liquidation time frames are reasonable and necessary to ensure that funds are used in a timely manner.

*Comment:* Several commenters wanted us to revise § 98.60(d)(5)(ii) to allow Interagency agreements and or contracts between government entities at the same level to constitute obligations.

*Response:* We had not proposed any change to this regulation which has been in effect since 1992. This issue is addressed in the preamble to the 1992 regulations at 57 FR 34395 and that discussion reflects our continued position.

As a practical matter, funds that are transferred to another part of State government, either at the same level, or at a lower level, simply do not reflect the same real fiscal commitment of funds to the CCDF program as occurs when funds are transferred to a third party.

*Comment:* One commenter observed that § 98.60(d)(6)—regarding obligating funds using a certificate—is problematic because the amount of funds that may be actually used by the family cannot be known with certainty as the family may use fewer hours of care than was indicated on the certificate. The commenter wanted to eliminate the requirement to include the amount of funds on the certificate.

*Response:* This provision is unchanged from the 1992 final rule and this situation was addressed in the preamble at 57 FR 34395. Without an amount it is unclear how the commenter would determine how much was obligated.

Stating an amount on the certificate fulfills the obligation requirement, yet, as explained in the 1992 preamble, the Lead Agency can nevertheless make adjustments to reflect the actual use of funds, reobligating if within the obligation period, to ensure the liquidation of funds within the prescribed period.

*Comment:* One commenter, understanding the necessity to recover fraudulently received payments, suggested that § 98.60(i) reflect a minimum threshold under which recovery would not be necessary. For example, if the administrative expense of recovery exceeded the amount fraudulently received.

*Response:* As we stated in the 1992 preamble at 57 FR 34397, any payments not made in accordance with the Act, regulation or approved State Plan may not be charged to the program and will be disallowed pursuant to § 98.66. Should a State choose not to pursue fraudulent payments because to do so may not be cost-effective, the amount of that fraudulent payment may not be charged to the CCDF.

Allotments From the Discretionary Fund (Section 98.61)

The allotment formulas for the Discretionary Fund are unchanged from the original formulas for the CCDBG and are discussed in the 1992 preamble at 57 FR 34397.

In response to an amendment to section 658P(14) of the CCDBG Act, we have added a provision allowing for Discretionary Fund grants to a Native Hawaiian Organization and to a private nonprofit organization established for the purpose of serving Indian or Native Hawaiian youth. This provision is discussed below.

*Data sources for tribal allotments.* The CCDBG Act requires the Secretary to obtain the most recent data and information necessary, from each appropriate Federal agency, to determine State funding allotments. There is no similar statutory requirement for determining tribal allotments.

In past years, ACF used two separate data sources to calculate tribal child counts: the Bureau of Indian Affairs' (BIA) Indian Service Population and Labor Force Estimates Report, published biennially, and the 1990 Census (for Alaska-specific data). These data sources are addressed in the CCDBG Final Rule (45 CFR 98 and 99, published August 1992).

In the proposed rule, ACF discussed a new self-certification process for tribal child counts used to calculate tribal allotments under the Child Care and Development Fund. This approach affords Tribes the opportunity to select a data source, or utilize a method for counting tribal children, which most accurately reflects its child population.

In addition, the child count data will be available with minimal lag time and will more accurately reflect the natural fluctuations in child population. With data sources used and discussed in the 1992 CCDBG Final Rule, it can take 2 to 3 years for changes in population (such as reaching a child population of 50) to be reflected.

Finally, this approach supports the President's April 29, 1994, mandate to Federal agencies reaffirming the government-to-government relationship between Tribes and the Federal government and directing agencies to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

Beginning with funding available in FY 1998, ACF implemented a new self-certification method for tribal child counts. In the proposed rule, we stated that self-certified counts for FY 1998 would continue to include children under age 16, consistent with the age category in the BIA Report. Furthermore, we proposed that for funds available in FY 1999, tribal child count declarations would include only children under age 13, in accordance with the CCDBG statute, thereby allowing a one-year transitional period for Tribal Lead Agencies to plan for a self-certified child count of children under age 13.

We have slightly modified this approach in this regulation to continue to permit self-certification of tribal child counts to include children under age 16 for funds which become available in FY 1999. While we fully embrace self-certification of tribal child counts, based on the practical experience in implementing this approach for FY 1998 tribal grant awards we believe that more time is necessary for some tribal grantees to plan for counting children under age 13.

This additional time is particularly important since Tribes will no longer be able to use the data in the BIA Report, and there is no frequently published national data source which provides counts of children under age 13 for all current or potential CCDF tribal grantees. However, despite the extension of the transition period, we still plan to require self-certification of children under age 13 beginning in FY 2000.

Each year ACF will issue instructions for Tribes to follow in submitting their self-certified child counts. Each tribal grantee and each Tribe participating in a consortium will be required to submit a child count declaration signed by the governing body of the Tribe or an individual authorized to act on behalf of the applicant Tribe or organization.

*Grants to a Native Hawaiian organization and a private nonprofit organization serving Indian or Native Hawaiian youth.* Section 658P(14) of the amended CCDBG Act adds the following second definition to the term ''tribal organization'' which are potentially eligible for Discretionary Funds:

> ''Other organizations—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.''

Section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 defines a Native Hawaiian Organization as:

> ''A private nonprofit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.''

No other changes were made in the Act with respect to Native Hawaiians or Native Hawaiian Organizations (NHOs) or private nonprofit organizations (PNOs) established for the purpose of serving youth who are Indians or Native Hawaiians; nor is the Conference Agreement instructive as to Congressional intent. However, given the statutory language, we provide at § 98.61(e) that only a single NHO and a single PNO will be funded.

Several options were considered for allocating funds in accordance with this expanded definition of tribal organization. We considered, for example, treating NHOs and PNOs in the same manner for allocation purposes as other tribal organizations (i.e., a base amount plus a per child amount, or only a per child amount).

Based on an analysis of the statute, however, we believe the Congress intended for an NHO and a PNO to be treated differently from Indian Tribes and tribal organizations which are eligible to receive CCDF funding. CCDF funds are awarded on a formula basis to all eligible Tribes and consortia. However, only a single NHO and a single PNO are to be awarded grants. Determination of those entities requires a discretionary grant process rather than the formula basis used for Indian Tribes and tribal consortia.

Eligible NHOs and PNOs, as well as the States, are reminded that under § 98.80(d), Indian children continue to have dual eligibility to receive services funded by CCDF. Indian children and Native Hawaiian children will continue to be eligible for services provided under a grant awarded to a NHO or PNO and from the State of Hawaii (or other State in the case of a PNO awarded to a grantee not located in Hawaii).

Therefore, through a grant award to a NHO and a PNO, additional child care services (from the Discretionary Fund) are available to children who are currently eligible to be served under a State CCDF program. A more detailed explanation of dual eligibility is provided in the Preamble at Subpart I.

For these reasons, up to $2 million is reserved from the total amount reserved for Tribes under the Discretionary Fund for two grants each fiscal year. We believe that such an amount is substantial enough to meaningfully serve populations that may have been under-served in the past, without jeopardizing existing tribal programs.

### Allotments From the Mandatory Fund (Section 98.62)

Section 418(a) of the Social Security Act creates a capped entitlement for the 50 States and the District of Columbia. The amounts allotted to each State and the District are based on the Federal share of expenditures for child care under prior programs under title IV–A of the Social Security Act (i.e., the AFDC/JOBS, Transitional and At-Risk Child Care programs) in FY 1994, FY 1995, or the average of FY 1992–1994, whichever is greatest. Before funds are allocated to the individual States, one-quarter of one percent of the total is reserved for the provision of technical assistance and up to two percent is reserved for grants to Tribes.

For Indian Tribes and tribal organizations we have chosen to allocate Mandatory Funds solely according to the number of Indian children in each Tribe's service area. That is, unlike the Discretionary Fund, there is no base amount provided to Tribes under the Mandatory Fund.

We chose this approach in response to tribal arguments for increased funding for direct services. We agree that tribal child care programs would especially benefit from additional service funds, and we did not wish to divert any new funds into non-service activities. Tribes have the flexibility to expend their base amount on administration or direct services, including quality activities. However, we are concerned that many large consortia already receive substantial sums of base amount monies. According to the program reports from those consortia, it appears that these large base amounts often do not translate into direct child care services for tribal children. We do not believe that tribal children would benefit from augmenting the existing base amount in lieu of direct child care services.

Lastly, we listed the 13 entities in Alaska that are eligible to receive Mandatory Funds pursuant to the amended section 419(4)(B) of the Social Security Act. We listed those eligible entities in this section of the regulation rather than have two different definitions of Tribes at § 98.2.

### Allotments From the Matching Fund (Section 98.63)

As provided in the statute, allotments to each of the 50 States and the District of Columbia are based on the formula used to distribute funds under the now-repealed At-Risk child care program. The Matching Fund consists of the amount remaining from a fiscal year's appropriation under section 418(a)(3) of the Social Security Act after reserving amounts for technical assistance and for Tribes and awarding Mandatory Funds.

### Reallotment and Redistribution of Funds (Section 98.64)

The provisions for reallotment and redistribution of Discretionary funds remain essentially unchanged from the 1992 regulations. The reallotment/redistribution process is described at 57 FR 34401, August 4, 1992. However, the

OMB-approved form ACF–696 now asks the State to indicate if it wants any Discretionary Funds that might be reallotted. Discretionary Funds will be reallotted only to those States that request them. Therefore, the provision formerly at § 98.64(b)(2)(iv) that returned to the Federal government any reallotted funds that a State ''does not accept'' is deleted as unnecessary.

Section 418(a)(2)(D) of the Social Security Act, which was amended after the proposed rule was published in July 1997, now provides for the redistribution of Federal Matching Funds which are allotted to a State, but not used. This new provision is now added to the regulations at § 98.64(c)(2). We have adopted the statutory term ''redistribute'' when discussing the Matching Fund in the regulation. However, we believe that the term is comparable to the ''reallotment'' of the Discretionary Funds and have therefore adopted a comparable process. For example, at § 98.64(c)(3) we have applied the language from the reallotment process at § 98.64(b)(2) to describe the same limits on the amounts of unobligated Matching grants that will be redistributed to other States that currently apply to the Discretionary Fund. That is, no redistribution will be made to States if the total to be redistributed is less than $25,000. Nor will any grant be made to an individual State if it would be less than $500. As provided in the statute, redistribution of the Matching Funds will be based on a formula similar to that used for the original allotments to the 50 States and the District of Columbia.

Section 98.64(c)(1) provides that Matching Funds allotted to a State, but not obligated by the end of that fiscal year, be redistributed to the other States which did obligate all of the Matching Funds allocated to them. Unused Matching Funds, then, would be made available only to those States which demonstrated their ability to use the entire amount already granted to them. According to the statute, such States must request the redistributed funds; the Funds will not automatically be redistributed to all qualifying States. We considered redistributing unused Matching Funds among each of the 50 States and the District of Columbia, including the States that returned the money being reallotted. We rejected that approach since it raised the possibility that States which were unable to use all of their funds in one year would again be unable to use them in the following year. This would result in funds reverting to the Federal Treasury rather than being used to assist families.

Sections 98.64(c)(3) and (4) provide that States use the regular financial reporting form, ACF–696, instead of a separate notification from the State. These provisions allow for a simplified process by which States can both notify us of any unobligated Matching Funds available for redistribution and request redistributed Matching Funds.

Section 98.64(c)(6) reflects the statutory language that redistributed Matching Funds are to be considered as part of the grant for the fiscal year in which the redistribution occurs, not as a part of the grant for the year in which the funds were first awarded. This is in contrast to reallotment of Discretionary Funds; for Discretionary Funds the obligation period is based on the award year and is not extended.

An amendment to section 658O of the Act provides for the reallotment of tribal Discretionary Funds. That amendment, at 658O(e)(4), requires the Secretary to reallot any portion of a tribal grant that she determines ''is not being used in a manner consistent with the provision of [the Act].''

Although the statutory language seems to suggest that the Secretary may make a determination which is separate and apart from the usual audit practice on the manner of use of funds by Tribes, there is no discussion in the Conference Agreement to indicate such an interpretation. Furthermore, we believe that Congress would have been more explicit if it desired the Secretary to create a separate audit or investigatory process. Therefore, § 98.64(d) provides for a reallotment process that parallels the State process. That is, we will determine the amounts to be reallotted based upon reports submitted by the Tribes, pursuant to paragraph (d)(1) of this section. Each Tribe must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate timely pursuant to § 98.64(d), or that it will obligate all funds in a timely manner. The reports must be submitted each year by a deadline established by the Secretary. Unless notified otherwise, this deadline will be April 1, and the reports may be in the form of a letter. We chose the April 1st deadline to allow the Secretary the necessary time to reallot the funds and to allow Tribes the necessary time to obligate such funds on a timely basis. While the proposed rule included the April 1 deadline in the regulatory language itself, we decided in the final regulation to leave flexibility to accommodate any changes that might be necessary as we implement the reallotment procedures.

We will reallot funds that Tribes indicate are available for reallotment to the other Tribes, in proportion to their original allotment, if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, we will not reallot these funds; instead, they will revert to the Federal Treasury. It is administratively impractical for the Department to issue small awards. Likewise, the Secretary will not award any reallotted funds to a Tribe if its individual grant award is less than $500, as it is administratively impractical to do so.

If a Tribe does not submit a reallotment report by the deadline for report submittal, we will determine that the Lead Agency does not have any funds available for purposes of the reallotment. If a report is postmarked after the deadline established by the Secretary (April 1, unless notified otherwise), we will not reallot the amount of funds reported to be available for reallotment; instead, such funds will revert to the Federal Treasury. As previously discussed, late reports do not allow the Secretary sufficient time to reallot the funds nor do they allow the Tribes sufficient time to obligate such funds timely as required by § 98.64(d). We anticipate the Secretary will reallot funds made available for reallotment within a month of the deadline for receipt of reallotment reports. Reallotted funds must meet the same programmatic and financial requirements as funds made available to Tribes in their initial allotments.

The statute, and hence the regulations, remain unchanged regarding the reallotment of Discretionary Funds to the Territories. That is, there is no reallotment of Territorial Discretionary Funds.

*Comment:* A number of commenters questioned why the regulation did not specifically reflect the statute regarding the timing of the determination and redistribution of returned Matching funds.

*Response:* Section 418(a)(2)(D) of the Social Security Act provides that the Secretary shall make a determination ''not later than the end of the first quarter of the subsequent fiscal year'' whether Matching funds are available for redistribution. And, that any redistribution ''shall be made as close as practicable to the date'' on which that determination is made.

Because this is a requirement on the Secretary, we did not believe it is necessary to include it in the regulation. We will follow the timeframes provided for in the Act.

*Comment:* One commenter suggested that the obligation and liquidation periods for reallotted Matching Funds should start from the time the funds are

reallotted, not at the beginning of the fiscal year in which the reallotment takes place.

*Response:* The requirement is statutory and the statute does not provide for extending the program period of reallotted Matching Funds.

*Comment:* Another commenter asked how States will know that Matching funds are available for redistribution, and noted that the regulation fails to state when a request for redistributed Matching funds is to be made by the State.

*Response:* We did not want to create a cumbersome, time-consuming process for redistributing Matching funds. Therefore, we did not propose the separate step of notifying States of the availability of redistributed funds. Rather, the required quarterly ACF–696 referred to in the regulation asks if the State wishes to request redistributed Matching funds, should any become available. This request is to be completed in the quarter preceding the final quarter in a fiscal year, as described in the instructions to the ACF–696 published as Program Instruction ACYF–CC–PI–05, dated September 26, 1997. We believe that this process will best expedite the redistribution of Matching Funds, should any become available. This process should also allow us to meet the time requirements in the Act on redistribution, thereby maximizing the amount of time that remains in the fiscal year for the State to obligate the redistributed Matching funds.

*Comment:* One commenter suggested that instead of redistributing returned State Discretionary funds to other States, those funds should be reallotted to the Tribes in the State that returns them.

*Response:* As discussed in the preamble to the 1992 rule at 57 FR 34401, Tribes are not eligible to receive State funds made available for reallotment.

*Comment:* Several commenters objected to the proposed dollar thresholds required for reallotment to Tribes. In the proposed rule, we used the same thresholds for Tribes as for States—$25,000 for the total amount available for reallotment and $500 for an individual grant award. Commenters argued that the thresholds for Tribes should be lower, given the smaller size of tribal grant awards.

*Response:* Based on these comments, we considered lowering the dollar threshold for Tribes in the final regulation. However, after discussing the administrative burden of small grants with ACF fiscal staff we decided to keep the $25,000 and $500 thresholds because it is administratively impractical for the Department to issue and track grant awards for smaller amounts.

Audits and Financial Reporting (Section 98.65)

Commenters were almost universally opposed to our proposed regulatory interpretation of the amended section 658K of the Act. They pointed out that our interpretation of ''an entity that is independent of the State'' was inconsistent with section 7501(a)(8) of the Single Audit Act Amendments of 1996. That section defines an independent auditor as an ''external State or local government auditor who meets the independence standards included in generally accepted government auditing standards.'' We have, therefore, amended the regulation to reflect that State auditors who meet the generally accepted auditing standards issued by the Comptroller General, including public accountants who meet such independence standards, may perform the required audits. We also corrected certain references, such as replacing the reference to OMB Circular A–128 with a reference to OMB Circular A–133, which was issued to replace A–128 after our proposed rule was published.

*Subpart H—Program Reporting Requirements*

Reporting Requirements (Section 98.70)

Section 658K(a) of the amended Act requires each State receiving Child Care and Development Fund funding to submit two reports: monthly case-level data for families (reported quarterly) and annual aggregate data. Territories are considered States for reporting purposes. The first annual aggregate report was required to be submitted by December 31, 1997, and annually thereafter.

*Comment:* Several commenters requested a delay in the submission of the first case record report (ACF–801) due to the changes made by the technical amendments to the law. They also requested that States be allowed to submit data monthly rather than quarterly.

*Response:* ACF recognizes these requests as justifiable. Therefore, as indicated at § 98.70, we extended the due date for the first quarterly submission (ACF–801) from February 15, 1998 to August 30, 1998. We also allow States to submit data monthly rather than quarterly. If they choose to submit data monthly, the first reported month, April 1998, is due 90 days later by July 30, 1998, with following reports every 30 days thereafter.

Section 658L of the Act requires the Secretary to prepare a report to Congress every two years summarizing the data and information required at section 658K of the Act and § 98.71 of the regulation.

Section 658O(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under CCDF. We require Tribes to submit annual aggregate data appropriate to tribal programs as they have previously in the CCDBG program.

*Principles for data reporting.* The amended Act significantly revised the reporting requirements for all child care services. As a result, ACF developed principles to guide the implementation of reporting requirements. ACF, in concert with the Lead Agencies, will:

1. Meet the statutory mandate for data reporting;
2. Streamline data collection and reporting procedures from the previous four programs into a single integrated program;
3. Build on data collection systems from the former four child care programs;
4. Apply flexibility in phasing in the implementation of the data collection requirements;
5. Apply flexibility in meeting data needs outside the Federal requirements;
6. Provide technical assistance to Lead Agencies in the design of new or revised data collection systems and reporting processes, encouraging linkages to TANF information systems and to other relevant Federal reporting systems;
7. Provide sampling specifications to Lead Agencies as part of the data collection process;
8. Provide technical assistance to Lead Agencies in the design and use of data for the development of program performance measures; and
9. Commit to making the data useful for Lead Agencies.

Content of the Reports (Section 98.71)

*For States and territories.* Consistent with the requirements of section 658K of the amended Act, we require States to collect monthly samples of case-level family data which are reported to ACF quarterly, or monthly if the State chooses to do so. To provide for adequate time for the approval process for sampling plans, we require at § 98.70(a)(3) that States submit their sampling plan to ACF for approval 60 days prior to the submission of the first report. States are not precluded from submitting case-level data for the entire population of families served under the

CCDF. Specific aggregate information is required in the annual report.

*Cost of Care.* Although the statute requires that cost of care information be provided in both the case-level and aggregate reports (658K(a)(1)(B)(ix) and 658K(a)(2)(B)), we will collect this information through the case-level report only and we will compile the information into the aggregate. This will eliminate duplicative reporting for the annual aggregate report.

Section 658K(a)(2)(C) requires that the number of payments made through various methods by types of providers be reported annually. Most States pay providers monthly; a few pay more frequently. If the statutory language is narrowly interpreted, States would be required to report as many as 12–24 payments or more for each subsidized child throughout the year. Because this information would be of limited value, we are regulating at § 98.71(b)(2) that the Lead Agency's report reflect the number of children served by payment method and primary type of provider during the final month of the report period only (or for the last month of service for those children leaving the program before the end of the report period). Changes in payment method or primary provider type over the report period should be ignored and only the last arrangement reported.

*Comment:* Several commenters requested that ACF include information about child care provider auspice or sponsorship in the reporting requirements, noting that the definitions section of these regulations (§ 98.2) refers to the type of provider as non-profit, sectarian, and relative providers and that the statute uses the word ''types''.

*Response:* Section 658K of the CCDBG Act as amended by the PRWORA specifically designates the child care data items which Congress mandated. In Section 658K(a)(1)(B)(vii), the statute states that quarterly case-level data should be collected on the ''type of child care in which the child was enrolled (such as family child care, home care, or center-based care).'' Additionally, Section 658K(a)(2)(A) of the amended statute requires Lead Agencies to report aggregate information about the number of child care providers that received funding ''as separately identified based on the types of providers listed in section 658P(5).'' Section 658P(5) specifically mentions center-based, group home, family child care, and relative care.

Although these statutory references seem to conflict with the term ''types of providers'' listed in § 98.2 of the rule, ACF has decided that it is not inherently inconsistent to use a different statutory definition for reporting purposes. Congress entertained much discussion around reporting requirements. Their strong need for specific child care data can be inferred from their resolve to include specific reporting elements in the statute. Additionally, even though recent technical amendments slightly revised the reporting requirements, no specific direction was given in the technical amendments to collect information based on sponsorship.

During the time reporting procedures have been under development, ACF has consulted with program administrators and system/information management specialists at the State level, as well as the American Public Welfare Association and the National Association of Child Care Resource and Referral Agencies. We have learned that most State information systems are built on payment systems, rather than provider identification systems, such as licensing programs might maintain. Requiring the collection of auspice or sponsorship information would represent a significant information collection burden for States which is not specifically authorized by the statute.

Program sponsorship is a difficult element to collect. However, we do recognize the interest of some organizations to learn about different sponsoring agents and toward that end we will include sponsorship as an optional data reporting element when these are developed in the future.

*Comment:* Several commenters requested that ACF not collect Social Security Number (SSN) as a case identifier. One commenter in particular argued that the collection of Social Security numbers may have a chilling effect on immigrant families wishing to apply for child care services.

*Response:* ACF is requiring the collection of SSN as a case identifier because it is necessary for gathering the aggregate data needed for research tied to TANF, employment and other child-related programs. Legal immigrants who work are entitled to receive child care subsidies. Therefore, requesting them to provide SSN is not a deterrent. Illegal immigrants are prevented from working by law and would not need subsidized child care.

*Comment:* A commenter objected to the collection of average hours of care per month and suggested that we allow States that collect the data weekly to be able to report weekly averages.

*Response:* The technical amendments to the law require the change in reporting the hours of care from weekly to monthly. Uniform reporting requirements dictate that data be reported by all States in the same manner to avoid confusion in data analysis. Therefore, all States should report monthly hours. States that collect the data weekly should transform the data into monthly data. We will provide technical assistance in how to perform this calculation.

*Comment:* Several commenters objected to the collection of ''reasons for care'' item because it is not in the law and puts an additional burden on the States.

*Response:* The ''Reason for Care'' data element has previously been collected in the old CCDBG and JOBS/AFDC child care programs and the collection of this data does not represent a new burden for the States. ACF will continue to collect ''reasons for care,'' i.e. working, training/education, or protective services because it best informs State and Federal planning and policy efforts. In addition, since the State has the option of not requiring income data for children in protective services, these cases need to be identified to determine if the missing data is appropriate. We will provide technical assistance to States experiencing difficulties with this data element.

*Comment:* One commenter recommended using the Census Bureau standards for reporting race.

*Response:* We have changed our race definitions to comply with the new OMB guidelines (**Federal Register** of 10/30/97) for Census Bureau reporting of race. Under these new guidelines, we will divide the child race element into two questions:

Child Ethnicity
1. Hispanic or Latino
2. Not Hispanic or Latino

and

Child Race
1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or Other Pacific Islander
5. White

On the second question, respondents will be allowed to report more than one category.

Information concerning child care disregards is required by the statute at 658K(a)(2)(C); however, disregards, if used, would be provided under the TANF programs, not child care programs. As a result, information on the use of the disregard will be collected through TANF reporting procedures, since TANF agencies can collect this information more reliably.

*Comment:* One commenter was concerned that child care disregard information would not be collected by

TANF since it is not required by statute. They also were concerned that some States may elect to spend a lot of TANF funds on child care without transferring the funds to CCDF.

*Response:* We have coordinated data collection efforts with the TANF program. The proposed TANF regulations require information about the child care disregard, as well as child care information for families that receive child care through TANF funding.

*Comment:* Several commenters requested that ACF collect some additional items that are not required by the statute but are important for understanding the program and improvement of program management. The suggested elements included items such as disability status and number of weeks of care each month.

*Response:* Requiring the collection of such items is important, but represents a significant increase in the reporting burden on the States. ACF has decided against adding these items as required elements to avoid requiring an additional burden on the States. However, because we recognize the importance of such items, we will consider these and other important items, as we develop optional data reporting elements, with input from the States, in the future.

To have a complete picture of child care services in the States, quarterly case-level data and annual aggregate information will be collected on all funds of the Child Care and Development Fund, including Discretionary Funds (which include any funds transferred from the TANF Block Grant), Mandatory Funds, and Federal and State Matching Funds, as well as funds used for Maintenance-of-Effort (MOE). For States that choose to pool CCDF funds with non-CCDF funds (e.g. title XX, or State or local funds not part of the CCDF MOE or Match) we will allow reporting and/or sampling on all children served by the pooled funds, but will require States to indicate percentages of CCDF and non-CCDF funds in the pool of funds. Detailed instructions on how to construct sampling frames for States with pooled funds will be included in the sampling specifications developed by ACF. Technical assistance will be provided to States regarding collecting data across funding streams.

Additionally, States have indicated a desire to compare data which are not a part of the mandatory reporting requirements. To meet this need and to make the available child care data more useful to State planning efforts, the Department will collaborate with States regarding a set of standardized optional data elements. The reporting of these data elements will not be required of any grantee.

We have provided additional information to Lead Agencies concerning specific reporting requirements, approved data definitions, reporting formats, sampling specifications for the quarterly case-level report, and the submission process in ACYF–PI–CC–97–08, dated November 25, 1997 and in ACYF–PI–CC–98–01, dated January 25, 1998. In this final rule, for ease of reference, we conformed the regulatory language at §§ 98.71(a)(1), (6), (7), and (10) to mirror the data collection elements of the ACF–801, Child Care Quarterly Case Record (OMB Number 0970–0167).

*For Tribes.* Tribes are neither required to submit the aggregate annual report nor the new case-level quarterly report as States are. Instead, Tribes will continue annually to submit the ACF–700 which is currently in use. They will include information on all children served under the Discretionary and Tribal Mandatory funds. As of fiscal year 2000, Tribes will no longer be required to submit the second page of the ACF–700 (fiscal programmatic data for CCDBG funds). Fiscal information for Tribes will be collected on a separate tribal financial reporting form.

*Subpart I—Indian Tribes*

This Part addresses requirements and procedures for Indian Tribes and tribal organizations applying for or receiving CCDF funds. In light of unique tribal circumstances, Subpart I balances flexibility for Tribes with the need to ensure accountability and quality child care for children.

Subpart I specifies the extent to which general regulatory requirements apply to Tribes. In accordance with § 98.80(a), a Tribe shall be subject to all regulatory requirements in Parts 98 and 99, unless otherwise indicated. Subpart I lists general regulatory requirements that apply to Tribes. It also identifies requirements that do not apply to Tribes.

Most programmatic issues that apply to Tribes are consolidated in Subpart I. However, financial management issues that apply to Tribes, including the allotment formulas and underlying data sources, are addressed separately in Subpart G—Financial Management.

Tribes have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub.L. 102–477). This law permits tribal governments to integrate a number of their federally funded employment, training, and related services programs into a single, coordinated comprehensive program.

Senate Committee Report language for that Act prohibits the creation of new regulations for tribal programs operating under the 102–477 initiative (S. Rep. No. 188, 102 Cong. 2d Sess. (1992)), therefore ACF is not promulgating any additional regulations for the Indian Employment, Training and Related Services application and plan process. ACF does publish annual program instructions providing directions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training and Related Services plan. The Department of the Interior has lead responsibility for administration of P.L. 102–477 programs.

General Procedures and Requirements (Section 98.80)

*Demonstrations from Consortia.* The regulation at § 98.80(c)(1) provides that a consortium must adequately demonstrate that each participating Tribe authorizes the consortium to receive CCDF funds on its behalf. This demonstration is required once every two years through the two-year tribal CCDF Plan. It is the responsibility of each consortium to inform ACF, through an amendment to its Plan, of any changes in membership during the Plan period.

Consortia can demonstrate members' agreement to participate in a number of ways. A resolution is acceptable. We will also accept an agreement signed by the tribal leader or evidence that a tribal leader participated in a vote adopting a consortium agreement.

*Comment:* Several commenters recommended a one-time or ''standing'' resolution from each consortium member which will remain in effect until rescinded.

*Response:* The purpose of the demonstration is to show that the member has authorized the consortium to act on its behalf. We have not changed this requirement because it is a measure designed to provide accountability to the individual members. We recognize the challenges of obtaining demonstrations, particularly in rural areas in Alaska due to seasonal work activities, but as a standing requirement Tribes should now be aware in advance that it will be needed and we will remind grantees about the demonstration requirement well before the Plan due date.

*Special requirements for Alaska Native grantees.* By statute (section 419 of the Social Security Act), only specified Alaska Native entities may

receive Tribal Mandatory Funds. The Metlakatla Indian Community of the Annette Islands Reserve and the 12 Alaska Native Regional Nonprofit Corporations are eligible to receive Tribal Mandatory Funds. The law provides that Discretionary Funds, however, will continue to be available to all the eligible Alaska Native entities that could apply under old CCDBG rules.

For purposes of Discretionary funding, Alaska Native Regional Nonprofit Corporations, which are eligible to apply on behalf of their constituent villages, will need to demonstrate agreement from each constituent village.

In the absence of such demonstration of agreement from a constituent village, the Corporation will not receive the per-child amount or the base amount associated with that village. This changes the policy stated in the preamble to the final rule issued August 4, 1992 (57 FR 34406). The former policy permitted Alaska Native Regional Nonprofit Corporations to receive the per-child amount (but not the base amount) for a constituent village in the absence of a demonstrated agreement from the village that the Corporation was applying for funding on its behalf. Since all other tribal consortia are required to demonstrate agreement from their member Tribes in order to receive Discretionary funding, this change makes the funding requirements consistent for all consortia grantees.

For purposes of Tribal Mandatory Funds, since the statute specifically cited the 12 Alaska Native Regional Nonprofit Corporations as eligible entities, demonstrations are not required by member villages for these entities to be funded.

Since the law provides that only designated Alaska Native entities may receive the Tribal Mandatory Funds, there is a difference between which Alaska Native entities can be direct grantees for the two tribal parts of the CCDF. Our analysis indicates, however, that each of the Alaska tribal entities that are eligible to receive Discretionary Funds is served by one of the 12 Alaska Native Regional Nonprofit Corporations that by law can be direct grantees for the Tribal Mandatory Funds. In instances where there are different Alaska Native grantees for the two parts of the fund, we strongly encourage grantees to work together to ensure a coordinated tribal child care system in Alaska.

*Dual eligibility.* Under § 98.80(d), Indian children continue to have dual eligibility to receive child care services funded by CCDF. Section 6580(c)(5) of the Act mandates that, for child care services funded by CCDF, the eligibility of Indian children for a tribal program does not affect their eligibility for a State program. To receive services under a program, the child must still meet the other specific eligibility criteria of that program.

This provision was in the original Act, and it was not affected by the recent PRWORA amendments. Regulations at § 98.20(b)(1) continue to provide that Lead Agencies may establish eligibility requirements, in addition to Federal eligibility requirements, so long as they do not ''discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability.'' As a result, States cannot have a blanket policy of refusing to provide child care services to Indian children.

At the same time, tribal CCDF programs are a valuable source of child care for Indian children, including children whose families receive TANF assistance. In particular, a Tribe that operates its own TANF or work program (or both) will have an important role in promoting self-sufficiency for its low-income families, including the provision of adequate child care. However, Indian children have dual eligibility for CCDF child care services regardless of whether a Tribe operates its own TANF or work program. Therefore, we encourage States and Tribes to work closely together in planning for child care services. Coordination of child care resources will be needed to meet the child care needs of eligible Indian families.

*Eligibility.* Under § 98.80(f), Tribal Lead Agencies continue to have the option of using either the State's median income or the tribal median income in determining eligibility for services. In determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either: (1) up to 85 percent of the State median income for a family of the same size; or (2) up to 85 percent of the median income for a family of the same size residing in the area served by the tribal grantee.

Application and Plan Procedures (Section 98.81)

Section 98.81 contains application and Plan requirements for Tribes and tribal consortia. In accordance with § 98.81(a), Tribes must apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

A Tribal Lead Agency must submit a CCDF Plan, as described at § 98.16, with the additions and exceptions described in § 98.81(b).

Section 98.81(b)(2) requires definitions of ''Indian child'' and ''Indian reservation or tribal service area'' for purposes of determining eligibility.

Section 98.81(b)(4) requires information necessary for determining the number of children for fund allocation purposes and grant eligibility requirements (i.e., the requirement that a Tribe must have at least 50 children under 13 years of age in order to directly apply for funding). The preamble discussion to Subpart G summarizes the data sources used to determine tribal allotments.

Other changes in Plan provisions are more fully discussed in related sections under Subpart I.

*Comment:* In the proposed rule we had included a new requirement that Tribes include a tribal resolution or similar demonstration which identifies the Tribal Lead Agency. A tribal leader responded to the proposed new requirement by stating that since he signs the Plan materials, a resolution identifying the Tribal Lead Agency should not be required.

*Response:* We understand that some tribal grantees may be required to include a resolution accompanying their Plan in order to comply with their own tribal regulations and/or procedures. However, as the commenter pointed out, since a grantee must identify the Tribal Lead Agency in its Plan, a resolution is not necessary. We agree with this comment and have eliminated this proposed requirement in the final rule.

*Comment:* Commenters asked if the financial reporting form could serve as the CCDF application for Tribes.

*Response:* Although the financial form ACF–696 and the CCDF Plan will serve as the application for States and territories, at this time Tribes are required to report financial information on the SF–269 form and do not use the ACF–696. ACF is developing a CCDF financial form specifically for Tribes. When this form is finalized it, along with the CCDF plan, will serve as the application for Tribes. However, since this form has not yet been developed, for years when the CCDF biennial Plan is due, the Plan itself will serve as the application. However, in non-Plan years, ACF will issue a Program Instruction which describes basic information that must be provided on an annual basis, including the self-certified child count, to apply for funds.

Coordination (Section 98.82)

Tribal Lead Agencies must meet the coordination requirements at §§ 98.12 and 98.14 and the planning requirements at § 98.14—including the

public hearing requirement at § 98.14(c). A Tribe must distribute notice of the hearing throughout its service area (rather than statewide).

Prior to the publication of new regulations, Tribal Lead Agencies were not required to coordinate with agencies responsible for health education, employment services or workforce development, and the State or tribal TANF agency, specified at § 98.14(a)(1). Although it was not a specific requirement in the Plan, during the pre-regulatory period ACF encouraged Tribal Lead Agencies to coordinate with these agencies.

We recognize that the agencies with which each Tribal Lead Agency coordinates may differ according to its own unique circumstances. We also recognize that child care is an essential part of a Tribe's self-sufficiency and workforce development efforts. In addition, the quality of child care benefits greatly from close coordination with the public health and education communities.

Therefore, in recognition of these important program linkages, in the final regulation Tribal Lead Agencies are required to meet the requirements at § 98.14(a)(1) to coordinate CCDF activities with tribal agencies responsible for health education, employment services or workforce development, and a Tribe's TANF agency, if the Tribe is administering its own TANF program.

*Comment:* A few commenters indicated that they were not operating their own TANF programs and inquired whether there was a specific mandate for coordination with State TANF agencies.

*Response:* Tribal Lead Agencies which are not administering their own TANF programs are not required, but are strongly encouraged to coordinate their program activities with the State TANF agency.

Requirements for Tribal Programs (Section 98.83)

In recognition of the unique social and economic circumstances of many tribal communities, Tribal Lead Agencies are exempt from a number of the CCDF requirements which apply to State Lead Agencies.

*Administrative costs.* Based on input from several tribal organizations and tribal representatives, and as proposed, we are providing greater flexibility for Tribal Lead Agencies by exempting them from the five percent administrative cost cap at § 98.52(a). Therefore, instead of enforcing the statutory five percent State administrative cost limit, a 15 percent administrative limit for Tribal Lead Agencies was recommended by several tribal organizations during the course of our pre-drafting consultations to account for the varying infrastructural capabilities of many Indian Tribes. Tribal Lead Agencies may not expend more than 15 percent of the aggregate CCDF funds for administrative activities (including amounts used for construction and renovation in accordance with section § 98.84, but not including the base amount provided under section § 98.83(e)).

Section 98.52(a) provides a list of administrative activities which are subject to the 15 percent cost limitation. The preamble discussion of § 98.52(a) provides an additional discussion of related activities which are not considered administrative activities for purposes of the 15 percent cost cap.

Through the list of activities which are not considered administrative costs, the exemption from the five percent State administrative cost cap, and the base amount under the Discretionary Fund, we believe Tribal Lead Agencies will have sufficient flexibility in determining their administrative and/or indirect costs to run effective CCDF programs.

We recognize that many Federal programs permit Indian Tribes and tribal organizations to include an indirect costs rate in their grant awards. Indirect costs are administrative costs that cannot be easily charged to a specific program. Among other things, these generally include: the cost of accounting services, personnel services, and general administration of the organization. Since the cost of these items cannot be easily assigned to a program that a grantee is operating, the indirect cost rate is applied to the grantee's direct costs to determine the amount the grantee will be able to recover from the program for the grantee's total indirect costs.

An indirect cost rate is arrived at through negotiation between an Indian Tribe or tribal organization and the appropriate Federal agency. Agreements vary from Tribe to Tribe. For example, some agreements may apply the indirect cost rate to salaries and wages only; others may apply the indirect cost rate to salaries, wages, and fringe benefits only.

Indirect costs, as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55, are identified at § 98.52(a)(6) as an allowable administrative expense for tribal grantees. Tribal Lead Agencies are reminded that regardless of their negotiated indirect cost rates, administrative costs may not exceed the 15 percent cost limitation at § 98.83(g).

*Comment:* A few commenters stated that a 15 percent administrative cost limit was too restrictive.

*Response:* The 15 percent limit is designed to provide Tribes greater flexibility than States which must meet a five percent administrative cost limit which was mandated by statute. The preamble discussion of § 98.52(a) provides an additional discussion of related activities which are not considered administrative activities for purposes of the 15 percent cost cap. Through these additional activities, the exemption from the five percent State administrative cost cap, and the base amount under the Discretionary Fund, we believe Tribal Lead Agencies will have sufficient flexibility in determining their administrative and/or indirect costs to run effective CCDF programs.

*Comment:* Several commenters requested that we adopt the following percentages: 63.75 for direct child care services; and 36.25 for child care services, activities to improve the availability and quality of child care, and/or administrative costs.

*Response:* Prior to the passage of PRWORA, the 63.75/36.25 percentages applied to exempt Tribal Lead Agencies. While this policy previously applied only to exempt Tribes, following the passage of PRWORA we extended it to apply to all Tribes during an interim period since the law was silent on administrative costs for Tribes. In a September 19, 1996 letter inviting Tribes to apply for Tribal Mandatory Funds and in ACF Program Instructions ACYF–PI–CC–97–03 and ACYF–PI–CC–97–04 we clearly indicated that this was an interim policy and that we intended to regulate on this issue. For the reasons given in this preamble, we have not retained the policy.

*Comment:* We received a comment asking why the administrative cost limit for Tribes at proposed § 98.83(g) applied to CCDF funds that were ''provided'' while the administrative cost limit for States at § 98.52 applied to CCDF funds that were ''expended''.

*Response:* We revised the administrative cost limit for Tribes at § 98.83(g) from the language in the proposed rule to more closely parallel the administrative cost limit for States at § 98.52. The revised § 98.83(g) requires that not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's allotment (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under § 98.83(e)) shall be expended for

administrative costs. We are using ''expended'' rather than ''provided'' to prevent a Tribal Lead Agency that does not expend its full allocation from receiving a windfall in administrative cost allowances. The revised language also clarifies that the administrative cost limit applies to the amounts expended from the total allocated, not to the amounts expended in a single fiscal year.

*Exempt Tribes.* We realize that many smaller tribal grantees do not have the infrastructure in place to support certain requirements. As a result, we are exempting Lead Agencies of smaller Tribes and tribal organizations (with total CCDF allocations less than an amount established by the Secretary) from certain requirements specified at § 98.83(f). Exempt tribal grantees are not required to comply with the four percent quality requirement at § 98.51(a) or to run a certificate program. Non-exempt tribal grantees are required to comply with these requirements.

The dollar threshold for determining which Tribes are exempt is established by the Secretary. Until Tribes are notified otherwise, the threshold is set at $500,000. In other words, Tribal Lead Agencies with total CCDF allocations less than $500,000 in a fiscal year will be considered exempt (any unobligated or unliquidated funds from prior fiscal years are not included in determining exempt/non-exempt status). Tribal Lead Agencies with allocations equal to or greater than $500,000 are non-exempt.

In the proposed rule, we proposed that the threshold would be set to include as non-exempt all Tribes which were non-exempt prior to PRWORA. However, due to increased appropriations, this approach would have greatly increased the number of non-exempt Tribes. As an alternative, we have chosen a reasonable dollar threshold ($500,000) that, while more than the dollar amount that was mentioned in the proposed rule ($460,000), would still move some Tribes to a non-exempt category.

The increased number of non-exempt Tribes reflects the increased child care funding provided directly to Tribes under PRWORA. Since the exemption was originally intended to recognize the difficulty of meeting all requirements with a small grant amount, we believe it is reasonable for a Tribe with a grant of $500,000 or higher to meet the four percent quality and certificate program requirements.

*Comment:* We received comments requesting the elimination of the exempt/non-exempt distinction. These commenters encouraged us to provide Tribal Lead Agencies with increased flexibility by making all Tribes exempt.

*Response:* We are keeping the exempt/non-exempt distinction since we believe grantees with large grant allocations should be subject to the four percent minimum quality and certificate program requirements. While we appreciate the need for Lead Agency flexibility, the need for quality child care and parental choice for Indian children is paramount.

Particularly given the increased allocation of funds for child care programs under the CCDF, we believe it is vitally important that the tribal grantees with larger grants establish or maintain certificate programs so that the families they serve may select from a range of providers: center-based; group home; family child care; in-home or other providers. Many of the larger tribal grantees already operate certificate programs. Likewise, the four percent minimum quality provision will help to ensure that Tribal Lead Agencies make the necessary investments for quality. We believe the Tribal Lead Agencies with larger grants can play a leadership role in providing parental choice and providing quality care.

Furthermore, in FY 1998, a few States received CCDF grant awards which were smaller than the largest tribal grant award. These State Lead Agencies, regardless of size, must comply with all the CCDF requirements including the four percent minimum quality provision and the requirement to run a certificate program. As a result, we believe it is appropriate to require Tribes with larger grants to meet these requirements.

*Comment:* One commenter requested clarification on funding amounts required for quality activities.

*Response:* While we strongly encourage exempt Tribal Lead Agencies to expend CCDF funds on quality activities, they are not required to meet this provision. For non-exempt Tribal Lead Agencies subject to the quality expenditure requirement at § 98.51(a), not less than four percent of the ''aggregate funds expended'' by the Lead Agency shall be expended for quality activities. For purposes of this requirement, the ''aggregate funds expended'' by the Tribal Lead Agency includes amounts used for construction and renovation in accordance with § 98.84 but does not include the base amount provided under § 98.83(e).

*Comment:* Several commenters recommended that Tribes should not be subject to § 98.43(b)(2) which requires a market rate survey as one of the three elements in determining equal access. The commenters stated that more flexible methodologies should be permitted for tribal grantees. For example, one commenter's Tribe currently establishes payment rates based on their State's market rate survey because their tribal service area is included in this market rate survey.

*Response:* In the final regulation, we have not exempted Tribal Lead Agencies from the requirement at § 98.43(b)(2) that their payment rates be based on a market rate survey. However, a Tribal Lead Agency may base its payment rates on the State's market rate survey rather than conducting its own survey if their service area is included in the State's survey. As noted at § 98.16(l), Tribal Lead Agencies must adequately describe the method used to ensure equal access.

While we are providing more flexibility for Tribal Lead Agencies regarding market rate surveys, we strongly encourage tribal CCDF grantees to survey their local providers in order to establish a payment rate which is an accurate reflection of the child care market on their reservation or tribal service area.

*70 percent requirement.* Section 418(b)(2) of the Social Security Act provides that States ensure that not less than 70 percent of the total amount of the State Mandatory and Matching funds received in a fiscal year be used to provide child care assistance to families receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition from such assistance, and families at risk of becoming dependent on such assistance. The provision at section 418(b)(2) does not apply to Tribal Lead Agencies. Nonetheless, Tribes have a responsibility to ensure that their child care services provide a balance in meeting the needs of families listed in section 418(b)(2) and the child care needs of the working poor.

Since Tribes may apply for both Tribal Mandatory Funds and Discretionary Funds, they are receiving increased CCDF grant awards—compared to amounts received prior to PRWORA—to provide direct child care services. Also, as we pointed out in our discussion on dual eligibility of tribal children, Tribes now have the option under title IV of the Social Security Act to operate their own TANF programs. Additionally, Tribes that operated a tribal Job Opportunities and Basic Skills Training (JOBS) program in 1994 may choose to continue a tribal work program. Whatever the mixture of child care, TANF, and work services a Tribe chooses to administer, child care services should be designed to ensure that all eligible families receive a fair

share of services within the tribal service area.

*Base amount.* A base amount is included in tribal grant awards under the Discretionary Fund. As referenced at § 98.83(e), the base amount of any tribal grant is not subject to the administrative costs limitation at § 98.83(g) or the quality expenditure requirement at § 98.51(a).

The base amount for each tribal grant may be used for any activity consistent with the purposes of the CCDF, including the administrative costs of implementing a child care program. For examples of administrative costs, refer to § 98.52(a).

*Lead agency.* Tribal grantees, like States, must designate a Lead Agency to administer the CCDF. If a tribal grantee applies for both Tribal Mandatory Funds and Discretionary funds, the programs must be integrated and administered by the same Lead Agency.

*Consortia.* If a Tribe participating in a consortium arrangement elects to receive only part of the CCDF (e.g., Discretionary Funds), it may not join a different consortium to receive the other part of the CCDF (Tribal Mandatory Funds), or apply as a direct grantee to receive the other part of the fund. In order to receive CCDF program services, individual tribal consortium members must remain with the consortium they have selected for the fiscal year in which they are receiving any part of CCDF funds. However, an Alaska Native village that must receive Tribal Mandatory Funds indirectly through an Alaska Native Regional Nonprofit Corporation may still apply directly for Discretionary Funds.

Section 98.83(c)(1) requires that a tribal consortium include in its two-year CCDF Plan a brief description of the direct child care services being provided for each of its participating Tribes. We included this provision for three reasons: (1) It helps ensure that services are being delivered to the member Tribes; (2) since in some cases consortia receive sizeable base amounts, it will provide documentation of the actual services being delivered to member Tribes through consortia arrangements; and (3) it provides the opportunity for public comment, as part of the public hearing process required by § 98.14(c), on the services provided to member Tribes.

*Comment:* One commenter was interested in how ACF would treat an individual consortium member that decided to drop out of its authorized CCDF consortium arrangement prior to the end of the fiscal year.

*Response:* We strongly encourage Tribes to closely evaluate their child care needs and eligibility for CCDF services before choosing to enter into a consortium arrangement. If a situation arises where a Tribe decides it must relinquish its membership in a consortium prior to the end of the fiscal year, the CCDF funds which were awarded to the consortium on behalf of the departing member Tribe will remain with the tribal consortium. The consortium may use these funds to provide direct child care services to other consortium members for the duration of the fiscal year. The final regulations codify this policy at § 98.83(c)(4).

*Child care standards.* Section 658E(c)(2)(E)(ii) of the Act requires the development of minimum child care standards for Indian Tribes and tribal organizations. Based on input from tribal leaders and tribal child care administrators, we are developing a process for Tribes to establish minimum child care standards that appropriately reflect tribal needs and available resources. Until the minimum standards are developed, Tribes must have in effect tribal and/or State licensing requirements applicable to child care services pursuant to § 98.40. Tribes must also have in place requirements designed to protect the health and safety of children in accordance with § 98.41 of the regulations, including, but not limited to: (1) The prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

*Comment:* We received comments about the process for developing the minimum child care standards, and about the need for flexibility under the standards in light of unique tribal needs and resources.

*Response:* The Child Care Bureau invited tribal leaders to consult with ACF officials on this issue in special focus groups at the Tribal Child Care Conference in April 1997. In addition, on March 26, 1997, a ''Request for Comments on the Development of Minimum Tribal Child Care Standards'' was published in the **Federal Register**. We are continuing to consult with tribal officials regarding the development of these standards. Regarding the need for flexibility, we recognize unique tribal circumstances and the fact that many Tribes have already developed their own standards. We are committed to an approach that considers both the need for flexibility as well as the statutory mandate to develop minimum standards.

*Planning costs for initial plan.* Section 98.83(h) provides that CCDF funds are available for costs incurred by a Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan. Federal obligation of funds for planning costs is subject to the actual availability of the appropriation.

Construction and Renovation (Section 98.84)

Upon requesting and receiving approval from the Secretary of the Department of Health and Human Services, a Tribal Lead Agency may use amounts from its CCDF allocation for construction and major renovation of child care facilities (pursuant to section 6580(c)(6) of the Act and regulations at § 98.84(a)).

Under the final rule, these payments could cover costs of amortizing the principal and paying interest on loans for construction and major renovation. As was also recognized in the Head Start procedures for construction and renovation, which allow use of funds to pay for principal and interest on loans, loans are an essential part of many construction and renovation projects.

The regulation at § 98.84(b) reflects the statutory requirement that, to be approved by the Secretary, a request to use CCDF funds for construction or major renovation must be made in accordance with uniform procedures developed by the Secretary. These uniform procedures were provided to Tribal Lead Agencies via program instructions ACYF–CC–PI–05, issued August 18, 1997, and ACYF–PI–CC–97–06 issued November 4, 1997. The Administration for Children and Families' Regional Offices have responsibility for approval of construction/renovation applications.

By statute (and § 98.84(b)), such requests must demonstrate that: (1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs; (2) the lack of such facilities will inhibit the operation of child care programs in the future; and (3) the use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year. In light of the requirement that a Tribe cannot reduce the level of child care services, a Tribal Lead Agency should plan in advance for anticipated construction and renovation costs.

Section 98.84(c) allows Tribal Lead Agencies to use CCDF funds for reasonable and necessary planning costs

associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation. This section of the rule also addresses the use of CCDF funds to pay for the costs of an architect, engineer, or other consultant.

The regulation at § 98.84(d) requires Tribal Lead Agencies which receive approval from the Secretary to use CCDF funds for construction or major renovation to comply with specified requirements in 45 CFR Part 92 and any additional requirements established by program instruction. Title 45 CFR Part 92 does not generally apply to the Child Care and Development Fund. However, we made specified sections which deal with the special circumstances of construction and renovation applicable for those purposes.

The ACF has an interest in property that is constructed or renovated with CCDF funds. This interest takes the form of restrictions on use and disposition of the property. The Federal interest also is manifested in the requirement that ACF receive a share of the proceeds from any sale of property. These requirements regarding Federal share and the use and disposition of property are found at 45 CFR 92.31(b) and (c).

Title requirements at 45 CFR 92.31(a) provide that title to a facility constructed or renovated with CCDF funds vests with the grantee upon acquisition.

Title 45 CFR 92.22 concerns cost principles and allowable cost requirements. Consistent with these cost principles, reasonable fees and costs associated with and necessary to the construction or renovation of a facility are payable with CCDF funds, but require prior, written approval from ACF.

Title 45 CFR 92.25 governs program income. Program income derived from real property constructed or renovated with CCDF funds must be deducted from the total allowable costs of the budget period in which it was produced.

All facility construction and renovation transactions must comply with the procurement procedures in 45 CFR 92.36, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

Tribal Lead Agencies must also comply with any additional requirements established by program instruction. These requirements may include, but are not limited to, requirements concerning: the recording of a Notice of Federal Interest in property; rights and responsibilities in the event of a grantee's default on a mortgage; insurance and maintenance; submission of plans, specifications, inspection reports, and other legal documents; and modular units.

The definition of ''facility'' at § 98.2 allows Tribal Lead Agencies to use CCDF funds for the construction or renovation of modular units as well as real property.

The definitions of ''facility,'' ''construction,'' and ''major renovation'' are the same definitions used in Head Start construction and renovation procedures. While a Tribal Lead Agency must request approval from the Secretary before spending CCDF funds on construction or major renovation, approval is not necessary for minor renovation pursuant to section 658F(b) of the Act and regulations at § 98.84(f). For Tribal Lead Agencies, minor renovation includes all renovation other than major renovation or construction.

Section 98.84(e) requires that, in lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies must liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. This gives Tribal Lead Agencies three years to liquidate funds approved by the Secretary for use on construction or major renovation with no separate obligation period. This separate obligation/liquidation requirement should allow sufficient time for construction and renovation projects.

Amounts used for construction and major renovation are not considered administrative costs for the purpose of the 15 percent administrative cost limit under § 98.83(g). We do not believe that Congress intended for us to unnecessarily limit a Tribal Lead Agency's ability to use CCDF funds on construction and renovation projects which meet the requirements necessary for Secretarial approval.

The ACF will transfer funds to be used for construction and major renovation to a separate grant award to be used specifically for construction or renovation activities. This approach is necessary to track the exact amount of funds spent on construction or renovation.

Finally, the new statutory provision allowing tribal construction with CCDF funds provides an opportunity for tribal grantees to leverage resources for quality facilities and services by coordinating with their Tribe's Head Start program.

*Comment:* We received comments objecting to the proposal at § 98.84(c) that would have prohibited a Tribal Lead Agency from using CCDF funds to pay for the costs of an architect, engineer, or other consultant until after the Lead Agency's construction/renovation application was approved by the Secretary. The commenters argued that the application procedures require construction/renovation plans and specifications as part of an application, and, unless Tribes are allowed to use CCDF funds, many Tribes would be unable to pay for the costs of architects, engineers, or consultants necessary to develop these plans and specifications.

*Response:* We eliminated the prohibition against the use of CCDF funds to pay for consultants prior to application approval. As revised, § 98.84(c) allows a Tribal Lead Agency to use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain Secretarial approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds. This approach allows Tribes access to the expertise necessary to prepare an application and launch a construction/renovation project. At the same time, it protects the Federal government from paying for consultant costs on a project that is not approvable. This revised policy is consistent with program instruction ACYF–CC–PI–05, issued August 18, 1997. We strongly encourage Tribes to involve ACF Regional Office staff early in the development of their construction/renovation applications.

*Comment:* We received questions regarding how the requirement at § 98.84(b)(3) would apply to new grantees. Under this provision (as well as the Act), use of funds for construction and renovation cannot result in a decrease in the Tribe's level of child care services compared to the preceding fiscal year. However, a new tribal grantee has no existing level of services to maintain.

*Response:* Since § 98.84(b)(3) does not apply to a new grantee (i.e., one that did not receive CCDF funds the preceding fiscal year), we added § 98.84(g) to address the amount of CCDF funds that a new grantee can use for construction or renovation. This section allows a new tribal grantee to spend no more than an amount equivalent to its Tribal Mandatory allocation on construction/renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

The CCDF program is primarily designed to provide direct child care services. Authority for construction and renovation was added as an amendment under the PRWORA. The statutory provision that prohibits a decrease in the level of child care services clearly indicates that Congress intended for construction and renovation activities only to be in addition to direct services. Limiting the amount of CCDF funds that a new tribal grantee may spend on construction or renovation to the amount of the Tribal Mandatory allocation is consistent with Congressional intent.

*Comment:* One commenter objected to the definition for major renovation. Section 98.2 defines ''major renovation'' as: (1) Structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change. The commenter objected to the second part of this definition, arguing that some projects may change the function and purpose of a facility (e.g., from a community center to a child care center) but only involve small, non-structural renovations that should not require an application seeking Secretarial approval.

*Response:* We did not revise the definition—which has also been used by the Head Start program. Projects that involve *extensive* alteration that change the function and purpose of the facility are potentially large and expensive and should therefore be subject to Secretarial approval. However, in order for a project that does not involve structural change to be considered major renovation under the definition at § 98.2, it must involve both: (1) Extensive alteration, and (2) a change in the function and purpose of the facility. Therefore, if a renovation project is *not* extensive (and does not involve structural change), the project would not be considered major renovation even if it changes the function and purpose of the facility.

*Comment:* We received a question as to whether non-exempt Tribal Lead Agencies could count construction and renovation costs as quality expenditures for purposes of meeting the four percent minimum quality requirement at § 98.51(a).

*Response:* Construction and renovation costs cannot be counted as quality expenditures for purposes of the four percent minimum quality requirement. Quality activities such as those described at § 98.51(a)(2) (resource and referral, provider loans, monitoring, training and technical assistance) are essential to the well-being of children in child care. The size of grant awards received by non-exempt Tribal Lead Agencies is sufficient to allow these Tribes to meet the four percent minimum quality requirement through activities other than construction or renovation.

*Comment:* We received a question regarding whether the costs of items such as parking lots, playground equipment, furniture, and kitchen equipment are considered to be construction/renovation costs?

*Response:* The regulations at § 98.2 define ''construction'' and ''major renovation'' for purposes of determining what activities are allowable under the CCDF and when prior approval from the Secretary is necessary.

However, these definitions do not directly address the question of what costs should be considered as part of the construction and renovation project. This question is relevant in at least three circumstances: (1) When ensuring that construction and renovation costs will not result in a decrease in the level of child care services in accordance with § 98.84(b)(3); (2) when providing an estimate of construction and renovation costs as required by the uniform procedures established by program instruction; and (3) when determining which costs should come from the separate grant award for construction and renovation.

For these three purposes, § 98.84(h) provides that a construction and renovation project that requires and receives the approval of the Secretary must include as construction and renovation costs the following: (1) Planning costs as allowed at § 98.84(c); (2) labor, materials and services necessary for the functioning of the facility; and (3) initial equipment, as discussed below, for the facility. All such costs must be identified in the Tribal Lead Agency's construction or renovation application to the Secretary and, to the extent that CCDF funds are used, must be paid for using the separate grant award for construction and renovation.

Under this framework, the cost of the construction or renovation project includes items which are not part of the actual facility itself, but which are necessary for the functioning of the facility (such as a parking lot or fence) when the item is part of a larger construction or renovation project that requires and receives approval by the Secretary.

Equipment, as used above, means items which are tangible, nonexpendable personal property having a useful life of more than five years. The intent of the five-year threshold is to include as construction and renovation costs only equipment that remains useful for an extended period of time, such as playground equipment, furniture, and kitchen equipment. Current operating expenses or items that are consumed in use (such as food, paper, books, toys or disposable housekeeping items) are not considered construction or renovation costs.

This relatively broad definition of construction and renovation costs emphasizes the importance of considering *all* costs when planning construction and renovation projects. The alternative approach, to exclude items such as playgrounds, parking lots and equipment from construction and renovation costs, would have underestimated the true costs of constructing or renovating a child care facility. A new or newly renovated facility requires the proper equipment to be operational. Furthermore, a facility must be constructed or renovated in a manner that ensures the health and safety of children in care, consistent with § 98.41(a)(2) of the regulations.

Equipment and other costs are only considered part of the construction or renovation costs, however, if they are included as part of a larger construction or renovation project that requires and receives approval by the Secretary. Costs of allowable activities (e.g., purchase of equipment necessary to bring a facility into compliance with health and safety standards) that are *not* part of a larger construction or renovation project as defined at § 98.2 should be considered quality improvement costs—not construction or renovation costs.

*Subpart J—Monitoring, Non-compliance and Complaints*

Penalties and Sanctions (Section 98.92)

We have amended paragraphs (1) and (2) of § 98.92(a), because the statutory amendments changed the penalty for a Lead Agency found to have failed to substantially comply with the statute, the regulations, or its own Plan. We also have deleted the former § 98.92(b) as redundant due to the statutory amendments. Section 658I(b)(2)(A)(ii) of the Act gives the Secretary the option to disallow improperly expended funds or to deduct an amount equal to or less than an improperly expended amount from the administrative portion of the Lead Agency's allotment for the following fiscal year. The Secretary can also impose a penalty that is a combination of these two options.

As proposed, we also added a new regulation at paragraph (b)(2) to establish a penalty on the Lead Agency for: (1) a failure to implement any part of the CCDF program in accordance with the Act or regulations or its Plan; or (2) a violation of the Act or regulations. Such penalty would be invoked when a failure or violation by the Lead Agency does not result in a clearly identifiable amount of improperly expended funds. For example, the failure to provide the reports required under subpart H or the inappropriate limitation of access to a particular type of provider in violation of the parental choice provisions of Subpart D do not result in a clearly identifiable amount of improperly expended funds. Hence, the penalties at paragraph (a) could not be applied. However, our stewardship of the program since its creation indicates the need for a more effective means of ensuring conformity with the statute and regulations than is offered by the existing regulations. Section 658I(b)(2)(B) of the CCDBG Act provides for an ''additional sanction'' if the Secretary finds there has been non-compliance with the Plan or any requirement of the program.

Because a failure or violation which would cause the penalty under § 98.92(b)(2) to be imposed may not have an amount of improperly expended funds associated with it, we needed to determine what amount of penalty should be imposed. We considered the range of TANF penalties found at section 409 of the Social Security Act and decided to use the TANF penalty provisions for failure to report at section 409(a)(2) as that was most analogous to the potential CCDF non-compliance. Accordingly, § 98.92(b)(2) provides that a penalty equal to four percent of the annual Discretionary allotment will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the potential penalty.

The TANF penalties include provisions for good cause and corrective action, and we have included similar provisions in § 98.92(b)(2). We believe that both provisions are good policy as the goal of the new provision is to achieve compliance with CCDF requirements, not punishment. If there is sufficient reason for not complying, or if the Lead Agency will comply without a penalty, the purpose is met without the imposition of a penalty. The penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is accepted by the Secretary. Waiting at least one full quarter before applying the penalty provides sufficient time to remedy the situations which we envision would cause the penalty to be invoked. The Lead Agency may, during that time, show cause to the Secretary why the amount of the penalty, if imposed, should be reduced.

The paragraphs formerly located at § 98.92(d) and (e) are relocated at § 98.92(c) and (d), respectively. We have added a new § 98.92(e) providing that it is at the Secretary's sole discretion to choose the penalty to be imposed.

*Comment:* While a few comments supported the need for the new penalty at § 98.92(b)(2), most opposed it stating that there is no basis for it in the PRWORA statute.

*Response:* As we stated in the preamble, the statutory basis for the penalty at § 98.92(b)(2) is section 658I(b)(2)(B) of the original CCDBG Act which provides for an ''additional sanction'' if the Secretary finds there has been non-compliance with the Plan or any requirement of the program. Our experience since the beginning of the program indicated the need for such an additional sanction.

*Comment:* Many of the same commenters objected to the use of the phrase ''failed to properly implement'' in the regulation, saying that it made the entire process subjective with only the Secretary deciding what was ''proper''.

*Response:* We agree that the use of the word ''proper'' gave the appearance of a subjective process, and we have eliminated it. It is not the intent of the regulation to second-guess how Lead Agencies implement the program, especially in light of the enormous flexibility they have. Rather, this regulation is specifically designed for those clear-cut instances wherein the Act, regulations, or Plan have not been followed, but for which there is not an amount of funds that are ''misspent'' as a result.

*Comment:* One commenter objected to the provision which allows the Secretary not to apply the penalty if the Lead Agency corrects the failure or violation or submits an acceptable plan for corrective action. The commenter wanted the penalty to be applied in all cases.

*Response:* As our goal is compliance with the requirements and not punishment, we believe it is good policy to forgive a penalty if the Lead Agency corrects the non-compliance without a penalty through corrective action. We also believe that Lead Agencies should be able to demonstrate that special circumstances, such as natural disasters or other circumstances beyond their control, prevent compliance and thus the penalty should be reduced. We believe that such instances will be rare.

**List of Subjects**

*45 CFR Part 98*

Child care, Grant program—social programs, Parental choice, Reporting and record keeping requirements.

*45 CFR Part 99*

Administrative practice and procedure, Child care, Grant program—social programs.

(Catalog of Federal Domestic Assistance Programs: 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: March 16, 1998.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

Approved: June 10, 1998.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, Parts 98 and 99 of Subtitle A of Title 45 of the Code of Federal Regulations are amended as follows:

1. Part 98 is revised as follows:

## PART 98—CHILD CARE AND DEVELOPMENT FUND

### Subpart A—Goals, Purposes and Definitions

Sec.
98.1 Goals and purposes.
98.2 Definitions.
98.3 Effect on State law.

### Subpart B—General Application Procedures

98.10 Lead Agency responsibilities.
98.11 Administration under contracts and agreements.
98.12 Coordination and consultation.
98.13 Applying for funds.
98.14 Plan process.
98.15 Assurances and certifications.
98.16 Plan provisions.
98.17 Period covered by plan.
98.18 Approval and disapproval of plans and plan amendments.

### Subpart C—Eligibility for Services

98.20 A child's eligibility for child care services.

### Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

98.30 Parental choice.
98.31 Parental access.
98.32 Parental complaints.
98.33 Consumer education.
98.34 Parental rights and responsibilities.

**Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements**

98.40 Compliance with applicable State and local regulatory requirements.
98.41 Health and safety requirements.
98.42 Sliding fee scales.
98.43 Equal access.
98.44 Priority for child care services.
98.45 List of providers.
98.46 Nondiscrimination in admissions on the basis of religion.
98.47 Nondiscrimination in employment on the basis of religion.

**Subpart F—Use of Child Care and Development Funds**

98.50 Child care services.
98.51 Activities to improve the quality of child care.
98.52 Administrative costs.
98.53 Matching Fund requirements.
98.54 Restrictions on the use of funds.
98.55 Cost allocation.

**Subpart G—Financial Management**

98.60 Availability of funds.
98.61 Allotments from the discretionary fund.
98.62 Allotments from the mandatory fund.
98.63 Allotments from the matching fund.
98.64 Reallotment and redistribution of funds.
98.65 Audits and financial reporting
98.66 Disallowance procedures.
98.67 Fiscal requirements.

**Subpart H—Program Reporting Requirements**

98.70 Reporting requirements.
98.71 Content of reports.

**Subpart I—Indian Tribes**

98.80 General procedures and requirements.
98.81 Application and Plan procedures.
98.82 Coordination.
98.83 Requirements for tribal programs.
98.84 Construction and renovation of child care facilities.

**Subpart J—Monitoring, Non-Compliance and Complaints**

98.90 Monitoring.
98.91 Non-compliance.
98.92 Penalties and sanctions.
98.93 Complaints.

**Authority:** 42 U.S.C. 618, 9858.

## Subpart A—Goals, Purposes and Definitions

### § 98.1 Goals and purposes.

(a) The goals of the CCDF are to:

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;

(2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) Encourage States to provide consumer education information to help parents make informed choices about child care;

(4) Assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(c) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that Lead Agencies:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs that provide for the changing needs of recipient families;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; and

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible.

### § 98.2 Definitions.

For the purpose of this part and part 99:

*The Act* refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, as amended and codified at 42 U.S.C. 9858 *et seq.*

*ACF* means the Administration for Children and Families;

*Application* is a request for funding that includes the information required at § 98.13;

*Assistant Secretary* means the Assistant Secretary for Children and Families, Department of Health and Human Services;

*Caregiver* means an individual who provides child care services directly to an eligible child on a person-to-person basis;

*Categories of care* means center-based child care, group home child care, family child care and in-home care;

*Center-based child care provider* means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

*Child care certificate* means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

*Child Care and Development Fund (CCDF)* means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

*Child care provider that receives assistance* means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

*Child care services*, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

*Construction* means the erection of a facility that does not currently exist;

*The Department* means the Department of Health and Human Services;

*Discretionary funds* means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

*Eligible child* means an individual who meets the requirements of § 98.20;

*Eligible child care provider* means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

*Facility* means real property or modular unit appropriate for use by a grantee to carry out a child care program;

*Family child care provider* means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

*Group home child care provider* means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

*In-home child care provider* means an individual who provides child care services in the child's own home;

*Lead Agency* means the State, territorial or tribal entity designated under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

*Licensing or regulatory requirements* means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

*Liquidation period* means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60.;

*Major renovation* means: (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

*Mandatory funds* means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

*Matching funds* means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

*Modular unit* means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

*Obligation period* means the applicable time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

*Parent* means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis*;

*The Plan* means the Plan for the implementation of programs under the CCDF;

*Program period* means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

*Programs* refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality and availability activities pursuant to § 98.51;

*Provider* means the entity providing child care services;

*The regulation* refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

*Real property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

*Secretary* means the Secretary of the Department of Health and Human Services;

*Sectarian organization or sectarian child care provider* means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

*Sectarian purposes and activities* means any religious purpose or activity, including but not limited to religious worship or instruction;

*Services for which assistance is provided* means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

*Sliding fee scale* means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

*State* means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

*Tribal mandatory funds* means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations;

*Tribal organization* means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

*Types of providers* means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

**§ 98.3 Effect on State law.**

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

## Subpart B—General Application Procedures

**§ 98.10 Lead Agency responsibilities.**

The Lead Agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate CCDF services pursuant to § 98.12.

**§ 98.11 Administration under contracts and agreements.**

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

**§ 98.12 Coordination and consultation.**

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

**§ 98.13 Applying for Funds.**

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF–LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103–277, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

**§ 98.14 Plan process.**

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a)(1) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children. The Lead Agency shall also coordinate with the State, and if applicable, tribal agencies responsible for:

(A) Public health, including the agency responsible for immunizations;

(B) Employment services/workforce development;

(C) Public education; and

(D) Providing Temporary Assistance for Needy Families.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary.

**§ 98.15 Assurances and certifications.**

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.53(h)(1).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(2) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(3) It will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices, as required by § 98.33;

(4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by Tribal Lead Agency), pursuant to § 98.40;

(5) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(6) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; and

(7) Payment rates for the provision of child care services, in accordance with § 98.43, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs.

**§ 98.16 Plan provisions.**

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) The assurances and certifications listed under § 98.15;

(c)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the entity designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.53(f);

(d) A description of the coordination and consultation processes involved in the development of the Plan, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14(a) and (b);

(e) A description of the public hearing process, pursuant to § 98.14(c);

(f) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) *in loco parentis*.

(g) For child care services pursuant to § 98.50:

(1) A description of such services and activities;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iv);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e).

(5) Any additional eligibility criteria, priority rules and definitions established pursuant to § 98.20(b);

(h) A description of the activities to provide comprehensive consumer education, to increase parental choice, and to improve the quality and availability of child care, pursuant to § 98.51;

(i) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to § 98.42;

(j) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41;

(k) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(l) Payment rates and a summary of the facts, including a biennial local

market rate survey, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43;

(m) A detailed description of how the State maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(n) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(o) A detailed description of the licensing requirements applicable to child care services provided, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(p) Pursuant to § 98.33(b), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(q)(1) When any Matching funds under § 98.53(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.53(c)(1), or for more than 10% of the funds available at § 98.53(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care; and

(r) Such other information as specified by the Secretary.

#### § 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

#### § 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.*

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

## Subpart C—Eligibility for Services

#### § 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child shall:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and

(3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(f)(7).

(b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

## Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

#### § 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(2) To receive a child care certificate as defined in § 98.2.

Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Group home child care;

(iii) Family child care; and

(iv) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(g)(2).

Under each of the above categories, care by a sectarian provider may not be limited or excluded.

(2) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.43, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

**§ 98.31 Parental access.**

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description of such procedures.

**§ 98.32 Parental complaints.**

The State shall:

(a) Maintain a record of substantiated parental complaints;

(b) Make information regarding such parental complaints available to the public on request; and

(c) The Lead Agency shall provide a detailed description of how such record is maintained and is made available.

**§ 98.33 Consumer education.**

The Lead Agency shall:

(a) Certify that it will collect and disseminate to parents and the general public consumer education information that will promote informed child care choices including, at a minimum, information about

(1) the full range of providers available, and

(2) health and safety requirements;

(b) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

(i) ''Appropriate child care'';

(ii) ''Reasonable distance'';

(iii) ''Unsuitability of informal child care'';

(iv) ''Affordable child care arrangements'';

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (b) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

(c) Include in the biennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (b) of this section.

**§ 98.34 Parental rights and responsibilities.**

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

## Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

**§ 98.40 Compliance with applicable State and local regulatory requirements.**

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Provide a detailed description of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

**§ 98.41 Health and safety requirements.**

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations). With respect to immunizations, the following provisions apply:

(i) As part of their health and safety provisions in this area, States and Territories shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for

childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object to immunization on religious grounds; and

(D) Children whose medical condition contraindicates immunization;

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.

(e) For the purposes of this section, the term ''child care providers'' does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to § 98.2.

**§ 98.42 Sliding fee scales.**

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

**§ 98.43 Equal access.**

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers, *e.g.*, center, group, family, and in-home care, is made available;

(2) How payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;

(3) How copayments based on a sliding fee scale are affordable, as stipulated at § 98.42.

(c) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

(d) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in § 98.30.

(e) Nothing in this section shall be construed to create a private right of action.

**§ 98.44 Priority for child care services.**

Lead Agencies shall give priority for services provided under § 98.50(a) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

**§ 98.45 List of Providers.**

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

**§ 98.46 Nondiscrimination in admissions on the basis of religion.**

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

**§ 98.47 Nondiscrimination in employment on the basis of religion.**

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead

Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

## Subpart F—Use of Child Care and Development Funds

### § 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of paragraphs (c), (d) and (e) of this section the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at § 98.51.

(d) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act,

(2) Are attempting through work activities to transition off such assistance program, and

(3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to § 98.16(g)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

### § 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

(1) These activities may include but are not limited to:

(i) Activities designed to provide comprehensive consumer education to parents and the public;

(ii) Activities that increase parental choice; and

(iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

(v) Improving salaries and other compensation (such as fringe benefits) for full-and part-time staff who provide child care services for which assistance is provided under this part; and

(vi) Any other activities that are consistent with the intent of this section.

(b) Pursuant to § 98.16(h), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

### § 98.52 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

**§ 98.53 Matching fund requirements.**

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use; and

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the entity designated by the State to receive donated funds pursuant to § 98.16(c)(2).

(g) The following are not counted as an eligible State expenditure under this Part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by § 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(q), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.

(4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20%, of either its maintenance-of-effort or State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

**§ 98.54 Restrictions on the use of funds.**

(a) *General.* (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction and renovation.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) *Sectarian purposes and activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2, assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs.

**§ 98.55 Cost allocation.**

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

## Subpart G—Financial Management

### § 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes,

(2) Mandatory and Matching Funds are available to States;

(3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold no more than one-quarter of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.53 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(6) For purposes of the CCDF, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

(1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or

(2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans, pursuant to § 98.51(a)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

### § 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to § 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\sum\left(YCF_t \times APF_t\right)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''$YCF_t$'' means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''$APF_t$'' means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*) an amount up to two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the **Federal Register**.

### § 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) and the amount reserved for Tribes pursuant to paragraph (b) of this section, an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to § 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to § 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

### § 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this subsection are available pursuant to the requirements at § 98.53(c).

### § 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they

have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term ''State'' means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.53(c) in the period for which the grant was first made. For purposes of this paragraph the term ''State'' means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under § 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF–696) and is subject to the monetary limits at paragraph (b)(2) of this section.

(4) A State eligible to receive redistributed Matching Funds shall also use the ACF–696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to § 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

**§ 98.65 Audits and financial reporting.**

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with OMB Circular A–133 and the Single Audit Act Amendments of 1996.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.

(g) The Secretary shall require financial reports as necessary.

**§ 98.66 Disallowance procedures.**

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

### § 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

## Subpart H—Program Reporting Requirements

### § 98.70 Reporting requirements.

(a) Quarterly Case-level Report—

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in § 98.71(a).

(b) Annual Report—

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(b).

(c) Tribal Annual Report—

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in § 98.71(c).

### § 98.71 Content of reports.

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) The total monthly family income for determining eligibility;

(2) County of residence;

(3) Gender and month/year of birth of children;

(4) Ethnicity and race of children;

(5) Whether the head of the family is a single parent;

(6) The sources of family income, from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act, cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; and other assistance programs;

(7) The month/year child care assistance to the family started;

(8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);

(9) Whether the child care provider involved was a relative;

(10) The total monthly child care copayment by the family;

(11) The total expected dollar amount per month to be received by the provider for each child;

(12) The total hours per month of such care;

(13) Social Security Number of the head of the family unit receiving child care assistance;

(14) Reasons for receiving care; and

(15) Any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) The total number (without duplication) of children and families served under CCDF; and

(5) Any additional information that the Secretary shall require.

(c) At a minimum, a Tribal Lead Agency's annual report to the Secretary, as required in § 98.70(c), shall include the following information on services provided through all CCDF tribal grant awards:

(1) Unduplicated number of families and children receiving services;

(2) Children served by age;

(3) Children served by reason for care;

(4) Children served by payment method (certificate/voucher or contract/grants);

(5) Average number of hours of care provided per week;

(6) Average hourly amount paid for care;

(7) Children served by level of family income; and

(8) Children served by type of child care providers.

## Subpart I—Indian Tribes

### § 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; and

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either:

(1) 85 percent of the State median income for a family of the same size; or

(2) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

### § 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) A Tribal Lead Agency shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility pursuant to § 98.80(f).

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(5) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in § 98.16(g)(2) or § 98.16(k) unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

(6) The Plan is not subject to requirements in § 98.16(f)(8) or § 98.16(g)(4).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(c) When initially applying under paragraph (a) of this section, a Tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(a).

**§ 98.82 Coordination.**

Tribal applicants shall coordinate as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

**§ 98.83 Requirements for tribal programs.**

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities shall be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their two-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (e.g., Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (e.g. Tribal Mandatory Funds).

(4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d) Tribal Lead Agencies shall not be subject to the requirements at §§ 98.41(a)(1)(i), 98.44(a), 98.50(e), 98.52(a), 98.53 and 98.63.

(e) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (g) of this section or the quality expenditure requirement at § 98.51(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to §§ 98.61(c) and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

(1) The assurance at § 98.15(a)(2);

(2) The requirement for certificates at § 98.30(a) and (d); and

(3) The requirements for quality expenditures at § 98.51(a).

(g) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under § 98.83(e)) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(h)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

**§ 98.84 Construction and renovation of child care facilities.**

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 92.31;

(2) Transfer and disposition of property requirements at 45 CFR 92.31(c);

(3) Title requirements at 45 CFR 92.31(a);

(4) Cost principles and allowable cost requirements at 45 CFR 92.22;

(5) Program income requirements at 45 CFR 92.25;

(6) Procurement procedures at 45 CFR 92.36; and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

(1) planning costs as allowed at § 98.84(c);

(2) labor, materials and services necessary for the functioning of the facility; and

(3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

## Subpart J—Monitoring, Non-compliance and Complaints

### § 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

### § 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to § 98.90 or § 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

### § 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow the improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)(i) A penalty of not more than four percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under § 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(d) Nothing in this section, or in § 98.90 or § 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be

applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

**§ 98.93 Complaints.**

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in § 98.90.

## PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT FUND

2. The heading of part 99 is revised to read as set forth above:

3. The authority citation for part 99 is revised to read as follows:

**Authority:** 42 U.S.C. 618, 9858.

4. In part 99 make the following changes:

a. Remove the words ''Child Care and Development Block Grant'' and add in their place, wherever they appear, the words ''Child Care and Development Fund.''

b. Remove the word ''Grantees'' and add in its place, wherever it appears, the words ''Lead Agencies.''

c. Remove the word ''Grantee'' and add in its place, wherever it appears, the words ''Lead Agency.''

d. Remove the words ''Block Grant Plan'' and add in their place, wherever they appear, the words ''CCDF Plan.''

[FR Doc. 98–19418 Filed 7–23–98; 8:45 am]

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federal register

Friday
July 24, 1998

# Part III

# Department of Transportation

## 14 CFR Part 187

## Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace; Final Rule

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 187

**[Docket No. 28860; Amendment No. 187–7]**

**RIN 2120–AG17**

## Fees for Air Traffic Services for Certain Flights Through U.S.-Controlled Airspace

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is amending Title 14 of the Code of Federal Regulations (14 CFR) to remove the interim rule that established fees and collection procedures for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. On January 30, 1998, the United States Court of Appeals for the District of Columbia (court) vacated the FAA's interim final rule and remanded the rule to the FAA for disposition. The FAA is taking this action in anticipation of issuing another interim final rule for FAA air traffic and related services as provided for in the 1996 FAA Reauthorization Act.

**DATES:** This rule is effective July 21, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Wharff, Office of Aviation Policy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7035.

**SUPPLEMENTARY INFORMATION:** On March 20, 1997, the FAA published Amendment No. 187–727 (62 FR 13496), to announce the establishment of fees for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States. The FAA invited public comment on this interim final rule. The comment period closed on July 18, 1997. In addition, the FAA held a public meeting on May 1, 1997. The FAA also published two additional interim final rules that amended the original interim final rule on May 2, 1997 (62 FR 24285) and October 2, 1997 (62 FR 51735).

### Authority to Establish Fees

The Federal Aviation Reauthorization Act of 1996 (the Act) directed the FAA to establish by interim final rule a fee schedule and collection process for air traffic control and related services provided to aircraft other than military and civilian aircraft of the United States government or of a foreign government that neither take off from, nor land in, the United States (42 U.S.C. 45301, as amended by Pub. L. 104–264). Also, the Act directed the FAA to ensure that the fees collected are directly related to the FAA's costs of providing the services rendered.

### United States Court of Appeals for the District of Columbia Decision

On January 30, 1998, the court issued its opinion on seven petitions consolidated in the case of Asiana Airlines et. al. (petitioners), versus the Federal Aviation Administration and Acting Administrator (respondents), 1998 U.S. App. Lexis 1286, App. No. 97–1356 (1998).

The petitioners challenged the interim final rule asserting that the FAA acted improperly in employing an expedited procedure before the effective date of the interim final rule, and that the regulation violated the anti-discrimination provisions of various international aviation agreements. The court rejected the petitioners' claims that FAA acted improperly in employing an expedited procedure before the effective date of the interim final rule, and that the regulation violated the antidiscrimination provisions of various international aviation agreements. However, the court concluded that the FAA's methodology of determining cost violated statutory requirements.

The court, therefore, vacated the interim final rule in its entirety and remanded the interim final rule to the FAA for further proceedings consistent with the opinion. The FAA anticipates that another interim final rule consistent with the 1996 FAA Reauthorization Act will be issued. The FAA will advise users of the details of any future interim final rule prior to the effective date of any new fee schedule imposed by interim final rule.

### Discussion of Comments

As noted above, when the FAA issued the interim final rule on March 20, 1997, comments were requested concerning the rule. One hundred and twenty comments were received. As the FAA is amending 14 CFR to remove the interim final rule for fees and collection procedures for FAA air traffic and related services, and will not be implementing the interim final rule as a final rule, the comments received need no disposition. Also, most of the issues raised by the commenters were addressed by the court. In any future rulemakings pursuant to 49 U.S.C. 45301, the FAA will seek comments on any interim final rule that will be implemented as a final rule.

Accordingly, the FAA amends 14 CFR part 187, and Appendix B of part 187, by removing all references to fees and collection procedures for FAA air traffic and related services provided to certain aircraft that transit U.S.-controlled airspace but neither take off from, nor land in, the United States.

### List of Subjects in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

### The Amendment

The Federal Aviation Administration amends Title 14 of the Code of Federal Regulations part 187 as follows:

## PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 106(g), 40104–40105, 40109, 40113–40114, 44702, 45301–45303.

2. Section 187.1 is amended by removing the following sentence: ''Appendix B to this part prescribes the fees for certain aircraft flights that transit U.S.-controlled airspace.''

3. Section 187.15 is amended by removing paragraph (d).

4. Part 187 is amended by removing and reserving appendix B.

Issued in Washington, DC, on July 21, 1998.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 98–19875 Filed 7–23–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
July 24, 1998

## Part IV

# Department of Education

**Rehabilitation Training: Rehabilitation Long-Term Training; New Awards Applications Invitation (Fiscal Year 1999); Notice**

## DEPARTMENT OF EDUCATION

**[CFDA Nos.: 84.129E, 84.129F, 84.129P, 84.129Q, and 84.129R]**

## Rehabilitation Training: Rehabilitation Long-Term Training; Notice Inviting Applications For New Awards For Fiscal Year (FY) 1999

*Purpose of program:* The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

*Eligible Applicants:* State agencies and other public or nonprofit agencies and organizations, including Indian Tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

*Deadline for Transmittal of Applications:* September 18, 1998.

*Deadline for Intergovernmental Review:* November 17, 1998.

*Applications Available:* July 24, 1998.

*Available Funds:* $1,000,000.

*Estimated Range of Awards:* $75,000 to $100,000.

*Estimated Average Size of Award:* $100,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Maximum Award:* In no case does the Secretary make an award greater than the amount listed in the Maximum Level of Awards column in the following chart for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

*Project Period, Maximum Number of Awards, Maximum Level of Awards, and Absolute Priorities:* The Secretary is conducting a single competition to select a total of 10 awards across the 5 priority areas identified by the Commissioner of the Rehabilitation Services Administration as areas of personnel shortages related to the public rehabilitation program (section 302(b)(1) of the Rehabilitation Act of 1973, as amended). The project period and maximum level of awards to be made in each priority area are listed in the following chart. The maximum number of awards to be made are listed in parentheses following each priority area. Applicants must submit a separate application for each area in which they are interested. Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that propose to provide training in one of the following areas of personnel shortages:

| CFDA number | Priority Area (maximum number of awards in parentheses) | Project period | Maximum level of awards |
|---|---|---|---|
| 84.129E1 | Rehabilitation Technology (3) | Up to 60 months | 100,000 |
| 84.129F1 | Vocational evaluation and work adjustment (3) | Up to 60 months | 100,000 |
| 84.129P1 | Specialized personnel for rehabilitation of individuals who are blind or have vision impairment (3). | Up to 60 months | 100,000 |
| 84.129Q1 | Rehabilitation of individuals who are deaf or hard of hearing (4) | Up to 60 months | 100,000 |
| 84.129R1 | Job development and job placement services to individuals with disabilities (2) | Up to 60 months | 100,000. |

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 386.

*For Applications Contact:* The Grants and Contracts Service Team, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 3317, Switzer Building), Washington, D.C. 20202–2550; or (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Mary C. Lynch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–8291.

For information on a specific training category, please contact the following: For Vocational evaluation and work adjustment and Job development and job placement services to individuals with disabilities, contact Ellen Chesley, U.S. Department of Education, 600 Independence Avenue, S.W. Room 3320, Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–9481. For Specialized personnel for rehabilitation of individuals who are blind or have vision impairments and Rehabilitation of individuals who are deaf or hard of hearing, contact Sylvia Johnson, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3320, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9481. For Rehabilitation Technology, contact Mary C. Lynch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3322, Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–8291.

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**Note:** The official version of a document is the document published in the **Federal Register**.

**Program Authority:** 29 U.S.C. 774.

Dated: July 21, 1998.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 98–19883 Filed 7–23–98; 8:45 am]

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federal register

Friday
July 24, 1998

# Part V

# Department of Education

## Rehabilitation Continuing Education Programs; New Awards Applications Invitation (Fiscal Year 1999); Notice

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.264A]**

### Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

*Purpose of Program:* To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities throughout a multi-State geographical area.

*Eligible Applicants:* State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

*Deadline for Transmittal of Applications:* September 25, 1998.

*Deadline for Intergovernmental Review:* November 24, 1998.

*Applications Available:* July 24, 1998.

*Available Funds:* $1,034,270.

*Maximum Awards by Rehabilitation Services Administration (RSA) Region:* In no case does the Secretary make an initial award greater than the amount listed for each of the following RSA regions for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this amount.

*Maximum Level of Awards by RSA Region:* Region I—$369,079; Region IV—$355,000.

*Estimated Range of Awards:* $310,191–$369,079.

**Note:** Applicants should apply for level funding for each project year. Also, applicants are subject to a four percent cost-share requirement on awards.

*Estimated Number of Awards:* 3.

**Note:** Applications are invited for the provision of training for Department of Education Regions I and IV only. The Department expects to make two awards in region IV, due to the size of the region. The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR Parts 385 and 389.

**Note:** The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR Part 86 apply to institutions of higher education only.

*For Applications Contact:* The Grants and Contracts Service Team (GCST), U.S. Department of Education, 600 Independence Avenue, S.W., Room 3317 Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS)at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application.

**FOR INFORMATION CONTACT:** Mary C. Lynch, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3318 Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9481.

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**Program Authority:** 29 U.S.C. 771a.

Dated: July 21, 1998.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 98–19859 Filed 7–23–98; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

**H.R. 1316/P.L. 105–205**

To amend chapter 87 of title 5, United States Code, with respect to the order of precedence to be applied in the payment of life insurance benefits. (July 22, 1998; 112 Stat. 683)

**H.R. 2676/P.L. 105–206**

Internal Revenue Service Restructuring and Reform Act of 1998 (July 22, 1998; 112 Stat. 685)

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