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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–181–AD; Amendment 39–12182; AD 2001–08–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–7–100, –101, –102, and –103 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–7–100, –101, –102, and –103 series airplanes, that requires inspecting the endcaps of the main landing gear selector valve for leaks of hydraulic oil and, if leaks are detected, replacing the leaking endcaps or the entire selector valve. This amendment also requires eventual replacement or rework of certain selector valves, which would terminate the repetitive inspections. This amendment is prompted by a report of the collapse of the main landing gear due to an external leak of hydraulic oil in the landing gear selector valve, resulting from a fracture of the endcap. The actions specified by this AD are intended to prevent leaks of hydraulic oil from the main landing gear selector valve, which could result in the collapse of the main landing gear.

**DATES:** Effective May 29, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James E. Delisio, Aerospace Engineer, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–7–100, –101, –102, and –103 series airplanes was published in the **Federal Register** on October 12, 2000 (65 FR 60595). That action proposed to require inspecting the endcaps of the main landing gear selector valve for leaks of hydraulic oil and, if leaks are detected, replacing the leaking endcaps or the entire selector valve. That action also proposed to require eventual replacement or rework of certain selector valves, which would terminate the repetitive inspections.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Explanation of Change to Final Rule

Since the issuance of the proposed rule, the FAA has received information from an operator indicating that replacement of the existing aluminum endcaps with stainless steel endcaps having part number (P/N) 52982, on a main landing gear selector valve having P/N 57420–5, is the same terminating action as that specified in paragraph (c)(2) of the final rule. The FAA has determined that this is accurate information and has changed the final rule to specify that such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of the final rule. Paragraphs (b)(1) and (c)(2) of the final rule have been revised for clarification.

### Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will require 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $1,920, or $60 per airplane.

The FAA also estimates that it will require 5 work hours per airplane to rework or replace the main landing gear selector valve and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the rework or replacement on U.S. operators is estimated to be $9,600 or $300 per airplane.

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

Should an operator elect to replace the endcaps and perform the optional repetitive inspections prior to replacing the main landing gear selector valve, it would take approximately 1 work hour per airplane to conduct each inspection. Based on these figures, the cost impact of the optional repetitive inspections is estimated to be $60 per inspection per airplane.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2001–08–05 Bombardier, Inc.** (Formerly de Havilland, Inc.): Amendment 39–12182. Docket 2000–NM–181–AD.

*Applicability:* Model DHC–7–100, –101, –102, and –103 series airplanes, serial numbers 003 through 113 inclusive; 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent the collapse of the main landing gear due to leaks of hydraulic oil from the main landing gear selector valve, accomplish the following:

**Inspection**

(a) Within 100 flight cycles after the effective date of this AD, perform a general visual inspection of both endcaps of the main landing gear selector valve for the presence of hydraulic oil, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. If no hydraulic oil is detected on either endcap, repeat the inspection at intervals not to exceed 400 flight hours until the requirements of paragraph (c) of this AD are accomplished.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**Replacement or Modification**

(b) If any hydraulic oil is detected on either endcap: Prior to further flight, perform the actions specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace the existing aluminum endcaps (on the selector valve), part number (P/N) 34629, with new stainless steel endcaps having P/N 52982, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. For main landing gear selector valves having P/N 57420–5, replacement of the endcaps terminates the repetitive inspection requirements of this AD.

(2) Replace the main landing gear selector valve with a valve having P/N 57420–5A, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999.

**Note 3:** Use care when removing the endcaps, so that the internal components do not fall on the ground and get damaged.

(c) Within 12 months after the effective date of this AD: Perform the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. Accomplishment of either paragraph (c)(1) or (c)(2) terminates the repetitive inspection requirements of this AD.

(1) If a main landing gear selector valve having P/N 57420–1 or 57420–3 is installed, remove it and replace it with a valve having P/N 57420–5A.

(2) If a main landing gear selector valve having P/N 57420–5 is installed, remove it and replace it with a valve having P/N 57420–5A or modify the valve to the P/N 57420–5A configuration (Modification 7/2742). For main landing gear selector valves having P/N 57420–5, replacement of the endcaps, as specified in paragraph (b)(1) of this AD, terminates the repetitive inspection requirements of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Incorporation by Reference**

(f) The actions shall be done in accordance with Bombardier Alert Service Bulletin A7–32–103, dated September 3, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–31, dated December 21, 1999.

**Effective Date**

(g) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on April 12, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9666 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–NM–223–AD; Amendment 39–12183; AD 2001–08–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes, that requires repetitive inspections of fuselage frame 07 in the upper frame section assemblies of the lateral cockpit windows, and corrective action, if necessary. Accomplishment of certain corrective actions extends the repetitive inspection interval. The actions specified by this AD are intended to detect and correct fatigue cracking in that area, which could result in reduced structural integrity of the airplane.

**DATES:** Effective May 29, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes was published in the **Federal Register** on January 9, 2001 (66 FR 1610). That action proposed to require repetitive inspections of fuselage frame 07 in the upper frame section assemblies of the lateral cockpit windows, and corrective action, if necessary. That action also proposed to require accomplishment of certain corrective actions, which would extend the repetitive inspection interval.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

### Other Models Subject to Unsafe Condition

The commenter, Airbus, advises that Model A300 B2 and A300 B4 series airplanes are also subject to the unsafe condition identified by this AD. However, the area included in the inspection required by this AD is also included in the A300 Supplemental Structural Inspection Document (SSID). Airbus further advises that the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, will mandate this inspection by a separate French airworthiness directive.

The FAA acknowledges that, while there may be merit to the commenter's concerns, this AD is not the appropriate context in which to address those concerns. Adding airplanes to the applicability would alter the requirements of the proposed AD, so additional rulemaking would be required. The FAA finds that to delay this action would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary in this regard.

### Change to Repair/Inspection Approval

Paragraph (b) of the proposed AD would have required follow-on corrective actions to be accomplished in accordance with a method approved by the FAA. However the DGAC was inadvertently omitted as an additional acceptable approval source for the actions identified in paragraph (b). In light of the type of repair or inspection that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair or inspection approved by either the FAA or the DGAC would be acceptable for compliance with this AD. Paragraph (b) of the final rule has been revised accordingly.

### Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

### Cost Impact

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,620, or $60 per airplane, per inspection cycle.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2001–08–06 Airbus Industrie:** Amendment 39–12183. Docket 2000–NM–223–AD.

*Applicability:* Model A300 B4–620, A310–203, A310–221, and A310–222 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A300–53–6120 or A310–53–2109, both dated May 5, 2000; excluding airplanes on which Airbus Modification 3632 has been accomplished.

**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 detect and correct fatigue cracking of fuselage frame 07 in the upper frame section assembly of the lateral cockpit windows, which could result in reduced structural integrity of the airplane, accomplish the following:

**Inspection and Corrective Actions**

(a) Before the accumulation of 25,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking of fuselage frame 07 in the left and right upper frame section assemblies of the lateral cockpit windows, in accordance with Airbus Service Bulletin A300–53–6120 (for Model A300–600 series airplanes) or A310–53–2109 (for Model A310 series airplanes), both dated May 5, 2000; as applicable.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is found: Repeat the inspection thereafter at least every 7,000 flight cycles.

(2) If any cracking is found and the cracking is only in ''area A,'' as depicted in view B of Figure 4 of the service bulletin: Before further flight, do the actions specified by either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Do a temporary repair per the applicable service bulletin. Within 3,000 flight cycles thereafter, do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(ii) Do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(3) If any cracking is in ''area B,'' or in both ''area A'' and ''area B'' as depicted in view B of Figure 4 of the service bulletin: Before further flight, do a permanent repair per the applicable service bulletin. Within 32,000 flight cycles thereafter, except as required by paragraph (b) of this AD, repeat the inspection specified by paragraph (a) of this AD.

(b) If the service bulletin specifies to contact Airbus for further instructions for a repair or inspection: Prior to further flight, perform a repair or inspection per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. 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 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with §§ 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.

**Incorporation by Reference**

(e) Except as required by paragraph (b) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–6120, dated May 5, 2000; or Airbus Service Bulletin A310–53–2109, dated May 5, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directive 2000–263–314(B), dated June 28, 2000.

**Effective Date**

(f) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on April 12, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9665 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–295–AD; Amendment 39–12184; AD 2001–08–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–200 and –300 Series Airplanes Equipped with a Main Deck Cargo Door Installed in Accordance with Supplemental Type Certificate (STC) SA2969SO

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200 and –300 series airplanes, that currently requires a one-time inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between certain fuselage stations and water lines, and replacement of any cracked part with a new part having the same part number. That AD was prompted by reports that, during the inspections required by the existing AD, cracks were found in the reinforcing angles of the main deck cargo door frame. This amendment requires, among other actions, an inspection to detect cracks of the lower frames and

reinforcing angles of the main deck cargo door; replacement of any lower frame or reinforcing angle of the main deck cargo door when it has reached its maximum life limit. The actions specified by this AD are intended to detect and correct cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane.

**DATES:** Effective May 29, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Culler, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748, telephone (770) 703–6084; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–17–51, amendment 39–11877 (65 FR 51752, August 25, 2000), which is applicable to certain Boeing Model 737–200 and –300 series airplanes, was published in the **Federal Register** on October 17, 2000 (65 FR 61289). The action proposed to require, among other actions, an inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door; replacement of any lower frame or reinforcing angle of the main deck cargo door when it has reached its maximum life limit.

## Comments Received

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

### Request to Change Proposed High Frequency Eddy Current (HFEC) Inspections to Detailed Visual Inspections

One commenter requests that, in lieu of the proposed repetitive HFEC inspections, repetitive detailed visual inspections with a borescope, flexiscope, or mirror and light be required every 600 flight cycles for cracks in the frames and, especially, in the reinforcing angles, provided that the initial inspection was an HFEC inspection of all lower frames and angles and all parts with crack indication were replaced with new parts. The commenter states that this change would alleviate the need to remove and reinstall the necessary hardware required to perform an adequate HFEC inspection, which causes an extended fleet downtime and damages the area being inspected. The commenter also states that it has reviewed statistical data from its fleet of airplanes on which HFEC inspections were done per AD 2000–17–51 that shows the number of cracked angles is higher than the number of cracked frames at the same frame station. Based on this data, the commenter provided a graph that shows a close correlation between cracked frames and attached angles.

The FAA does not agree. As indicated in the preamble of AD 2000–17–51, the special detailed visual inspection done per AD 2000–13–51 is not adequate to detect cracks embedded behind the reinforcing angles. In addition, previous reports from the commenter's fleet, and other operators, indicate that cracks could exist on a frame and remain hidden behind uncracked reinforcing angles. Therefore, we find that the required repetitive HFEC inspections are warranted to address the identified unsafe condition.

### Request to Revise Wording of Paragraph (b)(2) of the Proposed AD

One commenter requests that paragraph (b)(2) of the proposed AD be revised to "* * * replace the frames and associated angles which were not changed as per AD 2000–17–51 * * * Within 3,000 flight cycles after accomplishment of the replacement of parts as per 2000–NM–295–AD, do the HFEC inspection required of all the frames and associated angles." The commenter states that revising "reinforcing angle" to "associated angle" is necessary, because the terminating action, which is being developed, relies on a new angle (reinforcing angle) located on top of the existing angle (associated angle of the frame).

The FAA does not agree. We find that adding the phrase "which were not changed per AD 2000–17–51" is unnecessary, because paragraph (b) of the final rule clearly identifies the affected airplanes as those "on which any door frame or reinforcing angle at the location where the door latch fittings attach between FS 361.86 and FS 298.12 and WL 202.35 and WL 213.00 has NOT been replaced before the effective date of this AD." In addition, the header of paragraph (b) of the final rule is "Actions Addressing Door Frames or Reinforcing Angles That Have NOT Been Replaced." We also find that adding the phrase "as per 2000–NM–295–AD" to the compliance time of "within 3,000 flight cycles after accomplishment of the replacement" is unnecessary and redundant as the "Compliance" section of this AD states, "Required as indicated, unless previously accomplished." We note that the docket number associated with the preceding NPRM and this final rule is 2000–NM–295–AD. Furthermore, the term "reinforcing angle" is used in the design data and service documents of the original equipment manufacturer and in preceding AD's. Therefore, based on these conclusions, we find that no change is necessary to paragraph (b)(2) of the final rule.

### Requests to Reference or Develop Terminating Action

One commenter requests that the airplane manufacturer develop a terminating modification for the repetitive inspections required by the proposed AD. A second commenter requests that the proposed AD reference Pemco Service Bulletin 737–52–0036 as terminating action for the repetitive requirements of the proposed AD. A third commenter, Pemco, states that it is currently developing two terminating actions, and that they will be approved by a Designated Engineering Representative in November and December 2000. One commenter states that the proposed repetitive inspections requires removal and reinstallation of hardware, which can reduce fastener edge distance and potentially cause damage to the inspected areas. The commenter also states that these inspections cause unscheduled downtimes up to four weeks per airplane.

The FAA agrees with the commenters that a terminating action is desireable. However, we do not agree with the commenters' concern that the required inspections and reinstallation of hardware may result in potential

damage to the inspected area, since we anticipate that the terminating action will be available before the accomplishment of multiple inspections. We are aware that the affected Supplemental Type Certificate (STC) holder is developing service bulletin procedures to address the identified unsafe condition. However, the service bulletins are not scheduled to be completed until mid 2001. We have decided not to delay this action in anticipation of the service bulletins, since the release date is not absolute and this action is necessary to address an identified unsafe condition. Therefore, the FAA may approve requests for an alternative method of compliance (AMOC) under the provisions of paragraph (c) of this AD once the revised bulletins are issued. No change to the final rule is necessary.

## Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

There are approximately 35 Model 737–200 and –300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD.

It will take approximately 500 work hours per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $60,000, or $30,000 per airplane.

It will take approximately 128 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $15,521 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $46,402, or $23,201 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11877 (65 FR 51752, August 25, 2000), and by adding a new airworthiness directive (AD), amendment 39–12184, to read as follows:

**2001–08–07 Boeing:** Amendment 39–12184. Docket 2000–NM–295–AD. Supersedes AD 2000–17–51, Amendment 39–11877.

*Applicability:* Model 737–200 and –300 series airplanes, equipped with a main deck cargo door installed in accordance with Supplemental Type Certificate (STC) SA2969SO; 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)(1) 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 cracking of the lower portion of the main deck cargo door frames, which could result in sudden depressurization, loss or opening of the main deck cargo door during flight, and loss of control of the airplane, accomplish the following:

**Actions Addressing Door Frames or Reinforcing Angles That Have Been Replaced**

(a) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between fuselage station (FS) 361.86 and FS 298.12 and water line (WL) 202.35 and WL 213.00 has been replaced before the effective date of this AD: Do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) Within 3,000 flight cycles after accomplishment of the replacement, do a high frequency eddy current (HFEC) inspection to detect cracks of the replaced lower frames or replaced reinforcing angles of the main deck cargo door, as applicable.

(i) If no crack is detected, repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the replaced part.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) Before or upon the accumulation of 7,000 total flight cycles on any lower frame or reinforcing angle of the main deck cargo door, replace the lower frame or reinforcing angle, as applicable, with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

**Actions Addressing Door Frames or Reinforcing Angles That Have NOT Been Replaced**

(b) For airplanes on which any door frame or reinforcing angle at the location where the door latch fittings attach between FS 361.86 and FS 298.12 and WL 202.35 and WL 213.00 has NOT been replaced before the effective date of this AD: Within 1,300 flight cycles after accomplishment of the HFEC inspection required by AD 2000–17–51, amendment 39–11877, do the action specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable, per the Accomplishment

Instructions of Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000.

(1) For airplanes that have accumulated less than 7,000 total flight cycles since installation of STC SA2969SO: Do an HFEC inspection to detect cracks of the lower frames and reinforcing angles of the main deck cargo door where the door latch fittings attach between FS 361.87 and FS 498.12 and WL 202.35 and WL 213.00.

(i) If no crack is detected, do the actions specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this AD.

(A) Repeat the HFEC inspection thereafter at intervals of 1,300 flight cycles on the airplane, but not to exceed the accumulation of 7,000 total flight cycles on the airplane.

(B) Before the accumulation of 7,000 total flight cycles on the airplane, replace the lower frame and reinforcing angle with new parts per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(ii) If any crack is detected, before further flight, replace the cracked part with a new part having the same part number per the service bulletin. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

(2) For airplanes that have accumulated 7,000 or more total flight cycles since installation of STC SA2969SO: Replace the lower frames and reinforcing angles with new parts. Within 3,000 flight cycles after accomplishment of the replacement, do the HFEC inspection required by paragraph (a)(1) of this AD.

**Alternative Methods of Compliance**

(c)(1) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–17–51, amendment 39–11877, are approved as alternative methods of compliance with the initial HFEC inspection required by paragraph (a)(1) of this AD.

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Pemco Service Bulletin 737–52–0037, Revision 2, dated September 13, 2000, including Attachment 1, dated August 10, 2000, which contains the list of effective pages specified in Table 1 of this AD. Table 1 is as follows:

TABLE 1.

| Page number | Revision level shown on page | Date shown on page |
|---|---|---|
| 1 | A | August 15, 2000. |
| 2, 3, 6–10 | Original | August 10, 2000. |
| 4, 4a, 5 | 2 | September 13, 2000. |
| Attachment 1, 2 | Original | August 10, 2000. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pemco World Air Services, 100 Pemco Drive, Dothan, AL 36303. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on May 29, 2001.

Issued in Renton, Washington, on April 12, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9664 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–42–AD; Amendment 39–12179; AD 2001–08–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

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

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

**SUMMARY:** This amendment supersedes two existing airworthiness directives (AD), applicable to all Boeing Model 707 and 720 series airplanes, that currently require inspections of the upper chords of the wing front and rear spars, repair, if necessary, and application of corrosion inhibitor to the inspected areas. This amendment requires repetitive inspections of the upper and lower chords on the wing front and rear spars, repair, if necessary, and application of corrosion inhibitor to the inspected areas. These actions are necessary to find and fix stress corrosion cracking of the upper and lower chords on the wing front and rear spars, which could result in reduced structural integrity of the wing. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 8, 2001.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 8, 2001.

The incorporation by reference of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 10, 1992 (57 FR 4153, February 4, 1992).

Comments for inclusion in the Rules Docket must be received on or before June 22, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the

Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–42–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2773; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** On May 28, 1986, the FAA issued AD 86–11–06, amendment 39–5327 (51 FR 20249, June 4, 1986), applicable to certain Boeing Model 707 and 720 series airplanes, to require repetitive inspections to detect cracks or corrosion of the upper chord of the wing front spar, repair, if necessary, and application of corrosion inhibitor. The actions required by that AD are intended to ensure continued structural integrity of the upper chord of the wing front spar.

On January 17, 1992, the FAA issued AD 92–03–12, amendment 39–8169 (57 FR 4153, February 4, 1992), applicable to certain Boeing Model 707 and 720 series airplanes, to require repetitive inspections to detect cracks or corrosion of the upper chord of the wing rear spar, repair, if necessary, and application of corrosion inhibitor. The actions required by that AD are intended to ensure continued structural integrity of the upper chord of the wing rear spar.

## Actions Since Issuance of Previous Rule

Since the issuance of those AD's, a 31-inch crack was found in the radius of the lower chord of the wing front spar in the dry bay area between wing stations 360 and 400. Investigation revealed that 19 inches of the crack were due to stress corrosion, while the remainder was due to ductile separation. While the existing AD's require repetitive inspections to detect cracks or corrosion of the upper chord of the wing front and rear spars, engineering evaluation suggests that both upper and lower chords on the front and rear spars may be subject to such cracking. Cracking of an upper or lower chord of the wing front or rear spar, if not found, could result in reduced structural integrity of the wing.

## Explanation of Relevant Service Information

AD 86–11–06 requires inspections of the upper chord of the wing front spar per Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981, Revision 2, dated May 3, 1985, or Revision 3, dated October 18, 1985. AD 92–03–12 requires inspections of the upper chord of the wing rear spar per Boeing Service Bulletin 3240, Revision 3. Since the issuance of those AD's, Boeing has issued All Base Message (ABM) M–7200–01–00062, dated January 5, 2001. The ABM modifies the procedures described in Boeing Service Bulletin 3240, Revision 3, to emphasize certain procedures for solvent cleaning, detailed visual inspections (referred to in the service bulletin and the ABM as ''close visual inspections'') to detect corrosion or cracking of the upper and lower chords on the wing front and rear spars, application of surface finish, and application of corrosion inhibitor. The ABM also recommends a new compliance time for accomplishment of the next inspection. Performing inspections and follow-on actions per Revision 3 of the service bulletin as revised by the ABM eliminates the need for the inspections required by the existing AD's.

## Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 86–11–06 and AD 92–03–12 to continue to require the inspections and follow-on actions required by those AD's. This AD also requires accomplishment of the actions specified in the service bulletin as modified by the procedures in the ABM described previously, except as discussed below. Once the new requirements of this AD have been done, the inspections per the old AD's are no longer required.

## Differences Between Service Information and This AD

This AD differs from the service information in these ways:

- If any crack or corrosion is found, this AD requires repair of such damage before further flight. However, the service bulletin specifies that stop drilling of cracks allows the repair to be deferred. The FAA finds that stop drilling is not adequate to arrest stress corrosion cracking; thus, stop drilling is not adequate to ensure the safety of the affected airplane fleet. Thus, this AD requires that any cracking or corrosion that is found be repaired before further flight.
- Also, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

## Explanation of Changes in Restatement of Requirements of Existing AD's

Paragraphs (a) through (i) restate the requirements of AD 86–11–06 and AD 92–03–12. Certain existing requirements specify ''close visual inspections.'' The FAA finds that ''detailed visual inspection'' is a more accurate term for the type of inspections that are required. Therefore, the FAA has revised the existing requirements as stated in paragraphs (a) and (f) of this AD to identify the required inspections as ''detailed visual inspections.'' Also, Note 2 has been added to include a definition of ''detailed visual inspection.''

Additionally, the restatement of requirements of the existing AD's has been revised to remove all references to the use of ''later FAA-approved revisions'' of Boeing Service Bulletin 3240, Revision 1, in order to be consistent with FAA policy in that regard. Instead, the FAA has listed the specific revisions of the service bulletin that have been approved. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD.

## Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the

Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–42–AD.'' The postcard will be date-stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendments 39–5327 (51 FR 20249, June 4, 1986) and 39–8169 (57 FR 4153, February 4, 1992), and by adding a new airworthiness directive (AD), amendment 39–12179, to read as follows:

**2001–08–02 Boeing:** Amendment 39–12179. Docket 2001–NM–42–AD. Supersedes AD 86–11–06, Amendment 39–5327, and AD 92–03–12, Amendment 39–8169.

*Applicability:* All Model 707 and 720 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 (m) 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.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

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

To find and fix stress corrosion cracking of the upper and lower spar chords on the front and rear spars of the wing, which could result in reduced structural integrity of the wing, accomplish the following:

**Restatement of Requirements of AD 86–11–06**

*AD 86–11–06: Repetitive Inspections*

(a) For Model 707 and 720 series airplanes with 15,000 or more landings: Within 100 landings or 60 days after July 14, 1986 (the effective date of AD 86–11–06, amendment 39–5327), unless previously accomplished within the last 900 landings or 305 days prior to July 14, 1986, perform a detailed visual inspection of the wing front spar upper chord for cracks and corrosion, in accordance with Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981, Revision 2, dated May 3, 1985, or Revision 3, dated October 18, 1985. Repeat the inspection thereafter at intervals not to exceed 1,000 landings or one year, whichever occurs first.

*AD 86–11–06: Repair*

(b) If cracks or corrosion are found during the inspection per paragraph (a) of this AD, repair prior to further flight in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985.

*AD 86–11–06: Stop Drilling, Repetitive Inspections, and Permanent Repair*

(c) For airplanes subject to paragraph (a) of this AD: Cracks which have been repaired in accordance with the ''stop drilling'' procedure described in Part III, Figure 2, of Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981, Revision 2, dated May 3, 1985, or Revision 3, dated October 18, 1985, must be visually inspected at intervals not to exceed 300 landings, until permanently repaired in accordance with Part III, Figure 2, of Service Bulletin 3240, Revision 3, dated October 18, 1985. A permanent repair must be completed within 1,000 landings or one year, whichever occurs first after July 14, 1986.

*AD 86–11–06: Repair Per Earlier Service Bulletins*

(d) For airplanes subject to paragraph (a) of this AD: Cracks greater than 2.0 inches in length, which have been previously repaired in accordance with Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981, or Revision 2, dated May 3, 1985, must be repaired in accordance with Revision 3, dated October 18, 1985, within 1,000 landings or one year, whichever occurs first after July 14, 1986.

*AD 86–11–06: Application of Corrosion Inhibitor*

(e) For airplanes subject to paragraph (a) of this AD: After each of the above inspections and repairs have been performed, apply BMS–3–23 corrosion inhibitor, or equivalent, to the affected areas.

**Restatement of Requirements of AD 92–03–12**

*AD 92–03–12: Repetitive Inspections*

(f) For all Model 707 and 720 series airplanes: Perform a detailed visual inspection for cracks and corrosion of the wing rear spar upper chord from wing station (WS) 109.45 to WS 360 for Model 707–300 series airplanes; or from WS 180.71 to WS 360 for Model 720, 707–100, and 707–200 series airplanes; at rib and stiffener locations. Inspect in accordance with Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, prior to the later of the times specified in subparagraphs (f)(1) and (f)(2) of this AD, unless previously accomplished within the last 900 flight cycles or 335 days prior to June 19, 1991 (the effective date of AD 91–11–06). Repeat the inspection at intervals not to exceed 1,000 flight cycles or one year, whichever occurs first.

(1) Within the next 30 days or 100 flight cycles after June 19, 1991; or

(2) Prior to the accumulation of 10,000 total flight cycles.

*AD 92–03–12: Corrective Actions*

(g) If cracks or corrosion areas are found during any inspection per paragraph (f) of this AD, prior to further flight, accomplish either subparagraph (g)(1) or (g)(2) of this AD:

(1) Repair, other than by stop drill procedure, in accordance with Part III, Figure 2, of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985 (this is considered the ''final repair''), or

(2) Repair in accordance with the stop drill procedures specified in Part III, Figure 2, of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985. This repair method may only be used provided that the limitations specified in Part III, Figure 2, Items 5a and 5b, of the service bulletin are met.

(i) Immediately after stop drilling, conduct an eddy current inspection of the stop drill hole in accordance with the instructions in Section 5–5–1 of Boeing Document D6–7170, Nondestructive Test Document, to ensure that the crack does not extend beyond the stop drill. Thereafter, inspect visually for crack growth beyond the stop drill at intervals not exceeding 300 flight cycles.

(ii) If crack growth beyond the stop drill occurs, prior to further flight, accomplish the final repair in accordance with paragraph (g)(1) of this AD.

(iii) Within 1,000 flight cycles or one year, whichever occurs first, after the stop drill has been accomplished, accomplish the final repair in accordance with paragraph (g)(1) of this AD.

*AD 92–03–12: Inspection of Previously Stop Drilled Cracks*

(h) If previously stop drilled cracks are found during any inspection required by paragraph (f) of this AD, conduct an eddy current inspection of the stop drill hole for crack growth beyond the stop drill, in accordance with the instructions in Section 5–5–1 of Boeing Document D6–7170, Nondestructive Test Document.

(1) If growth beyond the stop drill has occurred, prior to further flight, repair in accordance with paragraph (g)(1) of this AD.

(2) If growth beyond the stop drill has not occurred, and the limitations specified in Part III, Figure 2, Items 5a and 5b, of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, are met, prior to further flight accomplish either subparagraph (h)(1)(i) or (h)(1)(ii) of this AD:

(i) Repair in accordance with paragraph (g)(1) of this AD; or

(ii) Reinspect visually for crack growth beyond the stop drill at intervals not exceeding 300 flight cycles.

(A) If crack growth beyond the stop drill occurs, prior to further flight, accomplish the final repair in accordance with paragraph (g)(1) of this AD.

(B) Within 1,000 flight cycles or one year, whichever occurs first after the initial inspection revealed the stop drill crack, accomplish the final repair in accordance with paragraph (g)(1) of this AD.

*AD 92–03–12: Application of Corrosion Inhibitor*

(i) After each of the inspections and repairs required by paragraphs (f) and (g) of this AD have been performed, apply BMS 3–23 corrosion inhibitor, or equivalent, to the affected areas.

**New Requirements of this AD**

*New Repetitive Detailed Visual Inspections*

(j) Within 30 days after the effective date of this AD, do a detailed visual inspection for corrosion or cracking of the upper and lower chords on the front and rear spars, per Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, as modified by Boeing All Base Message (ABM) M–7200–01–00062, dated January 5, 2001. Repeat the inspections thereafter at least every 6 months or 1,000 flight cycles, whichever comes first. Doing the initial inspection per this paragraph terminates the inspections required by paragraphs (a) and (f) of this AD.

**Note 3:** There is no terminating action available for the repetitive inspections required by paragraph (j) of this AD.

*Repair*

(k) If any cracking or corrosion is found during any inspection per paragraph (j) of this AD: Before further flight, repair per Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, as modified by Boeing ABM M–7200–01–00062, dated January 5, 2001, except, where the service information specifies to contact Boeing for repair instructions, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

**Note 4:** ''Stop drilling'' of cracks as a means to defer repair, as specified in Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, is Not allowed by paragraph (k) of this AD.

*Application of Corrosion Inhibitor*

(l) After each inspection required by paragraph (j) of this AD and any repair per paragraph (k) of this AD, before further flight, apply BMS 3–23 corrosion inhibitor to the affected areas.

*Alternative Methods of Compliance*

(m) 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 ACO. 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 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

(n) 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.

*Incorporation by Reference*

(o) Except as provided by paragraph (e), (g)(2)(ii), (h), (i), (k), and (l) of this AD; the actions shall be done in accordance with Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981; Boeing Service Bulletin 3240, Revision 2, dated May 3, 1985; Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985; or Boeing All Base Message M–7200–01–00062, dated January 5, 2001; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 3240, Revision 1, dated November 13, 1981; Boeing Service Bulletin 3240, Revision 2, dated May 3, 1985; and Boeing All Base Message M–7200–01–00062, dated January 5, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 3240, Revision 3, dated October 18, 1985, was approved previously by the Director of the Federal Register as of March 10, 1992 (57 FR 4153, February 4, 1992).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

*Effective Date*

(p) This amendment becomes effective on May 8, 2001.

Issued in Renton, Washington, on April 11, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9663 Filed 4–20–01; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–73–AD; Amendment 39–12180; AD 2001–08–03]**

**RIN 2120–AA64**

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

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This action requires repetitive inspections of the upper housing assembly of the forward trunnion of the main landing gear (MLG) for discrepancies (migrated or missing wearplates, loose or fractured attachment screws); and corrective action, if necessary. This action also provides for an optional modification of the upper housing assembly for airplanes without discrepant wearplates, which would end the repetitive inspections. This action is necessary to prevent migration or loss of the upper housing wearplate, which could result in loss of the MLG during the takeoff roll; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 8, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2001.

Comments for inclusion in the Rules Docket must be received on or before June 22, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–73–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD 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; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has received a report indicating that, during fatigue testing of a Boeing Model 777–200 series airplane, a wearplate of the upper housing assembly of the forward trunnion of the main landing gear (MLG) was found to have migrated, and the attachment screws were fractured. The airplane had accumulated approximately 32,000 flight cycles. Subsequent to that report, one operator reported finding loose or fractured attachment screws of the wearplate on three Model 777–200 series airplanes. The wearplate had not migrated on any of those airplanes. The airplanes had accumulated approximately 4,300 to 4,500 flight cycles, and 20,700 to 22,690 flight hours. Loose or fractured attachment screws could lead to migration or loss of the upper housing wearplate, which could result in loss of the MLG during the takeoff roll; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–57A0011, Revision 1, dated January 25, 2001, which describes procedures for repetitive inspections of the upper housing assembly of the forward trunnion of the MLG for discrepancies (migrated or missing wearplates, loose or fractured attachment screws), and corrective action (modification) if any discrepancies are found. The modification includes, but is not limited to, replacement of the lower housing fuse pins if the wearplates are fully migrated or missing; replacement of the upper and lower housing assemblies, and replacement of the wearplate if missing or damaged. Doing the modification eliminates the need for the repetitive inspections. The service bulletin references certain Boeing 777 Airplane Maintenance Manuals as the appropriate sources for accomplishment of the modification. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model 777–200 series airplanes of the same type design, this AD is being issued to prevent migration or loss of the upper housing wearplate, which could result in loss of the MLG during takeoff roll; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel. This AD requires repetitive inspections of the upper housing assembly of the forward trunnion of the MLG for discrepancies (migrated or missing wearplates, loose or fractured attachment screws); and corrective action, if necessary. This AD also provides for an optional modification of the upper housing assembly for airplanes without discrepant wearplates, which would end the repetitive inspections. The actions are required to be accomplished per the service bulletin described previously, except as discussed below.

### Difference Between Alert Service Bulletin and This AD

Although the service bulletin specifies accomplishment of inspections, the FAA finds that ''detailed visual inspection'' is the appropriate terminology for the inspections described in the service bulletin. A definition of a detailed visual inspection is included in Note 2 of this AD.

### Interim Action

This is interim action. The service bulletin recommends doing the modification of the upper housing assembly of the forward trunnion within 6 years since date of delivery of the airplane or within 24 months after the date of the service bulletin, whichever is later. This AD provides for the modification as optional. The FAA is currently considering requiring the modification, which is described in the service bulletin and which would end the repetitive inspections required by this AD action. However, the planned compliance time for the replacement is sufficiently long so that notice and

opportunity for prior public comment will be practicable.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–73–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2001–08–03 Boeing:** Amendment 39–12180. Docket 2001–NM–73–AD.

*Applicability:* Model 777–200 series airplanes, as listed in Boeing Alert Service Bulletin 777–57A0011, Revision 1, dated January 25, 2001, certificated in any category.

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

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

To prevent migration or loss of the wearplate of the upper housing assembly of the forward trunnion of the main landing gear (MLG), which could result in loss of the MLG during the takeoff roll; consequent damage to the airplane structure; and injury to flight crew, passengers, or ground personnel; accomplish the following:

**Repetitive Inspections/Corrective Action**

(a) Within 50 flight cycles after the effective date of this AD: Do a detailed visual inspection of the upper housing assembly of the forward trunnion of the MLG for discrepancies (migrated or missing wearplates, loose or fractured attachment screws), per Part 1 ''Inspection'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0011, Revision 1, dated January 25, 2001.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no wearplate migration or loose or fractured attachment screw is found: Repeat the inspection no later than every 100 flight cycles, until paragraph (b) of this AD has been done.

(2) If loose or fractured attachment screws are found but no wearplate migration is found: Repeat the inspection no later than every 50 flight cycles, until paragraph (b) of this AD has been done.

(3) If the wearplate is partially migrated, before further flight, do the modification specified in paragraph (b) of this AD.

(4) If the wearplate is fully migrated or missing, before further flight, replace the fuse pins of the lower housing assembly per the service bulletin, and do the modification specified in paragraph (b) of this AD.

**Optional Terminating Modification**

(b) Do the modification of the upper housing assembly per Part 2 ''Modification'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–57A0011, Revision 1, dated January 25, 2001. Doing this modification ends the repetitive inspections required by this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

**Special Flight Permits**

(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.

**Incorporation by Reference**

(e) The actions shall be done per Boeing Alert Service Bulletin 777–57A0011, Revision 1, dated January 25, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on May 8, 2001.

Issued in Renton, Washington, on April 11, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9662 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 2001–ASW–04]**

## Revocation of Class D Airspace, Fort Worth Carswell AFB, TX

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This document confirms the effective date of a direct final rule which revokes the Class D Airspace at Fort Worth Carswell AFB, TX.

**EFFECTIVE DATE:** The direct final rule published at 66 FR 10811 is effective 0901 UTC, July 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on February 20, 2001, (66 FR 10811). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 12, 2001. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 12, 2001.

**Robert N. Stevens,**

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 01–9881 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30244; Amdt. No. 2047]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

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. It, therefore—(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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on April 13, 2001.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### §§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

[Effective Upon Publication]

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 03/23/01 | NE | Ogallala | Searle Field | 1/2928 | VOR/DME Rwy 26, Orig. |
| 03/26/01 | IA | Hampton | Hampton Muni | 1/2981 | VOR/DME Rwy 35, Amdt 1A. |
| 03/28/01 | TX | Tyler | Tyler Pounds Field | 1/3056 | VOR Rwy 31, Amdt 1C. |
| 03/28/01 | TX | Tyler | Tyler Pounds Field | 1/3057 | VOR/DME or GPS Rwy 22, Amdt 3C. |
| 03/28/01 | TX | Tyler | Tyler Pounds Field | 1/3058 | VOR/DME or GPS Rwy 4, Amdt 3C. |
| 03/28/01 | TX | Tyler | Tyler Pounds Field | 1/3060 | NDB or GPS Rwy 13, Amdt 17D. |
| 03/28/01 | TX | Tyler | Tyler Pounds Field | 1/3061 | GPS Rwy 31, Orig-B. |
| 03/28/01 | NE | Holdredge | Brewster Field | 1/3065 | NDB Rwy 18, Amdt 7. |
| 03/28/01 | NE | Holdredge | Brewster Field | 1/3066 | GPS Rwy 36, Orig. |
| 03/28/01 | NE | Holdredge | Brewster Field | 1/3067 | VOR/DME or GPS–A, Amdt 2A. |
| 03/30/01 | TX | Gladewater | Gladewater Muni | 1/3140 | VOR/DME or GPS 13, Amdt 2A. |
| 04/02/01 | ME | Augusta | Augusta State | 1/3175 | VOR/DME Rwy 17, Amdt 4. |
| 04/02/01 | CO | Denver | Jeffco | 1/3184 | ILS Rwy 29R, Amdt 13. |
| 04/02/01 | NV | Las Vegas | McCarran Intl | 1/3189 | ILS Rwy 25R, Amdt 16C. |
| 04/02/01 | LA | Baton Rouge | Baton Rouge Metropolitan, Ryan Field | 1/3195 | VOR/DME Rwy 22R, Amdt 8C. |
| 04/03/01 | MT | Kalispell | Glacier Park Intl | 1/3217 | ILS Rwy 2, Amdt 4A. |
| 04/03/01 | AK | Wrangell | Wrangell | 1/3249 | LDA/DME–D, Amdt 6B. |
| 04/03/01 | AK | Wrangell | Wrangell | 1/3250 | LDA/DME–C, Amdt 7B. |
| 04/04/01 | SD | Rapid City | Rapid City Regional | 1/3256 | RNAV (GPS) Rwy 32, Orig. |
| 04/04/01 | OK | El Reno | El Reno Muni | 1/3268 | VOR/DME Rwy 35, Amdt 1B. |
| 04/05/01 | MO | Camdenton | Camdenton Memorial | 1/3332 | GPS Rwy 33, Orig-A. |
| 04/05/01 | ID | Boise | Boise Air Terminal/Gowen Field | 1/3336 | MLS Rwy 28L, Orig-A. |
| 04/09/01 | TX | Rockwall | Rockwall Muni | 1/3431 | NDB–A, Orig. |
| 04/10/01 | TX | Tyler | Tyler Pounds Field | 1/3455 | ILS Rwy 13, Amdt 20D. |
| 04/10/01 | TX | Houston | William P. Hobby | 1/3483 | VOR/DME Rwy 35, Amdt 2B. |

[FR Doc. 01–9883 Filed 4–20–01; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30243; Amdt. No. 2046]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

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. It, therefore—(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 on a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on April 13, 2001.

**L. Nicholas Lacy,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*Effective May 17, 2001*

Dothan, AL, Dothan Regional, RNAV (GPS) RWY 14, Orig
Dothan, AL, Dothan Regional, RNAV (GPS) RWY 18, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 16, Orig
Emmonak, AK, Emmonak, RNAV (GPS) RWY 34, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 3, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 11L, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 11R, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 21, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 29L, Orig
Tucson, AZ, Tucson Intl, RNAV (GPS) RWY 29R, Orig
Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 10R, Orig
Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 10L, Orig
Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 28L, Orig
Boise, ID, Boise Air Terminal (Gowen Field), GPS RWY 10L, Orig-A, (CANCELLED)
Boise, ID, Boise Air Terminal (Gowen Field), GPS RWY 28L, Amdt 1C, (CANCELLED)
Rockford, IL, Greater Rockford, NDB RWY 1, Amdt 25C
Rockford, IL, Greater Rockford, RNAV (GPS) RWY 1, Orig
Rockford, IL, Greater Rockford, RNAV (GPS) RWY 7, Orig
Rockford, IL, Greater Rockford, RNAV (GPS) Y RWY 19, Orig
Rockford, IL, Greater Rockford, RNAV (GPS) Z RWY 19, Orig
Rockford, IL, Greater Rockford, RNAV (GPS) Y RWY 25, Orig
Rockford, IL, Greater Rockford, RNAV (GPS) Z RWY 25, Orig
Toledo, OH, Toledo Express, NDB RWY 7, Amdt 24B
Toledo, OH, Toledo Express, VOR/DME RNAV RWY 16, Amdt 5B
Toledo, OH, Toledo Express, VOR/DME RWY 34, Amdt 7A
Toledo, OH, Toledo Express, RNAV (GPS) RWY 7, Orig
Toledo, OH, Toledo Express, RNAV (GPS) RWY 16, Orig
Toledo, OH, Toledo Express, RNAV (GPS) RWY 25, Orig
Toledo, OH, Toledo Express, RNAV (GPS) RWY 34, Orig

*Effective June 14, 2001*

Bay City, TX, Bay City Muni, NDB RWY 13, Amdt 4
Fulton, NY, Oswego County, VOR RWY 33, Amdt 5
Fulton, NY, Oswego County, GPS RWY 24, Orig, CANCELLED
Fulton, NY, Oswego County, RNAV (GPS) RWY 24, Orig

*Effective July 12, 2001*

Bethel, AK, Bethel, RNAV (GPS) RWY 18, Orig
Bethel, AK, Bethel, RNAV (GPS) RWY 36, Orig
Bethel, AK, Bethel, GPS RWY 18, Orig-A (CANCELLED)
Bethel, AK, Bethel, GPS RWY 36, Orig-A (CANCELLED)
Deland, FL, Deland Muni-Sidney H Taylor Field, NDB OR GPS RWY 30, Amdt 1A, CANCELLED
Panama City, FL, Panama City-Bay County Intl, RNAV (GPS) RWY 5, Orig
Panama City, FL, Panama City-Bay County Intl, RNAV (GPS) RWY 14, Orig
Panama City, FL, Panama City-Bay County Intl, RNAV (GPS) RWY 23, Orig
Panama City, FL, Panama City-Bay County Intl, RNAV (GPS) RWY 32, Orig
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 4, Orig
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 13, Orig
Peoria, IL, Greater Peoria Regional, RNAV (GPS) RWY 31, Orig
Baton Rouge, LA, Baton Rouge Metroplitan Ryan Field, NDB OR GPS RWY 13, Amdt 24
Baton Rouge, LA, Baton Rouge Metroplitan Ryan Field, ILS RWY 13, Amdt 26
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 6, Orig
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 17, Orig
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 24, Orig
Wilmington, NC, Wilmington Intl, RNAV (GPS) RWY 35, Orig
Wilmington, NC, Wilmington Intl, GPS RWY 6, Amdt 1A
Wilmington, NC, Wilmington Intl, GPS RWY 24, Amdt 1A
Ruidoso, NM, Sierra Blanca Regional, NDB RWY 24, Amdt 1B (CANCELLED)
McAlester, OK, McAlester Regional, LOC RWY 1, Amdt 4
McAlester, OK, McAlester Regional, NDB RWY 1, Amdt 3
McAlester, OK, McAlester Regional, VOR/DME RWY 19, Amdt 2
Charlottesville, VA, Chalottesville-Albermarle, RNAV (GPS) RWY 3, Amdt 1
Pasco, WA, Tri-Cities, VOR/DME RWY 30, Amdt 2
Pasco, WA, Tri-Cities, RNAV (GPS) RWY 30, Orig
Appleton, WI, Outagamie County Regional, VOR/DME RWY 21, Orig-C
Appleton, WI, Outagamie County Regional, NDB RWY 3, Amdt 14E
Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 3, Orig
Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 11, Orig
Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 21, Orig
Appleton, WI, Outagamie County Regional, RNAV (GPS) RWY 29, Orig

[FR Doc. 01–9882 Filed 4–20–01; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 10

**[T.D. 01–33]**

**RIN 1515–AC85**

## Amendment to Wool Duty Refund Program

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations on an interim basis regarding the refund of duties paid on imports of certain wool products pursuant to section 505 of the Trade and Development Act of 2000. Principally, this document amends the final rule published in the **Federal Register** on December 26, 2000, regarding the description of the types of wool products that are eligible to provide the basis for a wool duty refund for claim year 2000. This interim rule is necessary to accurately reflect the scope of section 505. This document also sets forth the tariff provisions that eligible wool products must be entered under in each of claim years 2000, 2001 and 2002 to substantiate a duty refund. These amendments reflect changes to the Harmonized Tariff Schedule by the Annex to Presidential Proclamation 7383. Other amendments involve non-

substantive editorial changes and the correction of typographical errors. Due to the changes to the final rule, Customs is reopening the time period within which to file an original or amended letter of intent to file a wool duty refund claim.

**DATES:** This interim rule is effective April 23, 2001. Letters of intent to file a wool duty refund claim, whether original or amended, must be received by Customs no later than May 8, 2001. Comments must be received on or before June 22, 2001.

**ADDRESSES:** Written comments (preferably in triplicate) should be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Bruce Ingalls, Chief, Entry and Drawback Management (202) 927–1082.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (''the Act''), Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within Title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs published in the **Federal Register** (65 FR 81344), as T.D. 01–01, the final rule setting forth the eligibility, documentation and procedural requirements regarding Customs issuance of refunds of the duties paid on imports of certain wool products. The final regulation was added to the Customs Regulations at § 10.184 (19 CFR 10.184), effective January 25, 2001.

Since the publication of T.D. 01–01, it has come to Customs attention that certain tariff subheadings identified in § 10.184 of the Customs Regulations (19 CFR 10.184) do not accurately reflect the scope of section 505 in regard to the wool products that may substantiate a duty refund for claim year 2000. This document amends these regulatory provisions so as to conform to the terms of the statute.

This document also amends § 10.184 to reflect the new tariff provisions for certain worsted wool fabrics and wool yarns added to the Harmonized Tariff Schedule of the United States (HTSUS) by the Annex to Presidential Proclamation 7383, published in the **Federal Register** on December 6, 2000 (65 FR 76551), effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2001. These new HTSUS tariff provisions affect the administration of the wool duty refund program in that they provide the basis for a wool duty refund for claim years 2001 and 2002, and replace certain HTSUS subheadings identified in the tariff provisions created in sections 501 and 502 that provide the basis for a wool duty refund for claim year 2000.

Additionally, this document corrects several typographical errors and makes non-substantive editorial changes to § 10.184.

The amendments, corrections and editorial changes are described below.

*Scope of Section 505 in Regard to the Wool Products That Are Eligible to Provide the Basis for a Wool Duty Refund*

Section 505 provides that wool products ''of the kind'' described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14 are eligible to provide the basis for a wool duty refund for claim years 2000, 2001 and 2002. These 9902 subheadings were created in sections 501 and 502, and were added to the HTSUS on January 1, 2001.

In § 10.184, paragraphs (c), (d), (f) and (g) provide that certain wool products ''of the kind'' described in the chapter 51, HTSUS, tariff provisions cited in the 9902, HTSUS, subheadings created in sections 501 and 502, may be used to substantiate a wool duty refund for claim year 2000. For claim years 2001 and 2002, the current regulations correctly reference wool products ''of the kind'' described in the 9902, HTSUS, subheadings created in sections 501 and 502. For claim year 2000, however, the current regulations do not accurately reflect the scope of section 505 in that the chapter 51, HTSUS, tariff provisions referenced therein are broader than the 9902, HTSUS, subheadings because the latter are subject to additional statutory conditions. In this regard, it is noted that the heading texts to HTSUS provisions 5112.11.20 and 5112.19.90 do not contain the statutory condition that the wool fabrics must be ''certified by the importer as suitable for use in making suits, suit-type jackets, or trousers,'' as is found in the heading texts to 9902.51.11 and 9902.51.12. Also, the heading texts to HTSUS provisions 5107.10.00 (wool yarn) and 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 and 5105.29 (wool fiber and top) do not contain limiting micron criteria, as do the heading texts to 9902.51.13 and 9902.51.14.

For this reason, paragraphs (c), (d), (f) and (g) in § 10.184 are amended to accurately reflect the scope of section 505 by providing that wool products of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 and 9902.51.14 provide the basis for a wool duty refund for claim years 2000, 2001 and 2002.

It should be noted that section 505 does not require that eligible wool products be entered under these 9902, HTSUS, subheadings. Customs is of the view that use of the statutory construction ''of the kind'' in section 505(a), (b) and (c) reflects Congress' intent to permit wool products entered under the chapter 51, HTSUS, subheadings identified in the tariff provisions created in sections 501 and 502 to be used to substantiate a wool duty refund claim for all three claim years, so long as the products entered under these chapter 51 tariff provisions are ''of the kind'' described in the relevant 9902, HTSUS, subheadings set forth in section 505. The fact that the relevant 9902, HTSUS, subheadings were not in effect in the tariff schedule until January 1, 2001, supports the view that Congress could not have intended to require entry under these tariff provisions.

*Amendments To Conform § 10.184 to Section 505*

To reflect the scope of section 505 in regard to the types of wool products that are eligible to provide the basis for a wool duty refund claim, the following amendments are required to the regulatory text:

(1) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to reflect that for all three claim years section 505 authorizes limited refunds of the duties paid on entries of wool products of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14; and

(2) Within § 10.184, the following paragraphs are amended to reflect that the referenced wool products must be ''of the kind'' described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14: (d)(2)(i)(D)(*1*); (d)(2)(ii) (affidavit item 1); (d)(3)(i)(E)(*1*); (d)(3)(ii) (affidavit item 1); (f); (g)(3)(iii); (g)(3)(iii)(A); (g)(3)(iv) (affidavit item 1); and (g)(3)(vi) (affidavit item 1).

*Amendments to § 10.184 To Reflect Additions to the HTSUS Effected by the Annex to Presidential Proclamation 7383*

The Annex to Presidential Proclamation 7383 provides for the following HTSUS subheading substitutions, effective on or after January 1, 2001:

- 5112.11.20 is replaced by subheadings 5112.11.30 and 5112.11.60;
- 5112.19.90 is replaced by subheadings 5112.19.60 and 5112.19.95; and
- 5107.10.00 is replaced by subheading 5107.10.30.

Because of these substitutions, it is necessary to clarify which chapter 51, HTSUS, tariff provisions may provide the basis for a wool duty refund for each claim year. To that end, it is noted that the chapter 51, HTSUS, subheadings cited in the heading text to HTSUS subheading 9902.51.14 were not replaced by the Annex, and remain eligible to provide the basis for a wool duty refund for claim years 2000, 2001 and 2002. Those tariff provisions that were replaced in the HTSUS by the Annex are only eligible to provide the basis for a wool duty refund claim for claim year 2000. The new tariff provisions added to the HTSUS by the Annex that replace the chapter 51 subheadings identified in the heading texts to the chapter 99, HTSUS, tariff provisions created in sections 501 and 502 are eligible to provide the basis for a wool duty refund claim for claim years 2001 and 2002. The 9902, HTSUS, subheadings identified in section 505 are eligible to provide the basis for a wool duty refund for claims years 2001 and 2002.

Accordingly, to reflect the language of Presidential Proclamation 7383, within § 10.184, paragraphs (f), (g)(3)(iii)(E) and (F), and (g)(3)(iv) (affidavit items 5(a) and 5(b)) are amended to reflect the additions to the HTSUS implemented by the proclamation and to specify the chapter 51 HTSUS subheadings that are eligible to substantiate a wool duty refund claim for each claim year.

*Clarifications to § 10.184*

To enhance the clarity of the final regulation, the following amendments are made to the regulatory text:

(1) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to include the tariff heading texts for the 9902 HTSUS subheadings cited in section 505;

(2) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended to include the chapter 51, HTSUS, subheadings under which eligible wool products must be entered in calendar year 1999;

(3) Within § 10.184, paragraphs (c)(1), (c)(2) and (c)(3) are amended by adding the adjective ''U.S.'' before the word ''manufacturer'' in the first sentence of each of these provisions;

(4) Within § 10.184, paragraph (c)(1) is amended by adding the term ''imported or'' before the word ''purchased'' at the end of the first sentence;

(5) Within § 10.184, paragraphs (c)(2) and (c)(3) are amended by adding the term ''to the manufacturer'' after the word ''refunded'' in the second sentence of each provision;

(6) Within § 10.184, the following paragraphs are amended to clarify under which HTSUS tariff provisions eligible wool products must be entered in specific calendar years for purposes of substantiating a wool duty refund claim: (d)(2); (d)(2)(i)(A); (d)(2)(i)(D)(*2*); (d)(2)(i)(D)(*5*); (d)(2)(ii) (affidavit item 2); (d)(2)(ii) (affidavit item 5(a)); (d)(2)(iii)(A); (d)(2)(iv) (affidavit item 1); (d)(3); (d)(3)(i)(A); (d)(3)(i)(E)(*2*); (d)(3)(ii) (affidavit item 2); and (d)(3)(ii) (affidavit item 5); (f); (g)(3)(iii)(E) and (F); (g)(3)(iv) (affidavit items 5(a) and 5(b));

(7) Within § 10.184, the following paragraphs are amended to clarify that the term ''fabric'' referenced therein is worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12 and, where appropriate, to clarify that such fabric may be entered under HTSUS subheadings 5112.11.20, 5112.19.90, 5112.11.30, 5112.11.60, 5112.19.60 or 5112.19.95 in specific calendar claim years: (f); (g)(3)(iii)(E) and (F); and (g)(3)(iv) (affidavit items 5(a) and 5(b));

(8) Within § 10.184, the following paragraphs are amended by removing the word ''attests'' and adding the word ''certifies'' in its place to clarify that the affidavit serves as the claimant's certification, for purposes of this section, that the subject worsted wool fabric has an average fiber diameter of a particular micron and that the fabric is suitable for use in making men's or boys' suits, suit-type jackets, or trousers: (d)(2)(ii) (affidavit item 6); (d)(2)(iv) (affidavit item 5); (d)(3)(ii) (affidavit item 6); (g)(3)(ii) (affidavit item 7); (g)(3)(iv) (affidavit item 6); and (g)(3)(vi) (affidavit item 6);

(9) Within § 10.184, paragraph (d)(2)(iii)(C) is amended by inserting the word ''such'' before the word ''fabric'' in the tenth line of the paragraph to clarify that the referenced fabric is worsted wool fabric of the kind described in (d)(2)(iii)(A) as corrected. The same amendment is made to paragraph (d)(2)(iv) (affidavit item 3);

(10) Within § 10.184, the last sentence in paragraph (d)(4), and paragraphs (d)(4)(i), (ii) and (iii), require rewording to clarify and simplify the regulatory text describing the required content of a letter of intent where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric;

(11) Within § 10.184, the following paragraphs are amended to clarify that the relevant time frame is not a specific claim year or the ''current calendar year'', but rather ''the calendar year for which a duty refund is sought'': (g)(3)(i)(A); (g)(3)(ii) (affidavit item 1); (g)(3)(iii)(A), (B), (E) and (F); (g)(3)(iv) (affidavit items 2, 5(a) and 5(b)); (g)(3)(v)(A) and (C); and (g)(3)(vi) (affidavit item 3);

(12) Within § 10.184, the following paragraphs are amended to clarify that the referenced eligible wool products need to have been imported in calendar year 1999, but the duties need not have been paid in calendar year 1999: (d)(2)(i)(D)(*5*); (d)(2)(ii) (affidavit items 5(a) and 5(b)); (d)(2)(iii)(C); (d)(2)(iv) (affidavit item 3); (d)(3)(i)(E)(*5*); (d)(3)(ii) (affidavit item 5); and (e); and

(13) As a result of the changes described in item (12) above, Customs is reopening the time to file a letter of intent and/or an amended letter of intent. Section 10.184(d)(6) is amended by changing the date that a manufacturer's letter of intent must be received by Customs from March 31, 2001, until May 8, 2001.

*Typographical Errors and Non-Substantive Editorial Changes*

Several typographical errors and editorial changes require the following corrections to the regulatory text:

(1) Within § 10.184, in paragraph (b), the third word ''for'' is removed and the word ''of'' is added in its place;

(2) Within § 10.184, the duplicative term ''duty refund'' at the end of paragraph (g)(3)(viii) is removed;

(3) Within § 10.184, in paragraphs (d)(2)(i)(D)(*1*) and (d)(3)(i)(E)(*1*), the word ''fabric'' is added after the word ''wool';

(4) Within § 10.184, in paragraph (d)(2)(iii)(C), the word ''duty'' is removed and the word ''duties'' is added in its place;

(5) Within § 10.184, the following paragraphs are corrected by removing the word ''is'' and adding in its place the term ''is/was'': (d)(2)(iv) (affidavit item 1); (g)(3)(i)(A); (g)(3)(ii) (affidavit item 1); (g)(3)(iii)(A); (g)(3)(iv) (affidavit item 1); and (g)(3)(vi) (affidavit item 1);

(6) Within § 10.184, the following paragraphs are corrected to reflect the redesignations made in paragraph (f): (g)(3)(i)(A); (g)(3)(ii)(affidavit item 1); and (g)(3)(viii);

(7) Within § 10.184, paragraphs (d)(3)(i)(B) and (C) are corrected by removing the term ''(d)(2)(i)(A)'' and adding in its place ''(d)(3)(i)(A)'';

(8) Within § 10.184, paragraphs (d)(3)(i)(E)(*3*) and (*4*) are corrected by removing the term ''(d)(3)(i)(D)(*2*)'' and adding in its place ''(d)(3)(i)(E)(*2*)''; and

(9) Within § 10.184, paragraph (e) is corrected by removing the term ''(d)(5)'' and adding in its place ''(d)(6)''.

Because of the number of changes to the final rule published in the **Federal Register** on December 26, 2000, § 10.184 is republished in its entirety in this document.

**Comments**

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

**Inapplicability of Prior Public Notice and Comment Procedures**

Customs has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. These regulations serve to align the Customs Regulations to section 505 of Title V of the Trade and Development Act of 2000, which went into effect May 18, 2000. The regulatory amendments inform the public of a change to the eligibility, documentation and procedural requirements necessary to substantiate a wool duty refund for claim year 2000, whereby eligible wool products must be of the kind described in HTSUS subheadings 9902.51.11, 9902.51.12, 9902.51.13 or 9902.51.14. Manufacturers eligible to receive these refunds need to know the amended requirements for applying for refunds as soon as possible. For these same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date.

**Executive Order 12866**

This document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for these interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Paperwork Reduction Act**

The collection of information involved in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0227. This rule does not propose any substantive change to the existing approved information collection.

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

**Drafting Information**

The principal author of this document was Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 10**

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

**Amendments to the Regulations**

For the reasons stated in the preamble, 19 CFR part 10 is amended as follows:

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority for § 10.184 continue to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Section 10.184 is also issued under Sec. 505, Pub. L. 106–200, 114 Stat. 251;

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2. A new center heading is added entitled ''Wool Duty Refunds'' before § 10.184.

3. Section 10.184 is revised to read as follows:

### § 10.184 Refund of duties on certain wool imports.

(a) *General.* Section 505 of Title V of Pub. L. 106–200 (114 Stat. 251), entitled the Trade and Development Act of 2000, authorizes the President to refund duties paid on imports of eligible wool products. The statute permits eligible importing-manufacturers and, in certain circumstances, manufacturers who are not importers, to apply for a refund of duties paid on imports of eligible wool products in each of three succeeding years. Claimants are eligible for a refund of duties paid on imports of eligible wool products in each of calendar years 2000, 2001 and 2002, limited to an amount not to exceed one-third of the duties paid on such wool products imported in calendar year 1999. This section sets forth the legal requirements and procedures that apply for purposes of obtaining this duty refund.

(b) *Eligible wool products.* For purposes of this section, the term eligible wool product'' means an imported wool product described under a Harmonized Tariff Schedule of the United States subheading listed under paragraph (c) of this section, relevant to a manufacturer of the particular wool products specified in paragraph (c).

(c) *Refunds authorized by section 505*—(1) *Worsted wool fabric.* For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, is eligible to claim a limited refund of the duties paid in such calendar years on entries of such fabrics that were imported or purchased by the manufacturer. HTSUS subheading 9902.51.11 provides for fabrics, of worsted wool, with average fiber diameters greater than 18.5 micron, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers. HTSUS subheading 9902.51.12 provides for fabrics, of worsted wool, with average fiber diameters of 18.5 micron or less, all the foregoing certified by the importer as suitable for use in making suits, suit-type jackets, or trousers. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid on calendar year 1999 imports of worsted wool fabric that was imported or purchased by the manufacturer and entered under HTSUS subheadings 5112.11.20 or 5112.19.90. A broker or other individual acting on

behalf of the manufacturer is ineligible to claim a duty refund.

(2) *Wool yarn.* For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of worsted wool fabric, who imports wool yarn of the kind described in HTSUS subheading 9902.51.13, is eligible to claim a limited refund of the duties paid in each of these years on such imported wool yarn. HTSUS subheading 9902.51.13 provides for yarn, of combed wool, not put up for retail sale, containing 85 percent or more by weight of wool, formed with wool fibers having diameters of 18.5 micron or less. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on calendar year 1999 imports of wool yarn entered under HTSUS subheading 5107.10.00.

(3) *Wool fiber and wool top.* For each of calendar years 2000, 2001 and 2002, a U.S. manufacturer of wool yarn or wool fabric, who imports wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14, is eligible to claim a limited refund of the duties paid in each of these years on such wool fiber or wool top. HTSUS subheading 9902.51.14 provides for wool fiber, waste, garnetted stock, combed wool, or wool top, having average fiber diameters of 18.5 micron or less. The amount of duties eligible to be refunded to the manufacturer for each of these calendar years is limited to an amount not to exceed one-third of the amount of duties paid by the importing-manufacturer on calendar year 1999 imports of wool fiber or wool top entered under HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29.

(d) *Manufacturer's letter of intent to file a claim for a wool duty refund.* A manufacturer that anticipates filing a wool duty refund claim in calendar years 2000, 2001, and 2002, pursuant to the terms of paragraph (c) of this section, must first file with Customs a letter of intent to that effect. A manufacturer's letter of intent must substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999.

(1) *Documentation required where the manufacturer is the importer.* Where a manufacturer is the importer of the eligible wool products imported in calendar year 1999, a letter of intent to file a wool duty refund claim must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer and must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful. The letter of intent must contain the following information:

(i) A statement of the total amount of duties paid by the importing-manufacturer on eligible wool products imported in calendar year 1999;

(ii) A list of relevant entry summary numbers, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount set forth in paragraph (d)(1)(i) of this section; and

(iii) A statement that no entry summary has been listed in paragraph (d)(1)(ii) of this section that did not liquidate under the HTSUS subheadings that provide a basis for a wool duty refund.

(2) *Documentation required where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section was not the calendar year 1999 importer of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, but possesses the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold worsted wool fabric that was imported in calendar year 1999, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90, to the manufacturer;

(B) Copies of all relevant invoices, set forth as an attachment, that demonstrate that the manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(A) of this section from an identified importer(s) or identified supplier(s) and that establish, where applicable, that the identified supplier(s) purchased such fabric from the identified importer(s);

(C) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(D) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(*4*) If the affiant purchased fabric of the kind described in paragraph (d)(2)(i)(D)(*2*) of this section from an identified supplier, a statement that the affiant has been provided with substantiating documentation that establishes that the subject fabric was imported by the identified importer; and

(*5*) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the submitted invoices, and such information is set forth as an attachment; and/or

(*6*) A statement by the affiant that the identified importer has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached.

(ii) A non-importing manufacturer's affidavit to substantiate the amount of duties paid on worsted wool fabric imported in calendar year 1999 must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be submitted to Customs in the following format:

*Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent To File a Wool Duty Refund Claim (Where the Manufacturer Possesses the Relevant Entry Summary Numbers for the Fabric Identified in the Invoices Submitted With This Affidavit)*

1. The undersigned (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of

the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the attached invoices; and/or

5(b). The importer (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (2) above to the undersigned or to identified supplier(s), and to attach a list of the relevant entry summary numbers that substantiates the amount of duties paid on calendar year 1999 imports of such worsted wool fabric, as identified in the attached invoices; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) If an importer assists in the substantiation of a non-importing manufacturer's letter of intent by submitting relevant entry summary numbers directly to Customs as an attachment to a signed affidavit, the importer's affidavit must be signed by the importer or a knowledgeable officer or employee of the importer and must state that, to the best of the affiant's knowledge and belief, the information contained in the affidavit is accurate and truthful. The importer's signed affidavit must contain the following information:

(A) A statement that the affiant paid duties on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(B) Identification of the claimant, or supplier to the claimant, to whom the affiant sold imported worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section;

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (d)(2)(iii)(A) of this section, imported in calendar year 1999, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid on such fabric sold to the identified claimant or identified supplier, as evidenced by the claimant's invoices; and

(D) A statement that the importer has not listed any entry summary in paragraph (d)(2)(iii)(C) of this section that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.19.90.

(iv) The importer's affidavit in support of a non-importing manufacturer's letter of intent to claim a wool duty refund must be signed by the importer or a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

*Importer's Affidavit in Support of a Non-Importing Manufacturer's Letter of Intent To Claim a Wool Duty Refund*

1. The undersigned (*name of importer*), is/was an importer who paid duties on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above that substantiates the amount of duties paid on calendar year 1999 imports of such fabric that was sold to (*name of manufacturer*) or to (*name of supplier*) by the undersigned;

4. The undersigned has not listed any entry summary in item (3) above that did not liquidate under HTSUS subheadings 5112.11.20 or 5112.11.90; and

5. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(3) *Documentation required where the manufacturer is not the importer and the manufacturer does not possess the relevant entry summary numbers.* Where a manufacturer described in paragraph (c)(1) of this section was not the calendar year 1999 importer of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, and does not possess the relevant entry summary numbers, a letter of intent to file a wool duty refund claim must be submitted to Customs and signed by the non-importing manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful.

(i) The non-importing manufacturer's letter of intent, where the manufacturer does not possess the relevant entry summary numbers, must contain the following information:

(A) A statement as to the identity of the importer(s) or supplier(s) who sold imported worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90 to the non-importing manufacturer;

(B) Copies of all relevant calendar year 1999 invoices, set forth as an attachment, that demonstrate that the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(A) of this section from an identified importer(s) or identified supplier(s);

(C) A statement that if the non-importing manufacturer purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(A) of this section from an identified supplier, the manufacturer has substantiating documentation that establishes that such fabric was imported by the identified importer;

(D) A completed Customs Form (CF) 5106—Importer ID Input Record, set forth as an attachment; and

(E) A signed affidavit, set forth as an attachment, that contains the following information:

(*1*) A statement that the affiant is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(*2*) A statement that the affiant was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;

(*3*) A statement of the quantity of imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(E)(*2*) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of the relevant invoices attached;

(*4*) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (d)(3)(i)(E)(*2*) of this section from an identified supplier, the affiant has substantiating documentation that establishes that such fabric was imported by the identified importer; and

(*5*) A statement by the affiant that a good faith effort was made to contact the identified importer and request relevant entry summary numbers that substantiate the amount of duties paid on calendar year 1999 imports of worsted wool fabric identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance.

(ii) A non-importing manufacturer's affidavit to estimate and substantiate the amount of duties paid by the importer on worsted wool fabric imported in calendar year 1999, where no entry summary numbers are available, must be signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer, and be

submitted to Customs in the following format:

*Non-Importing Manufacturer's Affidavit in Support of a Letter of Intent To File a Wool Duty Refund Claim (Where the Manufacturer Does Not Possess the Relevant Entry Summary Numbers for the Fabric Identified in the Invoices Submitted With this Affidavit)*

1. The undersigned (*name of manufacturer*), is a U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;
2. The undersigned was not the importer in calendar year 1999 of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90;
3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (2) above from (*name of importer*) or from a supplier (*name of supplier*), and copies of relevant invoices are attached;
4. If the undersigned has purchased imported worsted wool fabric of the kind described in item (2) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);
5. The undersigned attests that a good faith effort was made to contact the identified importer(s) and request that relevant entry summary numbers be provided to either the undersigned or directly to Customs that substantiate the amount of duties paid on calendar year 1999 imports of worsted wool fabric entered under HTSUS subheadings 5112.11.20 or 5112.19.90, as identified in the submitted invoices, but the identified importer is unable or unwilling to provide such assistance; and
6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(4) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must submit to Customs a letter of intent to file a wool duty refund claim that is signed by the manufacturer or a knowledgeable authorized officer or employee of the manufacturer. The letter of intent must state that, to the best of the signer's knowledge and belief, the information contained in the letter is accurate and truthful, and must contain the following:

(i) Where the manufacturer is the importer, the information described in paragraph (d)(1) of this section;

(ii) Where the manufacturer is not the importer, but the manufacturer possesses the relevant entry summary numbers, the information described in paragraph (d)(2) of this section and the relevant entry summary numbers may be submitted directly to Customs by the manufacturer and/or the importer(s); and/or

(iii)Where the manufacturer is not the importer, and the manufacturer does not possess the relevant entry summary numbers, the information described in paragraph (d)(3) of this section.

(5) *Documentation required where a prospective claimant is the legal assignee of an eligible manufacturer's potential wool duty refund rights.* To file a letter of intent where the prospective claimant is the legal assignee of any potential wool duty refund claim rights attributable to an eligible manufacturer described in paragraph (c) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the letter of intent, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(6) *Time to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including amendments, all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be received by Customs no later than May 8, 2001, unless this date is extended upon due notice in the **Federal Register**.

(7) *Place to file a letter of intent.* A manufacturer's letter of intent to file a wool duty refund claim, including all attachments and, where applicable, the importer's signed affidavit in support of the manufacturer's letter of intent, must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(e) *Customs verification letter.* Customs will issue to a prospective claimant a written verification letter within 30 calendar days from the date Customs receives a timely and complete letter of intent that relies solely on relevant entry summary numbers to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999. Where a prospective claimant submits a letter of intent that relies on invoices, in whole or in part, to substantiate, to Customs satisfaction, the amount of duties paid on eligible wool products imported in calendar year 1999, Customs will issue a verification letter to such prospective claimant within 30 calendar days after the date all letters of intent must be received by Customs, as set forth in paragraph (d)(6) of this section. The amount of potential duty refund will be based on the quantity of eligible wool products that was imported by the prospective claimant or, where the prospective claimant was not the importer, purchased by the prospective claimant (as indicated by submitted invoices). If entry summary numbers are used to substantiate the amount of duties paid on eligible wool products imported in calendar year 1999, the potential refund amount will be limited to the amount of duties paid on such entry summaries that is attributable to that quantity of eligible wool products. If, instead, invoices are used to estimate and substantiate the amount of duties paid on eligible wool fabrics imported in calendar year 1999, the amount of duties will be determined by deducting 10 percent from the invoice amounts (to deduct imputed profits and costs), dividing the resulting adjusted invoice amounts by 130.6% to back out the duty, and then multiplying that amount times the duty rate (30.6%). If the aggregate amount of duties attributable to an importer exceeds the amount of duties paid by that importer in calendar year 1999, as indicated by ACS, an adjustment will be made to those claimants requiring use of the invoice formula. The percentage deducted from the invoice amounts for those claimants will be increased on a *pro rata* basis to ensure that the aggregate amount to be refunded does not exceed the ACS amount. Refund amounts substantiated by entry summary numbers will not be reduced. A letter of verification will set forth the following information:

(1) The prospective claimant's claim identification number;

(2) The maximum amount of wool duty refund that the individual prospective claimant will be eligible to receive in each of calendar years 2000, 2001, and 2002; and

(3) Where invoices are used to substantiate the amount of duties paid on worsted wool fabric in calendar year 1999, the percentage that was deducted from the invoice amounts, with accompanying explanation.

(f) *Eligibility criteria to claim a wool duty refund for calendar years 2000, 2001, and 2002.* To be eligible to claim a refund of duties paid on imports of certain wool products in calendar years 2000, 2001, and 2002, a claimant must be in receipt of a claim verification letter from Customs. Additionally, in each calendar year for which a wool duty refund claim is being made, a claimant must be:

(1) A U.S. manufacturer of men's or boys' suits, suit-type jackets, or trousers,

of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12, for which duties were paid on entries made under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002;

(2) A U.S. manufacturer of worsted wool fabric who paid duties on imported wool yarn of the kind described in HTSUS subheading 9902.51.13 and entered under HTSUS subheadings 5107.10.00 in calendar year 2000, or under HTSUS subheadings 5107.10.30 or 9902.51.13 in calendar years 2001 and 2002;

(3) A U.S. manufacturer of wool yarn or wool fabric who paid duties on imported wool fiber or wool top of the kind described in HTSUS subheading 9902.51.14 and entered under HTSUS subheadings 5101.11, 5101.19, 5101.21, 5101.29, 5101.30, 5103.10, 5103.20, 5104.00, 5105.21 or 5105.29 in calendar years 2000, 2001 and 2002, or under HTSUS subheading 9902.51.14 in calendar years 2001 and 2002; and/or

(4) A legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2) or (f)(3) of this section.

(g) *Procedures for filing a claim*—(1) *Time to file.* An eligible claimant may file with Customs one wool duty refund claim for each of calendar claim years 2000, 2001 and 2002, including, where applicable, related amended claims. A claim may be amended within 90 calendar days from the date of the original submission or, if Customs has notified the claimant in writing that the claim is insufficient to support the claim as requested or is otherwise defective (*e.g.,* a claim that relies on an entry summary that is ineligible for a wool duty refund, as provided for in § 10.184(j)), within 90 calendar days from the date of the Customs notification. All claims for a wool duty refund, whether original or amended in the absence of a Customs notification of insufficiency or defect, must be received by Customs no later than December 31 of the year following the calendar claim year for which a wool duty refund is being sought. An amended claim made in response to a Customs notification of insufficiency or defect may be submitted to Customs after the December 31 deadline applicable to all other claim submissions. A claimant may file two separate duty refund claims in a single calendar year, so long as the claims are for two different claim years.

(2) *Place to file.* A claim for a refund of duties paid on imports of eligible wool products must be submitted to: U.S. Customs Service, Wool Refund Claim, Residual Liquidation and Protest Branch, Rm. 761, 6 World Trade Center, New York, N.Y. 10048–0945.

(3) *Documentation.* (i) *Where the manufacturer is the importer.* To file a wool duty refund claim, an importing-manufacturer must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is/was a U.S. manufacturer of the kind described in paragraphs (f)(1), (f)(2) or (f)(3) of this section, in the calendar claim year for which a wool duty refund is being sought;

(B) A statement of the total amount of duties paid by the affiant in that year on eligible wool products;

(C) The total amount of duty refund being claimed;

(D) A list of relevant entry summary numbers, set forth as an attachment and submitted to Customs in either a paper or an electronic format (the latter on diskette), that substantiates the amount of duties for which a refund is being claimed in paragraph (g)(3)(i)(C) of this section, and does not exceed the affiant's share of duties eligible to be refunded as set forth in the attached verification letter;

(E) A statement that no entry summary has been listed in paragraph (g)(3)(i)(D) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(F) A statement that identifies, if applicable, any entry summary listed in paragraph (g)(3)(i)(D) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(ii) *Form of affidavit.* An importing-manufacturer's signed affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002 must be signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, and submitted to Customs in the following format:

*Importing-Manufacturer's Affidavit in Support of a Claim for a Wool Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year*

1. The undersigned, (*name of manufacturer*), is/was a U.S. manufacturer of the kind described in paragraphs (f)(1) [__], (f)(2) [__] or (f)(3) [__] [check one] of § 10.184 of the Customs Regulations (19 CFR 10.184(f)), in the calendar claim year for which a wool duty refund is being sought;

2. The undersigned paid (*total amount of duties paid*) in calendar year _____ on eligible wool products;

3. The amount of wool duty refund being claimed is $_____;

4. Attached is a list of the relevant current claim year entry summary numbers that substantiate the amount of duty refund being claimed in item (3) above;

5. The undersigned has not listed any entry summary in item (4) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

6. The undersigned will list any entry summary in item (4) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

7. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(iii) *Where the manufacturer is not the importer.* To file a wool duty refund claim, a manufacturer of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HSTUS subheadings 9902.51.11 or 9902.51.12, who is a purchaser but not the importer of such fabric, must provide Customs with a copy of the verification letter the claimant received from Customs and an affidavit signed by the manufacturer, or a knowledgeable officer or employee of the manufacturer, that contains the following information:

(A) A statement that the affiant is/was a U.S. manufacturer in the calendar claim year for which a wool duty refund is being sought, of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

(B) A statement that the affiant was not the importer in the calendar claim year for which a wool duty refund is being sought of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section;

(C) A statement as to the quantity of imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section that the affiant purchased from an identified importer(s) or from an identified supplier(s), with copies of relevant invoices attached;

(D) A statement that where the affiant purchased imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section from an identified supplier(s), the affiant has substantiating documentation that establishes that such fabric was

imported by the identified importer(s); and

(E) A statement by the affiant that the identified importer(s) has provided a list of relevant entry summary numbers directly to the affiant that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section, as identified in the submitted invoices, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002, and such information is set forth as an attachment; and/or

(F) A statement by the affiant that the identified importer(s) has agreed to submit a signed affidavit directly to Customs with the relevant entry summary numbers attached that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on imported worsted wool fabric of the kind described in paragraph (g)(3)(iii)(A) of this section, as identified in the submitted invoices, and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002.

(iv) *Form of affidavit.* A manufacturer who is not the importer of the imported worsted wool fabric must submit to Customs an affidavit to substantiate a wool duty refund claim in calendar years 2000, 2001, or 2002, signed by the manufacturer or a knowledgeable officer or employee of the manufacturer, in the following format:

*Non-Importing Manufacturer's Affidavit in Support of a Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year*

1. The undersigned (*name of manufacturer*), is/was a U.S. manufacturer in calendar year _____ of men's or boys' suits, suit-type jackets, or trousers, of imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned was not the importer in the calendar claim year for which a wool duty refund is being sought of worsted wool fabric of the kind described in item 1 above;

3. The undersigned purchased (*specify quantity*) of imported worsted wool fabric of the kind described in item (1) above from (*name of importer(s)*) or from a supplier(s), and the relevant invoices are attached;

4. Where the undersigned purchased imported worsted wool fabric of the kind described in item (1) above from (*name of supplier*), the undersigned has substantiating documentation that establishes that such fabric was imported by (*name of importer*);

5(a). Attached is a list of relevant entry summary numbers, provided directly to the undersigned by (*name of importer*), that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought, as evidenced by the attached invoices, on imported worsted wool fabric of the kind described in item (1) above and entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002; and/or

5(b). The importer (*name of importer*), has agreed to submit a signed affidavit directly to Customs that attests to the fact that the importer sold imported worsted wool fabric of the kind described in item (1) above to the undersigned or to (*name of supplier*), and has agreed to attach a list of relevant entry summary numbers that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought, as evidenced by the attached invoices, on such fabric that was entered under HTSUS subheadings 5112.11.20 or 5112.19.90 in calendar year 2000, or under HTSUS subheadings 5112.11.30, 5112.11.60, 5112.19.60, 5112.19.95, 9902.51.11 or 9902.51.12 in calendar years 2001 and 2002; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(v) *Required content of an importer's signed affidavit in support of a manufacturer's wool duty refund claim.* Where an importer chooses to assist in the substantiation of a non-importing manufacturer's wool duty refund claim by submitting relevant entry summary numbers directly to Customs, such entry information must be set forth as an attachment to an affidavit that is signed by the importer or by a knowledgeable officer or employee of the importer, and must contain the following information:

(A) A statement as to the total amount of duties that the importer paid in the calendar year for which a wool duty refund is being sought on worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section;

(B) A statement that the importer sold worsted wool fabric of the kind described paragraph (g)(3)(iii) of this section, to the identified manufacturer or to the identified supplier(s);

(C) A list of relevant entry summary numbers for worsted wool fabric of the kind described in paragraph (g)(3)(iii) of this section, set forth as an attachment in either a paper or an electronic format (the latter submitted to Customs on diskette), that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on such fabric that was sold by the importer to the identified manufacturer or to the identified supplier(s);

(D) A statement that no entry summary number has been listed in paragraph (g)(3)(v)(C) of this section that has already had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law; and

(E) A statement that lists any entry summary number in paragraph (g)(3)(v)(C) of this section that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law.

(vi) *Form of affidavit.* The importer's affidavit in support of manufacturer's wool duty refund claim must be signed by the importer or by a knowledgeable officer or employee of the importer, and be submitted to Customs in the following format:

*Importer's Affidavit in Support of a Non-Importing Manufacturer's Claim for a Duty Refund Under Section 505 of the Trade and Development Act of 2000, for Calendar Year*

1. The undersigned (*name of importer*), is/was an importer who paid duties in calendar year _____ on imported worsted wool fabric of the kind described in HTSUS subheadings 9902.51.11 or 9902.51.12;

2. The undersigned sold worsted wool fabric of the kind described in item (1) above to a manufacturer identified as (*name of manufacturer*) or to a supplier(s) identified as (*name of supplier*);

3. Attached is a list of relevant entry summary numbers for worsted wool fabric of the kind described in item (1) above, that substantiates the amount of duties paid in the calendar claim year for which a wool duty refund is being sought on such fabric that was sold by the undersigned to (*name of manufacturer*) or to an identified supplier(s) (*name of supplier(s)*);

4. The undersigned has not listed any entry summary in item (3) above that has had 99% or more of the amount of duties paid on that entry refunded pursuant to any refund claim authorized by law;

5. The undersigned will list any entry summary in item (3) above that is, or may become, subject to an outstanding drawback claim, protest, or any other refund claim authorized by law; and

6. The undersigned certifies that the information set forth in this affidavit is true and accurate to the best of the affiant's knowledge and belief.

(vii) *Documentation required where the manufacturer is both an importer and a purchaser of eligible worsted wool fabric.* Where a manufacturer described in paragraph (c)(1) of this section is both an importer and a purchaser of eligible worsted wool fabric, the manufacturer must provide Customs with both the documentation described in paragraphs

(g)(3)(i) and (g)(3)(ii) of this section, and the documentation described in paragraphs (g)(3)(iii) and (g)(3)(iv) of this section.

(viii) *Documentation required where the claimant is the legal assignee of an eligible manufacturer's wool duty refund claim rights.* To file a wool duty refund claim where the claimant is the legal assignee of the existing wool duty refund claim rights of an eligible manufacturer described in paragraphs (f)(1), (f)(2) or (f)(3) of this section, the facts of such legal assignation, and the identity of all affected parties, must be submitted to Customs in a written attachment to the claim, and additional substantiating documentation must be available to Custom upon request. Only those assignees that substantiate, to Customs satisfaction, the terms and legality of the assignation will be eligible to claim a wool duty refund.

(h) *Wool duty refund claim processing procedures.* Upon receipt of a timely and complete wool duty refund claim filed pursuant to the terms of this section, Customs will determine the liquidation status of the entry summaries used to substantiate the claim. No duty refund will be issued to a claimant until all the entry summaries identified for purposes of substantiating the claim have been finally liquidated and the applicable amendment period, as set forth in paragraph (g)(1) of this section has expired or the claimant has submitted to Customs a signed waiver of amendment.

(i) *Denial of a wool duty refund claim.* Customs may deny a wool duty refund claim if the claim was not timely filed, if the claimant is not eligible pursuant to the terms of this section, or if the claimant has not complied with the requirements of this section. Customs will provide the claimant with written notice of the denial of the claim, including the reason for the denial.

(j) *Multiple refund claims and pending judicial review*—(1) *Allowance or denial of subsequent claims.* If an entry has been used to provide the basis for a duty refund claim pursuant to this section, and the entire amount of duties paid on that entry was refunded to the claimant, a claim for drawback, or any other refund claim authorized by law, that is based on that entry, will be denied by Customs. If an entry has been used to substantiate a claim for a duty refund under this section, and an amount in duties paid on that entry has not been refunded, the remaining amount may be eligible for subsequent duty refund claims under this section, drawback, or any other refund claim authorized by law. An entry that has already had 99% or more of the duties paid on that entry refunded by way of a drawback claim, protest, or any other claim authorized by law, may not be used to provide the basis for a wool duty refund claim.

(2) *Substitution of entry summary numbers.* If a duty refund claim under this section has not yet been processed by Customs, an importer may substitute an entry summary that has already been identified to Customs for purposes of substantiating the claim with another comparable entry summary, so long as the amount of duty paid in connection with the replacement entry is not less than the duty paid on the entry that was identified to Customs originally.

(3) *Pending judicial review.* If a summons involving the tariff classification or the dutiability of an imported wool product has been filed in the Court of International Trade, Customs will deem any entry summary at issue in that judicial proceeding ineligible to substantiate a duty refund claim.

(k) *Penalties and liquidated damages.* A wool duty refund claimant's failure to comply with any of the procedural requirements set forth in this document, or failure to adhere to all applicable laws and regulations, may subject the claimant to penalties, liquidated damages or other administrative sanctions.

**Charles W. Winwood,**

*Acting Commissioner of Customs.*

Approved: April 9, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 01–10004 Filed 4–20–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 14

**[Docket No. 00N–1634]**

### Public Hearing Before a Public Advisory Committee; Examination of Administrative Record and Other Advisory Committee Records; Withdrawal

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

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) published in the **Federal Register** of January 8, 2001, a proposed rule (66 FR 1276) and a direct final rule (66 FR 1257) to amend FDA regulations governing the public disclosure of written information for consideration by an advisory committee at an advisory committee meeting. The comment period closed March 26, 2001. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

**DATES:** The direct final rule published in the **Federal Register** of January 8, 2001 (66 FR 1257), is withdrawn as of April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, the direct final rule published in the **Federal Register** of January 8, 2001 (66 FR 1257), is withdrawn.

Dated: April 17, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01–9950 Filed 4–20–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs for Use in Animal Feeds; Amprolium, Bacitracin Methylene Disalicylate, and Roxarsone

**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 a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved, single-ingredient amprolium, bacitracin methylene disalicylate, and roxarsone Type A medicated articles to make three-way combination drug Type C medicated feeds for replacement chickens.

**DATES:** This rule is effective April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

**SUPPLEMENTARY INFORMATION:** Alpharma, Inc., One Executive Dr., P.O. Box 1399,

Fort Lee, NJ 07024, filed NADA 141–142 that provides for use of Amprol® (25 percent amprolium), BMD® (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) bacitracin methylene disalicylate), and 3-Nitro® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make combination Type C medicated feeds containing 36.3 to 113.5 g/ton amprolium, 50 g/ton bacitracin methylene disalicylate, and 22.7 to 45.4 g/ton roxarsone for use in replacement chickens. The Type C medicated feeds are used for the development of active immunity to coccidiosis; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; and for increased rate of weight gain, improved feed efficiency, and improved pigmentation. The NADA is approved as of February 16, 2001, and 21 CFR 558.55 is amended 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)(2) 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.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

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 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** 21 U.S.C. 360b, 371.

2. Section 558.55 is amended in the table in paragraph (d)(2) by alphabetically adding an item under entry (i) to read as follows:

**§ 558.55 Amprolium.**

* * * * *

(d) * * *

(2) * * *

| Amprolium in grams per ton | Combination in grams per ton | Indications for use | Limitations | Sponsor |
|---|---|---|---|---|
| (i) 36.3 to 113.5 (0.004% to 0.0125%). | | | | |
| * | * | * | * | * |
| | Bacitracin methylene disalicylate 50 plus roxarsone 22.7 to 45.4. | Replacement chickens; development of active immunity to coccidiosis; as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin; increased rate of weight gain, improved feed efficiency, and improved pigmentation. | Feed according to subtable in entry (i); bacitracin methylene disalicylate and roxarsone as provided by 046573 in § 510.600(c) of this chapter. | 046573 |
| * | * | * | * | * |

* * * * *

Dated: April 9, 2001.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 01–9872 Filed 4–20–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 660

**[Docket No. 00N–1586]**

## Revision to Requirements for Licensed Anti-Human Globulin and Blood Grouping Reagents; Confirmation of Effective Date

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

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of June 11, 2001, for the direct final rule that appeared in the **Federal Register** of December 12, 2000 (65 FR 77497). The direct final rule rule amends the biologics regulations applicable to microbiological controls for licensed Anti-Human Globulin and Blood Grouping Reagents by removing the requirement that these products be sterile. This document confirms the effective date of the direct final rule.

**DATES:** Effective date confirmed: June 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 12, 2000 (65 FR 77497), FDA solicited comments concerning the direct final rule for a 75-

day period ending February 26, 2001. FDA stated that the effective date of the direct final rule would be on June 11, 2001, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby will go into effect on June 11, 2001.

Dated: April 13, 2001.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 01–9873 Filed 4–20–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

**[Docket No. S–777]**

**RIN 1218–AB36**

## Ergonomics Program

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule; removal.

**SUMMARY:** Under the Congressional Review Act, Congress has passed, and the President has signed, Public Law 107–5, a resolution of disapproval of OSHA's final Ergonomics Program Standard. OSHA published the ergonomics program standard on November 14, 2000 (65 FR 68262), and the standard became effective on January 16, 2001. Because Public Law 107–5 invalidates the standard, OSHA is hereby removing it from the Code of Federal Regulations.

**DATES:** This action is effective April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** OSHA Office of Information at (202)–693–1999.

**SUPPLEMENTARY INFORMATION:** On November 14, 2000, OSHA issued a final Ergonomics Program Standard (Subpart W of 29 CFR 1910) (65 FR 68262). The final rule became effective on January 16, 2001. On March 6, 2001 (Cong. Rec. p. S1887), the United States Senate passed a resolution of disapproval (S.J. Res. 6) of the Ergonomics Program Standard under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The House of Representatives then passed S.J. Res. 6 on March 7, 2001 (Cong. Rec. p. H667). President Bush signed the resolution into law as Public Law 107–5 on March 20, 2001. Accordingly, OSHA is hereby removing the standard from the Code of Federal Regulations.

**Authority:** This document was prepared under the direction of R. Davis Layne, Acting Assistant Secretary for Occupational Safety and Health. It is issued under the authority of the Congressional Review Act (5 U.S.C. 801 *et seq.*), and Pub. L. 107–5 (March 20, 2001).

Signed at Washington, D.C. this 17 day of April, 2001.

**R. Davis Layne,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

## PART 1910—[AMENDED]

Accordingly, for the reasons set forth in the preamble, OSHA amends 29 CFR Part 1910 by removing Subpart W.

[FR Doc. 01–9957 Filed 4–20–01; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–00–242]**

**RIN 2115–AA97**

## Safety Zone: Macy's July 4th Fireworks, East River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent safety zone for the annual Macy's July 4th fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the East River.

**DATES:** This rule is effective May 23, 2001.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–242) and are available for inspection or copying at Waterways Oversight Branch, Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On December 26, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Macy's July 4th Fireworks, East River, NY in the **Federal Register** (65 FR 81471). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

### Background and Purpose

The Coast Guard is establishing a permanent safety zone for the annual Macy's July 4th fireworks display in the East River. The safety zone encompasses all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″ N 074°01′10.9″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone, at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and North 9th Street, Brooklyn. This area is bound by the following points: 40°42′45.5″ N 073°58′07.4″ W; thence to 40°42′50.4″ N 073°58′23.2″ W; thence to 40°43′23.1″ N 073°58′12.7″ W; thence to 40°43′21.5″ N 073°57′45.7″ W; (NAD 1983) thence back to the point of beginning. All vessels must be in this location by 6:30 p.m. (e.s.t.) the day of the event.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated vessels taking position in the viewing area of the zone. If it becomes apparent that any additional spectator vessels in the viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering it. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart the

viewing area as directed by the patrol commander.

We created the viewing area within this safety zone in order to reduce significant safety hazards in this area of the East River, due in great part, to the extremely strong currents. Based on experience from similar events in this area of the East River, we are concerned that smaller spectator craft located in between the two fireworks barge sites could drift into the fallout zone of either barge site. Additionally, experience from previous events has also shown that having large and small craft located in a confined area presents safety hazards for both sized vessels due to vessel wake, anchor swing radii, and restricted visibility of larger vessels in a confined area.

One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents. Fireworks barge locations are normally south of Roosevelt Island and the Brooklyn Bridge.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, Manhattan. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, NY, and those persons traveling to and from Manhattan at the end of a national holiday.

The safety zone is effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4th. If the event is cancelled due to inclement weather, then this safety zone is effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 5th. The safety zone prevents vessels from transiting this portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from 6 barges in the area. No vessel may enter the safety zone without permission from the Captain of the Port, New York.

This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels and the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via the Local Notice to Mariners, marine information broadcasts, facsimile, and Macy's waterways telephone hotline. In previous years this telephone hotline has been established in early June.

The size of this safety zone was determined using National Fire Protection Association and New York City Fire Department standards for 8 to 12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in this area. One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents.

**Discussion of Comments and Changes**

The Coast Guard received one letter commenting on the proposed rulemaking. No changes were made to this rulemaking. The commenter stated that the fireworks display will: (1) Emit thousands of pounds of air pollutants, some of which are the toxic combustion products of coloring agents used for the display; (2) be a violation of the Act to Prevent Pollution From Ships as it is an un-permitted discharge from the fireworks barges, including the discharge of plastics; (3) result in an adverse environmental impact due to the aggregation of spectator boats; and (4) require the Coast Guard to review its obligations for consistency review under the Coastal Zone Management Act.

The Coast Guard has determined that these matters are properly addressed in the determination whether to grant a marine event permit for the underlying fireworks event rather than in this rulemaking. It is the underlying event that triggers consideration of these items rather than this rulemaking itself. This rule, in accordance with our statutory authority, is limited to protecting safety of human life on the navigable waters during the event, which has not been approved yet. Prior to deciding whether to issue a marine event permit for this display, the Coast Guard will take these matters into account.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone temporarily closes a major portion of the East River to vessel traffic. There is a regular flow of traffic through this area; however, the impact of this regulation is expected to be minimal for the following reasons: the limited duration of the event; the extensive, advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually, small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

**Small Entities**

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

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the East River during the times these zones are activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the limited duration of the event; the extensive,

advance advisories that will be made to allow the maritime community to schedule transits before and after the event; the event is taking place at a late hour on a national holiday; the event has been held for twenty-three years in succession and is therefore anticipated annually, small businesses may experience an increase in revenue due to the event; advance notifications will be made to the local maritime community by the Local Notice to Mariners, marine information broadcasts, facsimile, and the event sponsor establishes and advertises a telephone hotline which waterways users may call prior to the event for details of the safety zone. This telephone number will be published via the Local Notice to Mariners and facsimile. The number is normally activated in early June each year.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from small entities.

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a safety zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

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

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

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

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

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

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

2. Add § 165.166 to read as follows:

### § 165.166 Safety Zone: Macy's July 4th Fireworks, East River, NY.

(a) *Regulated Area.* The following area is a safety zone: All waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.4″ N 074°01′06.8″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.4″ N 074°01′10.9″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″ N 074°00′42.5″ W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn from East 47th Street, Manhattan through the southern point of Roosevelt Island to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(b) *Activation period.* This section is activated annually from 6:30 p.m. until 11:30 p.m. on July 4th. If the event is cancelled due to inclement weather then this section is in effect from 6:30 p.m. until 11:30 p.m. on July 5th.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels, except the Staten Island Ferries, will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone, at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and North 9th Street, Brooklyn. This area is bound by the following points: 40°42′45.5″ N 073°58′07.4″ W; thence to 40°42′50.4″ N 073°58′23.2″ W; thence to 40°43′23.1″ N 073°58′12.7″ W; thence to 40°43′21.5″ N 073°57′45.7″ W; (NAD 1983) thence back to the point of beginning. All vessels must be in this location by 6:30 p.m. (e.s.t.) the day of the event.

Dated: April 11, 2001.

**R.E. Bennis,**

*Rear Admiral, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 01–9990 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–15–U

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**49 CFR Part 10**

**[Docket No. OST–96–1437]**

**RIN 2105–AC9**

## Privacy Act of 1974; Implementation

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** DOT exempts from certain provisions of the Privacy Act the record system designed to assist in finding Suspected Unapproved Parts used in aviation, and a record system used to manage the flow of data about commercial motor carriers. An editorial correction is also made to some existing language.

**DATES:** These changes take effect May 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Coates, S–80, Office of the Chief Information Officer, Department of Transportation, Washington, DC 20590–0001; telephone: 202–366–6964; fax: 202–366–7024; e-mail: yvonne.coates@ost.dot.gov.

**SUPPLEMENTARY INFORMATION:** Aviation. To assist in the ongoing campaign of the Department's Federal Aviation Administration against defective and dangerous parts being used in aircraft, DOT is establishing a Privacy Act record system in which evidence will be gathered as investigations are conducted (DOT/FAA 852 Suspected Unapproved Parts (SUP) Program). Motor Carriage. The recent establishment of DOT's Federal Motor Carrier Safety Administration has led to the development of a management information system (Motor Carrier Management Information System, DOT/FMCSA 001) that will encompass, among other things, safety investigations of commercial motor carriers and of their drivers. In both instances, investigations can result in criminal prosecutions. To facilitate the cooperation of persons who have information relevant to these investigations and who ask for confidentiality as a condition of their providing that information, DOT is exempting these systems from subsections (c)(3) (Accounting for Certain Disclosures), (d) (Access to Records), (e)(4)(G), (H), and (I) (Agency Requirements), and (f) (Agency Rules) of the Privacy Act, 5 USC 552a. If we do not exempt this system from these provisions, persons who are subjects of investigation will be able to learn that they are and who has provided information about them, both of which could well frustrate any investigation.

Finally, in the Appendix, a reference to subsection (e)(4)(I) was inadvertently omitted from, and section (g) was inadvertently included in explanatory paragraph 2 at the end of, paragraph A; these are corrected.

All of these changes were proposed for public comment (January 8, 2001; 66 FR 1294) and none was received. The amendment is being adopted as proposed.

### Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, because the reporting requirements, themselves, are not changed and because it applies only to information on individuals.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

### Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate,'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities, to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

**List of Subjects in 49 CFR Part 10**

Privacy.

Accordingly, DOT amends Part 10 of 49 CFR as follows:

1. The authority citation for Part 10 continues to read as follows:

**Authority:** 5 USC 552a; 49 USC 322; 49 CFR 10.13

2. Part IIA of the Appendix is amended as follows:

a. By republishing the introductory text;

b. By adding new paragraphs 17 and 18; and

c. By revising explanatory paragraph 2.

The additions and revisions read as follows:

* * * * *

**Part II. Specific Exemptions**

A. The following systems of records are exempt from subsections (c)(3) (Accounting of Certain Disclosures), (d) (Access to Records, (e)(4)(G), (H), (I) (Agency Requirements) and (f) (Agency rules) of 5 USC 552a, to the extent that they contain investigatory material for law enforcement purposes in accordance with 5 USC 552a(k)(2):

* * * * *

17. Suspected Unapproved Parts (SUP) Program, maintained by the Federal Aviation Administration (DOT/FAA 852).

18. Motor Carrier Management Information System (MCMIS), maintained by the Federal Motor Carrier Safety Administration (DOT/FMCSA 001). These exemptions are justified for the following reasons:

* * * * *

2. From subsections (d), (e)(4)(G), (H), and (I), and (f), because granting an individual access to investigative records, and granting him/her access to investigative records with that information, could interfere with the overall law enforcement process by revealing a pending sensitive investigation, possibly identify a confidential source, disclose information that would constitute an unwarranted invasion of another individual's personal privacy, reveal a sensitive investigative technique, or constitute a potential danger to the health or safety of law enforcement personnel.

* * * * *

Dated: April 17, 2001.

**Eugene K. Taylor, Jr.,**

*Deputy Chief Information Officer.*

[FR Doc. 01–9997 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–62–P

# Proposed Rules

Federal Register
Vol. 66, No. 78
Monday, April 23, 2001

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 28

**[CN–00–010]**

**RIN 0581–AB57**

## Revision of User Fees for 2001 Crop Cotton Classification Services to Growers

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to maintain user fees for cotton producers for 2001 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2000. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2000 user fee for this classification service was $1.35 per bale. This proposal would maintain the fee for the 2001 crop at $1.35 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

**DATES:** Comments must be received by May 8, 2001.

**ADDRESSES:** Comments and inquiries should be addressed to, Cotton Programs, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. E-mail comments may be sent to: *CottonComments@usda.gov.* Comments will be available for public inspection during regular business hours at the above office in Rm. 2641–South Building, 14th & Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Darryl Earnest, Cotton Program, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. 202–720–2145.

**SUPPLEMENTARY INFORMATION:** This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.601). Continuing the user fee at the 2000 crop level will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services (the 2000 user fee for classification services was $1.35 per bale; the fee for the 2001 crop would be maintained at $1.35 per bale; the 2001 crop is estimated at 18,337,850 bales);

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2000 crop, 17,219,500 bales were produced; and, virtually all of them were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 1999 crop of 45 cents per pound, 500 pound bales of cotton are worth an average of $225 each. The proposed user fee for classification services, $1.35 per bale, is less than one percent of the value of an average bale of cotton.

### Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

It is anticipated that the proposed changes, if adopted, would be made effective July 1, 2001, as provided by the Cotton Statistics and Estimates Act.

### Fees for Classification under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 2000 harvest season, as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This proposed rule establishes the user fee charged to producers for HVI classification at $1.35 per bale during the 2001 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2000. Therefore, the 2001 producer's user fee for classification service is based on the 2000 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2000 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.17 per bale. An increase of 2.26 percent, or 5 cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.17 would result in a

2001 base fee of $2.22 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2001 crop is estimated at 18,337,850 bales. The 2001 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 33 cents per bale reduction and was subtracted from the 2001 base fee of $2.22 per bale, resulting in a fee of $1.89 per bale.

With a fee of $1.89 per bale, the projected operating reserve would be 51.56 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.89 must be reduced by 54 cents per bale, to $1.35 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2001 season fee at $1.35 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.35 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents requesting classification data provided on computer punched cards will continue to be charged the fee of 10 cents per card in § 28.910(a) to reflect the costs of providing this service. Requests for punch card classification data represented less than 1.0 percent of the total bales classed from the 2000 crop, down from 2.6 percent in 1997. Growers or their designated agents receiving classification data by methods other than computer-punched cards would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale, and it would be applicable even if the same method was requested. However, if computer punched cards were requested, a fee of 10 cents per card would be charged. The fee in § 28.910(b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be maintained at $1.35 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

A fifteen-day comment period is provided for public comments. This period is deemed appropriate because it is anticipated that the proposed changes, if adopted, would be made effective July 1, 2001, as provided by the Cotton Statistics and Estimates Act.

**List of Subjects in 7 CFR Part 28**

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is proposed to be amended as follows:

## PART 28—COTTON CLASSING, TESTING, AND STANDARDS

### Subpart D—Cotton Classification and Market News Service for Producers

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

**Authority:** 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

**§ 28.909 Costs.**

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.35 per bale.

* * * * *

3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

**§ 28.911 Review classification.**

(a) * * * The fee for review classification is $1.35 per bale.

* * * * *

Dated: April 18, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–10065 Filed 4–19–01; 2:06 pm]

BILLING CODE 3410–02–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–201–AD]**

## Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Galaxy Airplanes

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes. That action would have required replacement of certain existing fasteners in the aft pickup fittings of the horizontal stabilizer. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received information from Galaxy Aerospace Company indicating that the replacement has already been carried out on all the affected airplanes and that the replacement is now standard on all airplanes off the production line. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (206) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to certain Israel Aircraft Industries, Ltd., Model Galaxy airplanes, was published in the **Federal Register** on October 30, 2000 (65 FR 64631). The proposed rule would have required replacement of certain existing fasteners in the aft pickup fittings of the horizontal stabilizer. That action was prompted by information from the Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, indicating that early fatigue failure of the fasteners that support the aft pickup fittings of the horizontal stabilizer can occur. The proposed actions were intended to prevent such fatigue failure,

which could result in reduced structural integrity of the empennage.

**Actions That Occurred Since the NPRM Was Issued**

Since the issuance of that NPRM, the FAA has received a comment from Galaxy Aerospace Company indicating that the replacement of the fasteners in the aft pickup fittings of the horizontal stabilizers has been accomplished on all the affected airplanes. Therefore, Galaxy requested the FAA to withdraw the proposed rule.

**FAA's Conclusions**

The FAA agrees that there is no need to issue the proposed AD, if all of its requirements have already been accomplished. The FAA, therefore, withdraws the proposed AD.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

**Regulatory Impact**

Since this action only withdraws a NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Withdrawal**

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–201–AD, published in the **Federal Register** October 30, 2000 (65 FR 64631), is withdrawn.

Issued in Renton, Washington, on April 16, 2001.

**Donald L. Riggin,**

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

[FR Doc. 01–9880 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF JUSTICE

## 28 CFR Part 16

**[AAG/A Order No. 228–2001]**

## Privacy Act of 1974; Implementation

**AGENCY:** Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice (DOJ), Joint Automated Booking System (JABS) Program Office proposes to establish its new Privacy Act regulations. The DOJ proposes to exempt a new Privacy Act system of records entitled, ''Nationwide Joint Automated Booking System (JABS), DOJ–005'' from subsections (c)(3) and (4), (d), (e)(1), (2) and (3), (4)(G) and (H), (e)(5) and (8), (f) and (g) of the Privacy Act (5 U.S.C. 552a), pursuant to 552a(j)(2) and (k)(2). Information in this system of records relates to matters of law enforcement, and the exemptions are necessary to avoid interference with law enforcement responsibilities and to protect the privacy of third parties. The reasons for the exemptions are set forth in the text below.

**DATES:** Submit any comments by May 23, 2001.

**ADDRESSES:** Address all comments to Mary Cahill, Management Analyst, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

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

**SUPPLEMENTARY INFORMATION:** In the notice section of today's **Federal Register**, the Department of Justice provides a description of this system of records.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have ''a significant economic impact on a substantial number of small entities.''

**List of Subjects in Part 16**

Administrative Practices and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: April 9, 2001.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

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

## PART 16—[AMENDED]

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

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 901.

2. It is proposed to add § 16.131 to read as follows:

**§ 16.131 Exemption of Department of Justice (DOJ)/Nationwide Joint Automated Booking System (JABS), DOJ–005.**

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e)(1), (2), (3), (4) (G) and (H), (e)(5) and (8), (f) and (g): Nationwide Joint Automated Booking System, Justice/DOJ–005. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Where compliance would not interfere with or adversely affect the law enforcement process, the DOJ may waive the exemptions, either partially or totally.

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

(1) From subsections (c)(3), (c)(4), and (d) to the extent that access to records in this system of records may impede or interfere with law enforcement efforts, result in the disclosure of information that would constitute an unwarranted invasion of the personal privacy of collateral record subjects or other third parties, and/or jeopardize the health and/or safety of third parties.

(2) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to federal and other law enforcement agencies in discharging their law enforcement responsibilities.

(3) From subsection (e)(2) because, in some instances, the application of this provision would present a serious impediment to law enforcement since it may be necessary to obtain and verify information from a variety of sources other than the record subject to ensure safekeeping, security, and effective law enforcement. For example, it may be necessary that medical and psychiatric personnel provide information regarding the subject's behavior, physical health, or mental stability, etc. to ensure proper care while in custody, or it may be necessary to obtain information from a case agent or the court to ensure proper disposition of the subject individual.

(4) From subsection (e)(3) because the requirement that agencies inform each individual whom it asks to supply information of such information as is required by subsection (e)(3) may, in some cases, impede the information gathering process or otherwise interfere with or compromise law enforcement efforts, e.g., the subject may deliberately

withhold information, or give erroneous information.

(5) From subsection (4) (G) and (H) because the application of these provisions would present a serious impediment to law enforcement efforts.

(6) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes, may prevent the eventual development of the necessary criminal intelligence, or otherwise impede law enforcement or delay trained law enforcement personnel from timely exercising their judgment in managing the arrestee.

(7) From subsection (e)(8) to the extent that such notice may impede, interfere with, or otherwise compromise law enforcement and security efforts.

(8) From subsection 5 U.S.C. 552a(f) to the extent that compliance with the requirement for procedures providing individual access to records could impede, compromise, or interfere with law enforcement efforts.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 01–9909 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–FB–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### 29 CFR Part 552

**RIN 1215–AA82**

### Application of the Fair Labor Standards Act to Domestic Service

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule; reopening and extension of comment period.

**SUMMARY:** This document reopens and extends the period for filing written comments on proposed revisions to regulations under the Fair Labor Standards Act (FLSA) pertaining to the exemption for companionship services in 29 CFR Part 552, which were published in the **Federal Register** on January 19, 2001 (66 FR 5481). The Department is continuing to consider this proposal, and is taking this action in order to obtain additional comments from interested parties.

**DATES:** Comments are due on or before July 23, 2001.

**ADDRESSES:** Submit written comments to Thomas M. Markey, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Attention: Fair Labor Standards Team, Room S–3516, 200 Constitution Avenue NW., Washington, D.C. 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit comments by certified mail, return receipt requested. As a convenience, commenters may transmit comments by facsimile (''FAX'') machine to (202) 693–1432. This is not a toll free number. If comments are transmitted by FAX and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone: (202) 693–0745. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** On January 19, 2001, the Department published a Notice of Proposed Rulemaking (66 FR 5481) (NPRM) inviting public comments for 60 days on proposed revisions to the regulations defining and interpreting the minimum wage and overtime exemption under section 13(a)(15) of the Fair Labor Standards Act (FLSA) for employees employed in domestic service employment to provide ''companionship services'' to individuals unable to care for themselves because of age or infirmity. This exemption was enacted in 1974 at the same time that Congress amended the FLSA to cover domestic service employees generally. The pertinent regulations governing this exemption have not been changed since they were promulgated in 1975. The NPRM stated that, due to significant changes in the home care industry over the last 25 years, workers who today provide in-home care to individuals needing assistance with activities of daily living are performing types of duties and working in situations that were not envisioned when the companionship services regulations were promulgated. The number of workers providing these services has also greatly increased. In addition, the NPRM stated that the Department had reevaluated the regulations and determined that, as currently written, they exempted types of employees beyond those whom Congress intended to exempt when it enacted section 13(a)(15). Accordingly, the Department proposed to amend the regulations to revise the definition of ''companionship services,'' which sets out the duties that a companion must be employed to perform in order to qualify for the exemption. The Department proposed three alternatives for defining companionship services that varied in the degree to which time must be spent in fellowship activities as compared to other care duties, and requested comments on all three alternatives. The Department also proposed to amend the regulations to clarify the criteria used to judge whether employees qualify as trained personnel, who are not recognized as exempt companions. Finally, the Department proposed to amend the regulations pertaining to employment by a third party. This change would make the companionship services exemption inapplicable if the worker is employed by someone other than a member of the family in whose home he or she works. It would similarly provide that the exemption for live-in domestics, who are exempt from the FLSA's overtime requirements pursuant to section 13(b)(21), would not apply if they are employed by someone other than a member of the family in whose home they reside and work. Interested parties were requested to submit written comments on the proposed revisions on or before March 20, 2001.

Because of continuing interest that has been expressed in this proposal and to address requests from interested parties, the Department believes that it is desirable to reopen and extend the comment period for all interested parties. Accordingly, the comment period for the NPRM published on January 19, 2001, is reopened and extended through July 23, 2001.

Signed at Washington, DC on this 17th day of April, 2001.

**Thomas M. Markey,**

*Acting Administrator, Wage and Hour Division, Employment Standards Administration.*

[FR Doc. 01–9959 Filed 4–20–01; 8:45 am]

BILLING CODE 4510–27–P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD11–01–010]**

**RIN 2115–AA97**

## Security Zone; San Diego Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to expand the geographical boundaries of the permanent security zone at Naval Base, San Diego, California, at the request of the U.S. Navy. The proposed security zone will expand across the mouth of Chollas Creek. The modification and expansion of this security zone is needed to ensure the physical protection of naval vessels moored at Naval Base, San Diego.

**DATES:** Comments must be received on or before June 22, 2001.

**ADDRESSES:** Comments may be mailed to LT Kathleen Garza, Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA, 92101–1064, (619) 683–6477. The Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Patricia Springer, Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951; e-mail pspringer@d11.uscg.mil.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or any other materials to the address listed under **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking, the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process. Persons may request a public hearing by writing to the address listed above in **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard proposes to modify the security zone, enlarging it by approximately 300 square yards to enclose the mouth of Chollas Creek so that unauthorized vessels or persons cannot transit into Chollas Creek.

The modification and expansion of this security zone is needed to ensure the physical protection of naval vessels moored in the area. The modification and expansion of this security zone will also prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Base, San Diego and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The modification and expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Station, San Diego.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

### Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1102.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

### Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

### Federalism

The Coast Guard has analyzed this proposed regulation under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed

rule would not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Environment**

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

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

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

**Proposed Regulation**

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. In § 165.1102, revise paragraph (a) and add a new paragraph (c) to read as follows:

**§ 165.1102 Security Zone: San Diego Bay, CA.**

(a) Location. The following area is a security zone: the water area within Naval Station, San Diego enclosed by the following points: Beginning at 32°41′16.5″ N, 117°08′01″ W (Point A); thence running southwesterly to 32°41′06″ N, 117°08′09.3″ W (Point B); thence running southeasterly along the U.S. Pierhead Line to 32°39′36.9″ N, 117°07′23.5″ W (Point C); thence running easterly to 32°39′38.5″ N, 117°07′06.5″ W (Point D); thence running generally northwesterly along the shoreline of the Naval Station to the place of beginning.

(b) * * *

(c) The U. S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U. S. Navy.

Dated: April 3, 2001.

**E.R. Riutta,**

*Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 01–9991 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD11–98–003]**

**RIN 2115–AA97**

## Security Zone; San Diego Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to expand the geographical boundaries of the permanent security zone at Naval Air Station North Island, Coronado, California. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island. The modification and expansion of this security zone is needed to ensure the physical protection of this third aircraft carrier at Naval Air Station North Island.

**DATES:** Comments must be received on or before May 23, 2001.

**ADDRESSES:** Comments may be mailed to LT Kathleen Garza, Coast Guard Marine Safety Office, 2716 North Harbor Drive, San Diego, CA 92101–1064, (619) 683–6477. The Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and copying at the Marine Safety Office between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Patricia Springer, Vessel Traffic Management Section, 11th Coast Guard District, telephone (510) 437–2951; e-mail pspringer@d11.uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or any other materials to the address listed under **ADDRESSES** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking, the specific section of the proposal to which their comments apply, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process. Persons may request a public hearing by writing to the address listed above in **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Coast Guard published a NPRM on May 15, 1998 (63 FR 27019). That NPRM proposed to modify the Security Zone adjacent to Naval Air Station North Island, Coronado, California, 33 CFR 165.1105. No comments were received. Publication of the final rule, however, was delayed due to the need for operational reassessment. Due to the length of time since publication of the NPRM, we are publishing a supplemental notice of proposed rulemaking and providing an additional opportunity for comment on this rulemaking. The Coast Guard proposes to modify the security zone, enlarging it to accommodate the home-porting of a

new aircraft carrier at Naval Air Station North Island. There were previously only two aircraft carriers home-ported at Naval Air Station North Island; however, a third aircraft carrier has been designated to homeport at Naval Air Station North Island.

The security zone will be expanded at its Northwest tip to the West by 0.144 square miles. It will be expanded in its mid-section to the North by 0.182 square miles.

The modification and expansion of this security zone is needed to accommodate the home-porting of this third aircraft carrier. The modification and expansion of this security zone will prevent recreational and commercial craft from interfering with military operations involving all naval vessels home-ported at Naval Air Station, North Island, and it will protect transiting recreational and commercial vessels, and their respective crews, from the navigational hazards posed by such military operations. In addition, the Navy has been reviewing all aspects of its anti-terrorism and force protection posture in response to the attack on the USS COLE. The modification and expansion of this security zone will safeguard vessels and waterside facilities from destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into, transit through, or anchoring within this security zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Air Force, U.S. Pacific Fleet, the Commander, Naval Base San Diego, or the Commanding Officer, Naval Air Station North Island.

Vessels or persons violating this section would be subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

## Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This proposal will have minimal additional impact on vessel traffic because it is only a slight modification and expansion of the existing security zone codified at 33 CFR 165.1105.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because vessel traffic would be allowed to pass through the zone with the permission of the Captain of the Port.

## Collection of Information

This proposed regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

## Federalism

The Coast Guard has analyzed this proposed regulation under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

## Taking of Private Property

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

## Civil Justice Reform

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

## Protection of Children

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

## Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist will be available for inspection and copying in the docket to be maintained at the address listed in **ADDRESSES.**

## List of Subjects in 33 CFR Part 165

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

## Proposed Regulation

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

1. The authority citation for 33 CFR Part 165 continues to read as follows:

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

2. In § 165.1105, revise paragraph (a) and add a new paragraph (c) to read as follows:

### § 165.1105 Security Zone: San Diego Bay, CA.

(a) Location. The following area is a security zone: on the waters along the northern shoreline of Naval Air Station North Island, the area enclosed by the following points: Beginning at 32°42′53.0″ N, 117°11′45.0″ W (Point A); thence running northerly to 32°42′55.5″N, 117°11′45.0″ W (Point B); thence running easterly to 32°42′55.″ N, 117°11′30.5″ W (Point C); thence running southeasterly to 32°42′40.0″ N, 117°11′06.5″ W (Point D); thence running southerly to 32°42′37.5″ N, 117° 11′07.0″ W (Point E); thence running southerly to 32°42′28.5″ N, 117°11′11.0″ W (Point F); thence running southeasterly to 32°42′22.0″ N,

117°10′48.0″ W (Point G); thence running southerly to 32°42′13.0″ N, 117°10′51.0″ W (Point H); thence running generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning.

(b) * * *

(c) The U.S. Coast Guard may be assisted in the patrol and enforcement of this security zone by the U.S. Navy.

Dated: April 3, 2001.

**E.R. Riutta,**

*Vice Admiral, U.S. Coast Guard Commander, Eleventh Coast Guard District.*

[FR Doc. 01–9992 Filed 4–20–01; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[TX–126–4–7475; FRL–6969–5]**

## Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Low Emission Diesel Fuel

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to fully approve a State Implementation Plan (SIP) revision for the State of Texas establishing a Low Emission Diesel (LED) fuel for nine counties in the Dallas-Fort Worth Consolidated Metropolitan Statistical Area (CMSA). Beginning May 1, 2002, aromatic hydrocarbon content, cetane number and sulfur content will be regulated for diesel fuel sold in these counties for use in both motor vehicles and nonroad engines. We propose that the Texas LED fuel program requirements are necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the Dallas/Fort Worth ozone nonattainment area (DFW), and are therefore exempt from preemption under section 211(c)(4) of the Clean Air Act (the Act).

**DATES:** Comments should be received on or before May 23, 2001.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA.

Texas submitted an attainment demonstration SIP for the DFW 4-county nonattainment area on April 25, 2000. The SIP contained measures for reducing Nitrogen Oxides ($NO_X$), the pollutant identified as controlling the formation of ozone in this area. The LED fuel program was submitted as part of the attainment demonstration. This LED rule was codified in Chapter 114 of the Texas Administrative Code (TAC) (Sections 114.6, 114.312–114.317 and 114.319). See 30 TAC Chapter 114 (Apr. 19, 2000). Since the SIP submittal, the Texas Natural Resource Conservation Commission (TNRCC) has revised these LED regulations to expand the covered area, revise recordkeeping and reporting requirements and add a second more stringent phase of sulfur standards to be implemented May 1, 2006. See 30 TAC 114.312–317, 114.319 (Dec. 6, 2000). For purposes of today's action, we are proposing approval of the current LED regulations only insofar as they apply to the nine counties in the DFW CMSA,[1] and only with respect to the standards to be implemented on May 1, 2002.

### What Does the State's LED Regulation Include?

The State's LED SIP submittal for DFW requires that diesel fuel produced for delivery and ultimate sale within nine counties of the DFW CMSA have a maximum sulfur content of 500 ppm, have no more than 10% aromatic hydrocarbons by volume, and have a cetane number of 48 or greater. Alternative diesel fuel formulations that achieve equivalent emission reductions may also be used. The regulations apply to diesel fuel sold in the nonattainment counties of Dallas, Tarrant, Collin, and Denton, and the attainment counties of Parker, Johnson, Ellis, Kaufman, and Rockwall for use in either on-highway vehicles or nonroad engines. The State regulations require compliance by May 1, 2002.

### What Are the Requirements of the Clean Air Act?

Section 211(c)(4)(A) of the Act generally prohibits the State from prescribing or attempting to enforce controls respecting motor vehicle fuel characteristics or components that EPA has controlled under section 211(c)(1), unless the State control is identical to the Federal control. Under section 211(c)(4)(C), EPA may approve a non-identical state fuel control as a SIP provision, if the state demonstrates that the measure is necessary to achieve the NAAQS. We may approve a state fuel requirement as necessary if no other measures would bring about timely attainment, or if other measures exist and are technically possible to implement but are unreasonable or impracticable.

In this rulemaking, EPA does not need to determine whether the State requirements for LED fuel used in motor vehicles are preempted under section 211(c)(4)(A) before acting to approve the SIP submittal because EPA is finding the fuel requirements necessary under section 211(c)(4)(C) to achieve the ozone standard in the DFW nonattainment area.

### What Did the State Submit?

The State submitted the LED rules as part of the DFW SIP by letter from the Governor dated April 25, 2000. The SIP submittal contains 30 TAC Chapter 114 rules as adopted on April 19, 2000,[2] a request for a waiver from Federal preemption pursuant to Section 211(c)(4)(C) of the Act, and Texas laws providing the authority for the State to adopt and implement revisions to the SIP.

Texas submitted data and analyses to support a finding under section 211(c)(4)(C) that the LED fuel requirement for the nine counties is necessary for the DFW nonattainment area to achieve the ozone NAAQS. The State has (1) identified the quantity of reductions of $NO_X$ needed to achieve attainment of the ozone NAAQS; (2) identified all other control measures and the quantity of reductions each would achieve; (3) identified those control alternatives that were deemed

[1] There are 12 counties in the DFW CMSA. The nine counties subject to the LED requirements are Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant.

[2] As explained above, TNRCC subsequently revised these LED regulations on December 6, 2000. Because the State's SIP submittal for the DFW nonattainment area only requested approval of the LED program for the nine counties and only for the standards effective May 1, 2002, today's action proposes approval of the current State LED regulations only insofar as they apply to the nine counties and only with respect to the standards to be implemented May 1, 2002.

unreasonable or impracticable; and (4) shown that even with the implementation of all reasonable and practicable control measures, the State would need additional emissions reductions for the nonattainment area to meet the ozone NAAQS on a timely basis, and that the LED fuel requirement would supply some of such additional reductions.

Texas submitted its demonstration of necessity for the LED fuel requirement in the State's attainment demonstration for DFW. The State's submission used the CAMx photochemical modeling to estimate the quantity of $NO_X$ emission reductions necessary to achieve the ozone NAAQS by 2007. Based on this analysis, Texas estimates that $NO_X$ reductions of 370.12 tons per day (tpd) are necessary to achieve the ozone NAAQS by 2007. Without the LED requirements for the nine counties in the DFW CMSA, implementation of the reasonable and practicable non-fuel control measures would reduce $NO_X$ emissions by only 367.64 tpd.

**What Are the Benefits From the LED Fuel Program?**

The primary benefit of LED fuel in the DFW attainment demonstration is reduction of $NO_X$ emissions. Without the proposed fuel controls, the 9-county area subject to the proposed fuel control would receive diesel fuel for nonroad use that is subject to no federal emissions-related standards or diesel fuel for on-highway use that meets the less stringent, current Federal standards.

Texas is controlling three components of diesel fuel for on-road vehicles: aromatic hydrocarbons, cetane number and sulfur. The State's sulfur standard, however, is the same as the current Federal requirement for diesel fuel used in motor vehicles. Texas estimated that the 10% cap on aromatic hydrocarbons reduces $NO_X$ from diesel combustion. The cetane number is an indication of ignition properties of the fuel. A fuel with better ignition properties will ignite at a lower heat of compression, thereby reducing the amount of $NO_X$ produced during combustion.

For nonroad engines, Texas' sulfur content standards will provide additional emissions reductions. There is no direct $NO_X$ benefit from controlling sulfur in fuel. However, the State is including the sulfur requirement for nonroad engines because lower sulfur levels prevent fouling of aftermarket $NO_X$ emission control devices that may be installed on off-road diesel equipment to comply with other State rules like the Construction Shift. The State does not need a waiver of preemption for fuel components of nonroad diesel because section 211(c)(4)(A) applies only to State controls respecting motor vehicle (i.e., on-highway) fuel characteristics or components. In addition, there are no Federal requirements promulgated under section 211(c)(1) for characteristics or components of nonroad diesel fuel.

Currently, EPA is in the process of doing a comprehensive review and analysis of data to quantify the emission reduction effects of low emission diesel fuels. The outcome of this evaluation could result in a need to reconsider the emission reduction estimates used by the State in their LED rule. We expect the evaluation process to be completed by May of 2001. If the results of EPA's evaluation indicate that Texas has overestimated the emission reductions attributable to their LED rule, then EPA will work with the State to address this shortfall.

**What Other Measures Did Texas Consider Before Selecting LED?**

The State evaluated a broad range of potential control measures and estimated the quantity of reductions that could be achieved through implementation of these measures. Over three hundred potential control strategies were initially considered by the State and DFW regional stakeholders as part of the planning process. This list is included in the Technical Support Document (TSD) for this document. The measures that were selected for the attainment demonstration are in Table 1.

TABLE 1.—STATE AND LOCAL CONTROL MEASURES[3] IN THE DFW ATTAINMENT DEMONSTRATION

| Measure | $NO_X$ reductions in tpd |
|---|---|
| Inspection and Maintenance (ASM, OBD, and remote sensing in 9 counties). | 54.45 |
| Major Point Source $NO_X$ reductions in 4 counties. | 129 |
| Low Emission Diesel in 9 counties (the subject of this rulemaking). | 3.48 |
| Heavy-duty diesel operating restriction in 4 counties. | 2.5 |
| Accelerated Purchase of Tier II/III off-highway diesel equipment in 4 counties. | 13.8 |
| Airport Ground Support Equipment electrification 4 counties. | 9.54 |
| Speed limit reductions 9 counties. | 5.42 |

[3] The attainment demonstration includes additional $NO_X$ reductions from Federal measures.

TABLE 1.—STATE AND LOCAL CONTROL MEASURES[3] IN THE DFW ATTAINMENT DEMONSTRATION—Continued

| Measure | $NO_X$ reductions in tpd |
|---|---|
| Voluntary Mobile Emission Reduction 9 counties. | 3.9 average (2.40–5.40) |
| Transportation Control Measures (TCMs) in 4 counties. | 4.73 |
| Heavy equipment fleets—gasoline in 9 counties. | 1.8 |
| Gas-fired water heaters, small boilers, and process heaters statewide. | 0.5 |

**What Measures Were Considered But Not Selected?**

Measures that were quantified but not selected for the SIP are listed in Table 2. (See Appendix D of the TSD for more detailed descriptions of these measures). The State chose not to implement these measures after performing cost/benefit analysis and considering whether each was reasonable or practicable for the DFW nonattainment area. Many of the measures from the original list of over 300 are not quantifiable and so could not be shown to help achieve the NAAQS.

TABLE 2.—MEASURES QUANTIFIED BUT NOT SELECTED FOR THE SIP

| | |
|---|---|
| Extend Federal RFG to surrounding 8 counties. | 4.6 |
| Electric Automobile mandate. | 2.3 |
| Heavy-Duty Vehicle I/M. | 1.5 |
| Truck idle shut-off ..... | 1 |
| Natural gas buses ..... | 0.6 |
| Energy Efficiencies (building codes). | 0.5 |
| California LEV ..... | 0 tons per day (Federal Tier 2 vehicles are expected to get essentially equivalent $NO_X$ reductions) |
| Controls beyond 30% in Ellis county. | 0 tons per day in NA counties |
| (1 county) ..... | 9.1 tons/day at 30% reduction<br>11.1 tons/day reduced at 50% reduction |

Of the control measures identified above, for purposes of section 211(c)(4)(C), all measures but one (truck idling shut-off) in Table 2 are considered unreasonable or impracticable for the DFW area to implement in comparison to the State's LED requirement.

*Extending Federal RFG to surrounding 8 counties.* TNRCC is not required to demonstrate that expanded use of RFG, a fuel measure, is unreasonable or impracticable in order to support the necessity of the LED fuel measure.

*Electric vehicle mandate.* This rule is not reasonable or practicable because of high cost to the general public and availability concerns.

*Heavy-duty vehicle I/M.* Inspection and maintenance is neither reasonable nor practicable for heavy duty vehicles because the technology is not currently available to implement a program and determine associated $NO_X$ reductions. The 1.5 tpd $NO_X$ reduction value in Table 2 is questioned by EPA. Existing heavy-duty I/M programs consist primarily of opacity testing, which is testing for particulates.

*Natural gas buses.* This type of bus is more costly than clean diesel. The difference in cost would not justify the small additional emission reduction benefits, so to mandate natural gas buses would be unreasonable. In addition, TNRCC would have to get changes to existing statutory authority in order to regulate bus fleets. The time required to draft and seek passage of such legislation renders this an unreasonable and impracticable measure. It should be noted that both Dallas and Fort Worth have voluntarily purchased natural gas buses when their budgets allowed.

*California LEV.* This measures provides essentially no additional credit to the nonattainment areas. Federal Tier 2 vehicles will provide essentially the same or more credit. Therefore, California LEV is unreasonable.

*$NO_X$ Controls on cement kilns beyond 30% in Ellis county.* For Ellis County, Table 2 shows 2.0 tpd $NO_X$ reductions if 50 percent, rather than 30 percent, control is in place. The technology to achieve 50 percent reductions produces a high cost/benefit ratio, which makes this measure unreasonable and impracticable.

*Energy efficiencies (building codes).* Energy efficiency measures are implemented through local building codes. Each municipality would have to adopt the measures in order for them to be enforceable. This would cause extensive delay in implementation. In addition, the State is requiring significant reductions in emissions from electric generating facilities. As a result, it is unclear what additional emission reductions could be obtained from energy efficiency improvements.

*Truck idle shut-off.* Although this measure may now be considered reasonable and practicable for other nonattainment areas, the State would still need additional emission reduction credits even if it were implemented. (See discussion in TSD).

In addition to the above controls, TNRCC also considered expanding several of the control measures in Table 1 beyond the 4-county DFW nonattainment area. Five of the six measures were considered unreasonable or impracticable in the 9-county area.

*Major Point Source $NO_X$ reductions* in 4 counties. Major point source $NO_X$ reductions are mandated only for the 4 county area because $NO_X$ controls for those sources in the attainment areas are mandated by other rules. These rules are $NO_X$ reductions of 30% for grandfathered sources, 50% reductions for grandfathered Electric Generating Facilities, and 30% reductions for Cement Kilns. Therefore the extreme cost of adding additional controls does not justify the relatively small benefit that would result.

*Heavy-duty diesel operating restriction* in 4 counties. Analysis of the area and nonroad emissions inventory showed that 16% of the region's total $NO_X$ emissions come from construction equipment within the 4-county area. Implementation of this measure will be difficult. It is not considered reasonable to extend this measure to the less urban attainment counties at this time. Construction in these counties is considerably less than in the more urbanized counties. The benefit from this measure would be too small to make a significant contribution to emission reductions compared to the cost to implement.

*Accelerated Purchase of Tier II/III off-highway diesel equipment* in 4 counties. Implementation of this measure will be difficult, and little if any benefit is available. Construction in these counties is considerably less than in the more urbanized counties. The benefit from this measure would be too small to make a significant contribution to emission reductions compared to the cost to implement. It is not considered reasonable to extend this measure to the less urban attainment counties at this time.

*Airport Ground Support Equipment electrification* in 4 counties. It is not necessary (or reasonable) to impose airport GSE electrification in the attainment counties because there are no major airports in those counties.

*Transportation Control Measures (TCMs)* in 4 counties. A TCM is a project that attempts to reduce vehicle use, change traffic flow, or reduce congestion conditions. Due to the semi-rural nature of the attainment counties, reducing vehicle use is not a viable option in this lower population density area. Generally traffic flow is satisfactory and congestion is not an issue. Therefore, implementing TCMs is not reasonable or practicable in the attainment counties.

*Speed limit reductions* in 9 counties. The reduced speed limit measure is based on vehicle emission information from EPA's MOBILE5 model. There is a significant amount of vehicle miles traveled and ample fleet size in the additional 5 counties to justify expanding this measure beyond the 4-county area.

Based on the discussion above, we propose to find that reasonable or practicable non-fuel measures which would bring the DFW nonattainment area into attainment in a timely manner do not exist.

**Why Is the State Requiring LED Fuel in Attainment Counties of the DFW CMSA?**

Requiring LED in the attainment areas will reduce emissions of $NO_X$ in those areas, which, in turn, benefits the DFW nonattainment area by reducing the transport of ozone and $NO_X$ from the attainment areas to the nonattainment area.

**The LED Fuel Program Will Reduce the Transport of Ozone From the Attainment Areas to the Nonattainment Area**

Texas conducted several studies (see Appendix A of the TSD for a list of studies) to evaluate the transport of ozone and its precursors in and around the DFW nonattainment area and other urban areas. Photochemical grid modeling showed that urban ozone plumes disperse with distance and that significant impact extended to about 300 km downwind. Each plume adds to the background concentration, making it more difficult for the downwind areas to reach attainment. The Seasonal Modeling for Regional Air Quality, in which Texas participated, showed similar results: that mobile source reductions, along with point and area source reductions, in the eastern part of Texas resulted in modeled decreases in ozone in the nonattainment areas in the eastern half of Texas. This modeling supports the concept that ozone formed in attainment counties is carried into the nonattainment areas as a result of meteorologic conditions and that transport from upwind attainment areas affects background ozone concentrations in downwind urban nonattainment areas.

In addition, the Baylor Aircraft Study showed the impact of ozone plumes between the attainment and nonattainment areas. Part of this study

demonstrated the potential for significant ozone levels when high background levels of ozone are transported into the DFW area from attainment areas. Results of the analysis show area, point, and mobile sources contribute about 40 ppb to the regional background, resulting in background concentrations of approximately 79 ppb in the attainment areas. Further, the study demonstrated transport of this ozone into the nonattainment areas.

In the Coastal Oxidant Assessment for Southeast Texas (COAST) Study, researchers collected aerometric (meteorological and air quality) data to improve understanding of the causes of high ozone in Southeast Texas. This data was then used in conjunction with photochemical modeling to determine control strategy effectiveness including the sensitivity of ozone concentrations in the nonattainment areas to emission reductions in the attainment region. This sensitivity modeling indicated there was an influence of emission reductions in the attainment areas on the nonattainment areas.

**The LED Fuel Program Will Reduce the Transport of $NO_X$ From the Attainment Areas to the Nonattainment Area**

EPA policy recognizes that ozone precursors emitted in attainment areas that surround nonattainment areas may be transported into those nonattainment areas and contribute to ozone problems therein. With the December 29, 1997, Guidance for Implementing 1-Hour Ozone and Pre-Existing PM10 NAAQS, EPA recognized that both VOCs and $NO_X$ outside the nonattainment areas at 100 km and 200 km respectively could influence the nonattainment area. We allowed taking credit from sources within these areas of influence in the 9 percent Rate of Progress Plans. The fact that $NO_X$ influence has been shown to be meaningful within 200 km of a nonattainment area supports Texas' justification for controlling the components of diesel in many of the attainment areas surrounding the DFW nonattainment area. We believe it is appropriate to conclude that $NO_X$ emission reductions within this area will benefit the nonattainment area.

The Baylor Aircraft Study also demonstrated that ozone precursors were present in the ozone plumes being studied. The actual formation of ozone within plumes from point sources in the attainment areas suggests that ozone precursors are present in those plumes and are transported into nonattainment areas along with ozone. The evidence of transport of $NO_X$ from the attainment area into the nonattainment areas supports the statement that the LED fuel program will help to prevent ozone formation in the nonattainment area.

**Is the LED Fuel Program Necessary To Achieve the NAAQS?**

Without the LED program in the nine counties, implementation of all reasonable and practicable non-fuel control measures, including truck idling, would reduce $NO_X$ emissions by only 367.64 tpd. An additional 2.48 tpd of $NO_X$ emissions reductions is necessary for DFW to achieve timely attainment of the ozone NAAQS. The LED fuel program will supply additional reductions needed for the DFW area to demonstrate attainment. Therefore, we propose to find the LED fuel requirements for the nine counties necessary to achieve timely attainment of the ozone NAAQS in the DFW nonattainment area. This satisfies the requirement of necessity in section 211(c)(4)(C).

**Does the State Submittal Meet the SIP Approval Requirements Under Section 110?**

The LED fuel control program meets the requirements outlined in section 110. Texas submitted the fuel portion of the DFW attainment SIP under a Governor's letter April 25, 2000. The submittals contain the appropriate hearing actions, a preamble, and the LED fuel rules. The SIP was deemed complete by letter on June 23, 2000.[4]

**How Will the Program Be Enforced?**

The Texas Natural Resource Conservation Commission will implement the LED fuel rule. Anyone, including producers and importers, who sells, offers for sale, supplies, or offers for supply to affected counties the LED fuel are subject to provisions of this rule. Registration, recordkeeping, reporting, and certification requirements are included. This rule will be enforced in the same way as other regulations implemented by TNRCC. State law allows collection of administrative penalties up to $10,000 per day and civil penalties up to $25,000 per day for violations of air quality regulations. See Vernon's Texas Statutes & Codes, Annotated (VTCA) Water Code, sections 7.002, and 7.051. The TNRCC may also seek injunctive relief under section 7.032 of the Water Code.

Texas revised the enforcement portion of the State's LED rules on December 6, 2000, in response to our comments on the Houston Attainment Demonstration. That rule supersedes the enforcement provisions of the DFW LED rule.

**What Is Proposed?**

We are proposing to approve rules establishing a LED fuel requirement for all diesel fuel sold in nine counties in the DFW CMSA. We are also proposing to find, under section 211(c)(4)(C), that the State has demonstrated the fuel measure is necessary for attainment of the NAAQS and that no other measures exist which would bring about timely attainment or if such measures exist, they are not reasonable or practicable.

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.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

[4] As noted above, the regulations as submitted in the DFW SIP have since been revised. Today's action proposes approval of the current State LED regulations only insofar as they apply to the nine counties and only with respect to the standards to be implemented May 1, 2002.

August 10, 1999), because it merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 9, 2001.

**Lynda F. Carroll,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 01–9973 Filed 4–20–01; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 300

**[Docket No. 010111010–1010–01–01; I.D. 113000B]**

**RIN 0648–AO42**

## International Fisheries Regulations; Pacific Tuna Fisheries; Correction

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

**ACTION:** Correction to proposed rule; implementation of Inter-American Tropical Tuna Commission (IATTC) recommendations to reduce bycatch in the purse seine fishery and to establish a regional vessel register.

**SUMMARY:** This document corrects the classification section of the preamble to the proposed rule which was published on March 30, 2001. This rule proposes fishery conservation and management measures for the purse seine fishery in the eastern Pacific Ocean (EPO) to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species. The measures were recommended by the IATTC and approved by the Department of State (DOS), in accordance with the Tuna Conventions Act of 1950. In addition, the proposed rule would establish reporting requirements for U.S. vessels fishing for tuna in the EPO so that NMFS can provide information to the IATTC for a regional vessel register.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, 562–980–4030.

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed rule that was published in the **Federal Register** on March 30, 2001 (66 FR 17387), that proposes conservation and management measures for the purse seine fishery in the EPO to reduce bycatch of juvenile tuna, non-target fish species, and non-fish species, contained a number of errors that require correction.

### Correction

In the classification section of the proposed rule FR Doc. 01–7942, in the issue of Friday, March 30, 2001 (66 FR 17387), make the following correction:

On page 17388, in the second column, delete the last paragraph and replace it with the following paragraphs:

''Two alternatives were considered. A no action alternative and an additional action alternative.

Under the no action alternative, U.S. regulations would be deferred until it is clear that other nations have placed restrictions on their vessels equal to those imposed by the U.S. Deferring implementation of these regulations at this time would not immediately have any impacts on fish stocks because the U.S. share of total fishing in the EPO is quite small and U.S. fishers generally try to avoid small fish already due to their low value. Also, U.S. vessels already take care to minimize harm to sea turtles. However, this approach could result in serious long term impacts if other nations viewed failure of the U.S. to implement regulations in a timely manner as a sign of disagreement with the measures recommended by the IATTC. The U.S. has obligations under the convention to implement such recommendations as are approved by the DOS, and not fulfilling those obligations would probably result in many other nations failing to abide by the IATTC recommendations. This would almost certainly result in overfishing of the stocks, excessive bycatch, and long term losses to U.S. industries and vessel owners.

Under the additional action alternative, the U.S. would go beyond the recommendations of the IATTC or take an alternative approach to the vessel register information collection. For example, NMFS might act to require vessels to abort sets if the first brailing of fish on board demonstrates that there is a certain percentage of fish below a given size. NMFS also could propose to prohibit log sets (fish aggregating device sets)(FADs) to ensure that bycatch will be reduced. U.S. vessels have become more dependent on log sets (especially FAD sets) in recent years, and the IATTC already has recommended (and NMFS has implemented regulations) to close the log set fishery from September 15 through December 15 (at least for 2000), which will by itself contribute to reduced bycatch. NMFS might also establish a separate EPO licensing program with applications to include all the specific items of information specified in the IATTC recommendation.

Such actions would have greater impact on U.S. fleets than the proposed action. It is likely that more sets would be aborted than is now the case, which could cause inefficiency in the fishing operation and put the U.S. vessels at a disadvantage compared to foreign fleets. It is not clear that the benefits of further reductions would offset the loss of economic value associated with log set fishing; log sets constitute a very cost-effective fishing technique, and other

approaches than closures or full retention may be equally effective in reducing bycatch.

With respect to licensing, a single Federal license might be an efficient way not only to document who is fishing for these species in the EPO, but also to establish the universe of persons who would need to be contacted and whose fishing would need to be monitored to ensure adequate information for future management decisions. However, NMFS notes that the Pacific Fishery Management Council is preparing a fishery management plan for U.S. fisheries for highly migratory species off California, Oregon and Washington. Among the matters under consideration is a single licensing program and comprehensive reporting. NMFS does not want to foreclose the Council's options at this time, and, therefore, rejects this alternative''.

Dated: April 17, 2001.

**John Oliver,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 01–9984 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register
Vol. 66, No. 78
Monday, April 23, 2001

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

### Farm Service Agency

### President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of Meeting.

**SUMMARY:** Executive Order No. 13168 published September 22, 2000, established the President's Commission on Improving Economic Opportunity in Communities Dependent on Tobacco Production While Protecting Public Health (Commission). This notice announces that the Commission will conduct a public meeting on May 4, 2001. The purpose of the meeting will be to finalize recommendations from tobacco, economic development, and health working groups in preparation of the Commission's Final Report.

**DATES:** The Commission will meet on May 4, 2001, from 11:30 a.m. to 1:30 p.m. at 2101 L Street, NW, Room 303A, Washington, DC. If special accommodations are required, please contact Doug Richardson, at the address specified below, by COB April 30, 2001. All times are Eastern Daylight Savings Time. All meetings are open to the public; however, seating is limited and available on a first-come basis.

**FOR FURTHER INFORMATION CONTACT:** Doug Richardson, Executive Director, Tobacco Commission, United States Department of Agriculture, (USDA), 1400 Independence Avenue, SW, STOP 0574, Washington, D.C., 20250–0574 or telephone (202) 418–4266 or toll free (866) 804–6698; FAX (202) 418–4270; Internet: tobcom@wdc.usda.gov.

**SUPPLEMENTARY INFORMATION:** The purpose of the Commission is to advise the President on changes occurring in the tobacco farming economy and recommend such measures as may be necessary to improve economic opportunity and development in communities that are dependent on tobacco production, while protecting consumers, particularly children, from hazards associated with smoking. The Commission collected and reviewed information about changes in the tobacco farming economy and Federal, State, and local initiatives intended to help tobacco growers, tobacco quota holders, and communities dependent on tobacco production pursue new economic opportunities. The Commission issued its Preliminary Report on January 26, 2001, with comments requested through March 8, 2001. Copies of the Preliminary Report are available on the Commission's website at *http://www.fsa.usda.gov/tobcom/* or by contacting the Commission's office at the contact information listed above. All comments received through March 8, 2001, and up to the meeting on March 20, 2001, with respect to the Preliminary Report were reviewed by the Commission in its public meetings conducted on February 21, 2001, and March 20, 2001.

The Commission, in its March 20, 2001, meeting, also reviewed revised recommendations from two working groups representing the farm and economic development areas of the Commission. The health working group indicated that they had no new issues ready for discussion in the March 20, 2001, meeting. After this review, the Commission directed that each working group further revise their recommendations based on input received from the meeting and other recommendations to the Commission and prepare their final working group recommendations.

The purpose of the May 4, 2001, meeting is to review the final recommendations from the tobacco, economic development and health working groups in order to prepare the Final Report to the President.

Signed at Washington, D.C. on April 19, 2001.

**James R. Little,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 01–10079 Filed 4–19–01; 1:14 p.m.]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Cayuga Project, Chequamegon-Nicolet National Forest, Ashland County, WI

**AGENCY:** USDA, Forest Service.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of proposed land management activities, and corresponding alternatives, within the Cayuga project area.

The purpose of the Cayuga project is to implement a variety of land management activities that addresses resource management and public safety concerns while moving the area towards the desired future condition as directed in the Chequamegon Land and Resource Management Plan. These activities include vegetation management, wildlife and fisheries habitat protection and enhancement, watershed restoration, and recreation facilities and trail improvement. The existing condition does not meet the desired future condition described in the Chequamegon Land and Resource Management Plan.

A legal description for the area is as follows: Township 43 North, Range 2 West, Sections 6–7, 16–20, and 29; Township 43 North, Range 3 West, Sections 1–18, and 23–24; Township 43 North, Range 4 West, Sections 1–3, 10–23, and 27–33; Township 43 North, Range 5 West, Section 24; Township 44 North, Range 3 West, Sections 19–23 and 26–35; and Township 44 North, Range 4 West, Sections 23–27 and 34–36, Fourth Principle Meridian.

**DATES:** Initial comments concerning the scope of the analysis should be received on or before May 23, 2001 to receive timely consideration in the preparation of the draft EIS.

**ADDRESSES:** Send written comments concerning the proposed land management activities or requests to be placed on the project mailing list to: Barry Paulson, District Ranger, Great Divide Ranger District, P.O. Box 126, Hwy. 13, Glidden, Wisconsin 54527.

**FOR FURTHER INFORMATION CONTACT:** Teresa Maday, Project Leader/Integrated Resource Analyst, or Richard Strauss,

Assistant Ranger-Timber, Great Divide Ranger District, P.O. Box 126, Hwy. 13, Glidden, Wisconsin, or phone at (715) 264–2511.

**SUPPLEMENTARY INFORMATION:** The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by the proposed land management activities. The information presented in this notice is summarized. Those who wish to provide comments, or are otherwise interested in or affected by the project, are encouraged to obtain additional information from the contact identified in the For Further Information Contact section.

Proposed Actions—The proposed land management activities (proposed actions) include the following with approximate acreage and mileage values: (1) Forest Age and Composition—selection harvest 2,101 acres, thin 1,744 acres, clearcut harvest 732 acres, shelterwood seedcut harvest 339 acres, overstory shelterwood removal harvest 64 acres, and underplant 38 acres (other needs include 14 miles of temporary road construction, which will be obliterated following harvest activities, and reconstruction of 16.8 miles); (2) Visual Quality Objectives—underplant 53 acres with white pine in stands adjacent to Day Lake and Spillerberg Lake and within Day Lake Campground and shelterwood seedcut harvest 279 acres along County Highway GG north; (3) Recreation Facilities—thin 113 acres of jack and red pine within Day Lake Campground; (4) Fish and Wildlife Habitat Improvement—restore 75 acres of upland openings through a combination of hand cutting, mowing, and prescribed burning, remove fine debris and alder along 1.5 miles of McCarthy Creek, and place brush bundles along 1,000 feet of McCarthy Creek; (5) Watershed Improvement—replace culverts and improve road crossings at seven sites along unnamed tributaries to Dead Horse Slough, East Twin Lake, Brush Creek, Bad River, Squaw Creek and along County Highway GG north, and thin 52 acres and underplant within 300 feet of McCarthy Creek; (6) Noxious Weeds—biologically treat less than 1 acre of noxious weed infestation along County Highway GG north; (7) Trail Management—construct a 1 acre snowmobile trailhead and reroute 4.8 miles and abandon 2.5 miles of Snowmobile Trail 8; and (8) Road Closures—close .5 miles of road in the McCarthy Lake and Cedars Research Natural Area.

The scope of this analysis is limited to activities related to the purpose and need and measures necessary to mitigate the effects these activities may have on the environment. The decision will include if, when, how, and where to schedule: Vegetation management activities, recreation site and trail improvement projects, road improvement, construction, and management activities, watershed and fisheries improvement activities, planting and reforestation activities, wildlife habitat enhancement projects, visual quality enhancement activities, resource protection measures, monitoring, and other follow-up activities.

Responsible Official—The District Ranger of the Great Divide Ranger District, Barry Paulson, is the Responsible Official for making project-level decisions from the project.

Decision Space—Decision making will be limited to specific activities relating to the proposed actions. The primary decision to be made will be whether or not to implement the proposed actions or another action alternative that responds to the project's purpose and needs.

Project History—This project was originally presented to the public for review and comment in October 2000 prior to undertaking preparation of an Environmental Assessment (EA). Many years of experience implementing similar types of activities in the same vicinity have shown us that the effects are not significant. We therefore do not feel that an EIS is required. However, due to the increase in appeals and litigation over the last few years and for wise fiscal efficiency, we have decided to prepare an EIS. This Notice of Intent serves as notice of the intent to prepare an EIS for the Cayuga Project. The comments received as a result of the public participation for the Cayuga analysis will be brought forward for this EIS.

Preliminary Issues—Comments from American Indian tribes, the public, and other agencies were considered in the development of the tentative or preliminary issues. These are as follows: effects on Threatened, Endangered, and Sensitive (TES) and Management Indicator Species (MIS); concern over new road construction and road closures; safety concerns on a section of a motorized trail, direct, and indirect and cumulative effects.

Public Participation—The Forest Service is seeking comments from Federal, State, and local agencies, as well as local Native American tribes and other individuals or organizations that may be interested in or affected by the proposed actions. Comments received in response to this notice will become a matter of public record. While public participation is welcome at any time, comments on the proposed actions received within 30 days of this notice will be especially useful in the preparation of the draft EIS. Timely comments will be used to identify: potential issues with the proposed actions, alternatives to the proposed actions that respond to the identified needs and significant issues, and potential environmental effects of the proposed actions and alternatives considered in detail. In addition, the public is encouraged to contact and/or visit Forest Service officials at any time during the planning process.

Relation to Forest Plan Revision—The Chequamegon-Nicolet National Forest is in the process of revising and combining the existing Land and Resource Management Plans (Forest Plans) for the Chequamegon National Forest and the Nicolet National Forest, which were administratively separate at the time the Forest Plans were developed. A Notice of Intent to revise and combine the Forest Plans was issued in 1996. As part of this process, various inventories and evaluations are occurring. Additionally, the Forest is in the process of developing alternative land management scenarios that could change the desired future conditions and management direction for the Forest. A Draft Environmental Impact Statement (DEIS) will be published in the near future that will disclose the consequences of the different land management direction scenarios considered in detail. As a result of the Forest Plan revision effort, the Forest has new and additional information beyond that used to develop the existing Forest Plans. This information will be used where appropriate in the analysis of this project to disclose the effects of the proposed activities and any alternatives developed in detail.

The decisions associated with the analysis of this project will be consistent with the existing Forest Plan, unless amended, for the Chequamegon. Under regulations of the National Environmental Policy Act (40 CFR 1506.1), the Forest Service can take actions while work on a Forest Plan revision is in progress because a programmatic Environmental Impact Statement—the existing Forest Plan Final EIS, already covers the actions. The relationship of this project to the proposed FP revision will be considered as appropriate as part of this planning effort.

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 the draft EIS must structure their participation in the environmental review of the proposal in such a way 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 of the draft EIS in order that substantive comments and objections are available to the Forest Service at 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.

The responsible official for this EIS is Barry Paulson, District Ranger, Chequamegon-Nicolet National Forest.

Dated: April 17, 2001.

**Lynn Roberts,**

*Forest Supervisor.*

[FR Doc. 01–9951 Filed 4–20–01; 8:45 am]

BILLING CODE 3401–11–U

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Olympic Provincial Interagency Executive Committee (PIEC) Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Olympic PIEC Advisory Committee will meet on May 11, 2001. The meeting will be held at the Jamestown S'Klallam Tribal Center's conference room, 1033 Old Blyn Highway, Sequim, Washington. The meeting will begin at 9:00 AM and end at approximately 3:30 PM. Agenda topics are: (1) Introductions of new committee members and brief Forest update; (2) adaptive management area process; (3) Northwest Forest Plan monitoring report; (4) road management video; (5) Rural Schools and Community Self-Determination Act of 2000; (6) Olympic Province Advisory Committee work plan and goals; (7) Open forum; and (8) Public comments.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd. Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (360) 956–2301.

Dated: April 11, 2001.

**Luis E. Santoyo,**

*Operations Staff, Acting Forest Supervisor, Olympic National Forest.*

[FR Doc. 01–9781 Filed 4–20–01; 8:45 am]

BILLING CODE 3410–KE–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on May 8, 2001, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

**Agenda**

*Public Session*

1. Opening remarks and introductions.
2. Discussion on license conditions.
3. Update on Wassenaar Arrangement negotiations.
4. Discussion on Regional Stability controls.
5. Presentation of papers or comments by the public.

*Closed Session*

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. 20230. For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 17, 2001.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 01–9874 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 9, 2001, 9:30 a.m., at the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export

Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

**Agenda**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Update on foreign policy controls.
5. Briefing on missile technology issues.
6. Update on the Wassenaar Arrangement.
7. Update on regulatory changes.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

For more information or copies of the minutes, please call Lee Ann Carpenter on (202) 482–2583.

Dated: April 17, 2001.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 01–9875 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket A(27f)–21–01]**

### Foreign-Trade Zone 161—Sedgwick County, KA, Request for Minor Modification—Subzone 161B, Frontier El Dorado Refining Company, El Dorado, KA (Crude Oil Refinery Complex)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of County Commissioners of Sedgwick County, Kansas, grantee of FTZ 161, requesting authority on behalf of the Frontier El Dorado Refining Company (Frontier), pursuant to Sec. 400.27(f) of the Board's regulations, for a minor modification of the list of products that can be produced from non-privileged (NPF) inputs referenced in Restriction #2 of FTZ Board Order 862 (62 FR 1314, 1/9/97) and Board Order 1116 (65 FR 52696, 8/30/00), authorizing Subzone 161B at Frontier's' oil refinery complex in El Dorado, Kansas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 10, 2001.

The company is now requesting to add one additional refinery product—Alpha-Methylstyrene (also known as AMS or styrene) (HTSUS 2902.50.0000, duty-free)—to the list of petrochemical feedstocks and refinery by-products that can be produced from NPF status inputs (e.g., crude oil) at the refinery. The list is referenced as Appendix ''C'' of the Examiner's Report in Board Orders 862 and 1116, Restriction #2.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 23, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 7, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 11, 2001.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 01–9982 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket A(27f)–20–01]**

### Foreign-Trade Zone 149—Freeport, TX, Request for Minor Modification—Subzone 149C, Phillips Petroleum Company, Sweeney, TX (Crude Oil Refinery Complex)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Freeport, grantee of FTZ 149, requesting authority on behalf of Phillips Petroleum Company (Phillips), pursuant to Section 400.27(f) of the Board's regulations, for a minor modification of the list of products that can be produced from non-privileged (NPF) inputs referenced in Restriction #2 of FTZ Board Order 920 (62 FR 51830, 10/3/97) and Board Order 1116 (65 FR 52696, 8/30/00), authorizing Subzone 149C at Phillips' oil refinery complex in Sweeney, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 10, 2001.

The company is now requesting to add four additional refinery products—normal pentane, iso-pentane, hexane and C5 diolefins (HTSUS 2901.10.3000, 2901.10.4000 and 2901.29.5000, duty-free)-to the list of petrochemical feedstocks and refinery by-products that can be produced from NPF status inputs (e.g., crude oil) at the refinery. The list is referenced as Appendix ''C'' of the Examiner's Report in Board Orders 920 and 1116, Restriction #2.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 23, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 7, 2001.

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 11, 2001.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 01–9981 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 7–2001]**

### Foreign-Trade Zone 129—Bellingham, Washington Application for Subzone Status ARCO Products Company (Oil Refinery Complex); Extension of Public Comment Period

The comment period for the above case, requesting special-purpose subzone status for the oil refining complex of the Atlantic Richfield Company (ARCO), in the Bellingham, Washington, area (66 FR 8930, 2/5/01),

is being extended to June 6, 2001, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 12, 2001.

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 01–9980 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–802]**

### Gray Portland Cement and Clinker: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for preliminary results of antidumping duty administrative review.

**EFFECTIVE DATE:** April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Davina Hashmi, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0180.

### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

### Extension of Time Limit for Preliminary Results

The Department of Commerce (the Department) received a request to conduct an administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico. On September 26, 2000, the Department initiated this administrative review covering the period August 1, 1999, through July 31, 2000.

This case involves numerous complex issues including whether sales are outside the ordinary course of trade, model-matching, and the initiation of a sales-below-cost investigation. In addition, to allow time for verifications, should we determine that it is necessary to conduct verifications, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the preliminary results to August 31, 2001. The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 16, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 01–9978 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–601]**

### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1990/1991, 1991/1992, and 1992/1993 Antidumping Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final court decision and amended final results of administrative reviews.

**EFFECTIVE DATE:** April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** George Callen or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0180 or (202) 482–4477, respectively.

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department) regulations are to the regulations as codified at 19 CFR Part 353 (1995).

### Summary

On August 8, 2000, the Department published in the **Federal Register** its notice of *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Amended Final Results of 1990/1991, 1991/1992, and 1992/1993 Antidumping Duty Administrative Reviews,* 65 FR 48478 (*Amended Final Results*). In that notice, the Department published the final margins following affirmation of final remand results by the Court of International Trade (CIT) and the United States Court of Appeals for the Federal Circuit (CAFC). See *Peer Bearing Company* v. *United States,* Slip Op. 98–161 (CIT December 7, 1998), aff'd mem., sub nom. *The Timken Co.* v. *United States,* No. 99–1204 (Fed. Cir. October 6, 1999).

However, the *Amended Final Results* did not take into account the final remand results of another decision by the CIT affecting the entries of one firm, Transcom, Inc. See *Transcom, Inc.* v. *United States,* Slip Op. 99–86 (CIT August 20, 1999). In that decision, the CIT ordered, pursuant to the decision of the CAFC in *Transcom, Inc.* v. *United States,* 182 F.3d 876 (Fed. Cir. 1999), that the Department refund to Transcom all antidumping duty deposits made in excess of the 2.96% ''all others'' rate established in the original investigation on tapered roller bearings that were collected during the review periods from June 1, 1990, through May 31, 1993.

As there is a final and conclusive court decision in this action, we are amending our final results of reviews, and we will instruct the Customs Service to liquidate entries of Transcom, Inc., at the rate of 2.96% for these review periods.

This notice is published pursuant to section 751(a) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 16, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01–9979 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–423–809]**

### Stainless Steel Plate in Coils from Belgium: Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel plate in coils from Belgium for the period September 4, 1998, through December 31, 1999. We have preliminarily determined that the only producer/exporter covered by this review, ALZ N.V., received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the Preliminary Results of Review section of this notice. Interested parties are invited to comment on these preliminary results (see the Public Comment section of this notice).

**EFFECTIVE DATE:** April 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder, Melani Miller, or Anthony Grasso, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0189, (202) 482–0116, or (202) 482–3853, respectively.

**SUPPLEMENTARY INFORMATION:**

## Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''URAA'') effective January 1, 1995 (''the Act''). Similarly, all citations to the Department of Commerce's (''the Department'') regulations are to the current regulations as codified at 19 CFR Part 351 (2000), including the new substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (63 FR 65348), unless otherwise indicated.

## Background

On May 11, 1999, the Department published in the **Federal Register** (64 FR 25288) the countervailing duty order on stainless steel plate in coils from Belgium. On May 16, 2000, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order (65 FR 31141). On May 31, 2000, we received a timely request for review of ALZ N.V. (''ALZ'') from Allegheny Ludlum Corp., Armco, Inc., Lukens Inc., and United Steelworkers of America, AFL–CIO/CLC (collectively, ''the petitioners'').

We initiated the review, covering calendar year 1999, on July 7, 2000 (65 FR 41942). As noted below in the Period of Review section, the appropriate period of review (''POR'') in this proceeding is September 4, 1998 through December 31, 1999, not calendar year 1999. Corrections to the initiation notice to revise the POR were published in the **Federal Register** on October 2, 2000 (65 FR 58733) and October 30, 2000 (65 FR 64662).

On July 26, 2000, we received a timely allegation from the petitioners concerning several additional subsidies. The petitioners also requested that the Department re-investigate several equity programs that had been examined in the investigation. *See Final Affirmative Countervailing Duty Determination; Stainless Steel Plate in Coils from Belgium,* 64 FR 15567 (March 31, 1999) (''*Plate in Coils from Belgium*''). ALZ submitted information rebutting these allegations and requests on August 7, 2000. We decided to include two of the newly-alleged subsidy programs in this review; we also decided to re-examine two previously-investigated equity investments from *Plate in Coils from Belgium.* We determined not to investigate two of the newly-alleged subsidy programs. *See* October 19, 2000 memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement, entitled ''New Subsidy Allegations'' (''New Allegations Memo''), which is on file in the Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce building (''CRU'').

In accordance with 19 CFR 351.213(b), this review of the order covers ALZ, the only company for which a review was specifically requested. This review covers 27 programs, including the four programs for which we initiated an investigation or re-investigation, noted above.

On August 9, October 4, October 19, and December 5, 2000, we issued countervailing duty questionnaires and supplemental questionnaires to the Government of Belgium (''GOB''), the Government of Flanders (''GOF''), the Commission of the European Union (''EC''), and ALZ. We received timely responses from these parties in October and November 2000 and January 2001.

On January 2, 2001, the Department published a notice in the **Federal Register** extending the time limit for issuing these preliminary results until no later than April 16, 2001 (66 FR 95).

## Scope of the Review

Imports covered by this review are shipments of certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and for Customs Service (''Customs'') purposes, the written description of the scope of the order is dispositive.

## Period of Review

According to section 351.213(e)(2)(ii) of the Department's regulations, in the case of the first administrative review of a countervailing duty order, the POR should extend from the initial date of suspension of liquidation of the subject merchandise to the end of the most recently completed fiscal year. In this case, suspension of liquidation began on September 4, 1998, the date of publication of the preliminary results in *Plate in Coils from Belgium. See*

*Preliminary Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Plate in Coils From Belgium,* 63 FR 47239 (September 4, 1998). Therefore, the POR for which we are measuring countervailable subsidies is from September 4, 1998 through December 31, 1999.

Because it is the Department's practice to calculate subsidy rates on an annual basis, we calculated a 1998 rate and a 1999 rate for ALZ. The rate calculated for 1998 will be applicable only to entries, or withdrawals from warehouse, for consumption made on and after September 4, 1998 through the end of 1998.

**Subsidies Valuation Information**

*Responding Producers*

In *Plate in Coils from Belgium,* we found that ALZ had two subsidiaries which were involved in the production of the subject merchandise, ALBUFIN N.V. (''Albufin'') and AL–FIN N.V. (''Alfin''). ALZ has reported in the instant review that, as of the end of 1998, Albufin was merged into ALZ and no longer exists as a separate entity. We have included subsidies to these companies in the subsidy rate for ALZ for the POR. Furthermore, SIDMAR (''Sidmar'') owns either directly or indirectly 100 percent of ALZ's voting shares and is the overall majority shareholder of ALZ. Therefore, in accordance with section 351.525(a)(6)(iii) of the Department's regulations, because ALZ is a fully consolidated subsidiary of Sidmar, any untied subsidies provided to Sidmar are attributable to ALZ.

*Benchmarks for Long-term Loans and Discount Rates*

Both ALZ and Sidmar obtained long-term commercial loans contemporaneously with the receipt of certain government loans or grants that are under review. Therefore, where ALZ or Sidmar obtained long-term commercial loans, we used the company-specific interest rates as the long-term loan benchmark interest rate or discount rate. See section 351.505(a)(2)(ii) of the Department's regulations. For all other years, we used national average rates for long-term, fixed-rate debt as the long-term loan benchmark interest rate or discount rate. See section 351.505(a)(3)(ii) of the Department's regulations.

*Equity Methodology*

Section 771(5)(E)(i) of the Act and section 351.507 of the Department's regulations state that, in the case of government-provided equity infusion, a benefit is conferred if an equity investment decision is inconsistent with the usual investment practice of private investors.

Consistent with the methodology discussed in section 351.507 of the Department's regulations, the first question in analyzing a benefit with respect to an equity infusion is whether, at the time of the infusion, there was a market price for similar newly-issued equity. If so, the Department will consider an equity infusion to be inconsistent with the usual investment practice of private investors if the price paid by the government for newly-issued shares is greater than the price paid by private investors for the same, or similar, newly-issued shares.

If actual private investor prices are not available, then the Department will determine whether the firm funded by the government-provided infusion was equityworthy or unequityworthy at the time of the equity infusion. (*See* section 351.507(a)(3)(i) of the Department's regulations.) Section 351.507(a)(4)(ii) of the Department's current regulations further stipulates that the Department will ''normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion.'' Absent an analysis containing information typically examined by potential private investors considering an equity investment, the Department will normally determine that the equity infusion provides a countervailable benefit. This is because, before making a significant equity infusion, it is the usual investment practice of private investors to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor.

In this review, as noted above, the Department is examining three government equity infusions. *See* 1984 Purchase of Sidmar's Common and Preference Shares, 1985 ALZ Share Subscriptions, and Sidmar's Debt to Equity (OCPC-to-PB) conversion in 1985 in the individual program descriptions, below, for an individual analysis relating to each of the three GOB equity infusions.

*Allocation Period*

*In Plate in Coils from Belgium*, in accordance with a Court of International Trade (''CIT'') decision, we calculated company-specific allocation periods for non-recurring subsidies using company-specific average useful life (''AUL'') data. (*See British Steel plc* v. *United States,* 929 F. Supp. 426, 439 (CIT 1996)). We determined that the AUL for ALZ was 15 years, and that the AUL for Sidmar was 19 years.

Since *Plate in Coils from Belgium,* new countervailing duty regulations have come into force and are applicable to this review. Pursuant to section 351.524(d)(2) of these regulations, the Department will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets as listed in the IRS tables unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. In this case, the AUL in the IRS tables is 15 years.

With respect to non-recurring subsidies received prior to the POR which have already been countervailed and allocated based on an allocation period established in *Plate in Coils from Belgium,* it is neither reasonable nor practicable to reallocate those subsidies over a different time period. Therefore, we have preliminarily decided to allocate non-recurring subsidies countervailed in *Plate in Coils from Belgium* over 15 years for ALZ and over 19 years for Sidmar. This methodology is consistent with our approach in *Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review,* 62 FR 16549 (April 7, 1997) and *Certain Pasta from Italy: Final Results of Third Countervailing Duty Administrative Review,* 66 FR 11269 (February 23, 2001).

With respect to new non-recurring subsidies which have not been previously allocated, ALZ (also responding on behalf of Sidmar) does not contest the use of the 15-year allocation period in the IRS tables for both ALZ and Sidmar. The petitioners, however, have argued that, because a 19-year company-specific AUL for Sidmar was verified in *Plate in Coils from Belgium,* and because that AUL differs from the IRS table AUL by more than one year, the presumption that the IRS AUL is the most appropriate for Sidmar has been rebutted. (The petitioners do not contest the use of the AUL from the IRS tables for ALZ.) Moreover, the petitioners note that, in *Plate in Coils from Belgium,* ALZ itself argued that the Department should use the 19-year AUL for Sidmar. The petitioners point out that ALZ, in its case brief in *Plate in Coils from Belgium,* noted that, even if that investigation had been conducted under the new regulations, Sidmar would qualify for a company-specific AUL.

ALZ disagrees with the petitioners, and argues that the 15-year AUL included in the IRS tables is the most appropriate AUL to use for Sidmar. ALZ argues that any entity wishing to rebut the presumption of the use of the IRS tables must actually demonstrate that the IRS table AUL is inappropriate. ALZ contends that the petitioners did not meet the burden of proof set forth in section 351.524(d)(2)(iii) of the Department's regulations, and, hence, have not rebutted the presumption of a 15-year AUL for Sidmar.

In further support of its arguments, ALZ notes that the 19-year AUL derived in the investigation was based on information derived from Sidmar NV, not on information from the entire Sidmar Group (of which Sidmar NV is one part). Given that the subsidies in question were received by the Sidmar Group, Sidmar NV's experience should not be sufficient to rebut the presumption as it applies to the Sidmar Group.

Given that we relied on Sidmar NV's data to calculate Sidmar's AUL in *Plate in Coils from Belgium* and, thus, we have a relative recently calculated AUL that has been applied to Sidmar, we have continued to use a 19-year AUL for these preliminary results. However, we invite further comment on this issue for the final results. While we acknowledge that we used Sidmar NV's data in Plate in Coils from Belgium, we did so because it was the best company-specific information we had at that time. However, given the preference in the new regulations for IRS data, we believe that it is appropriate to reconsider whether IRS data should not be preferred to company-specific data which is flawed because it is based only on a portion of the subsidy recipient's data.

As for ALZ, because no party has demonstrated that another period was more appropriate than the AUL period required by the Department's current regulations, any new, not previously allocated non-recurring subsidies received by ALZ during the current POR are being allocated over 15 years as specified in the IRS tables.

**Analysis of Programs**

**I. Programs Preliminarily Determined to Confer Subsidies**

*A. 1985 ALZ Share Subscriptions (identified as 1985 ALZ Share Subscriptions and Subsequent Transactions in Plate In Coils from Belgium)*

In 1985, the GOB made three share subscriptions (one subscription for ordinary shares and two for preference shares) in ALZ. These purchases followed Royal Decree No. 245 of December 31, 1983, which allowed the GOB to make preference share subscriptions in the steel industry as long as the subscriptions did not exceed one-half of the social capital of the company. ALZ, the GOB, and the Nationale Maatschappig voor de Herstructurering van de Nationale Sectoren (''NMNS''), the government agency purchasing the shares, signed an agreement with respect to these purchases on July 10, 1985. ALZ's shareholders approved of these share acquisitions on September 26, 1985.

In *Plate in Coils from Belgium*, we analyzed whether the GOB's 1985 share purchases conferred a benefit on ALZ according to the equity methodology that was in place prior to the issuance of the Department's current subsidy regulations. We found in our investigation that ALZ was equityworthy and that the GOB's 1985 share subscriptions in ALZ did not constitute a countervailable subsidy within the meaning of section 771(5) of the Act. However, in the instant review, as explained in our New Allegations Memo, we have re-initiated an investigation of these 1985 share subscriptions based on the change in our equity methodology from the time of the original investigation of this program.

ALZ has reported that there was no market price for similar newly-issued equity at the time the GOB purchased ALZ's equity, as neither ALZ's common nor preference shares were publicly traded. Therefore, we must determine whether ALZ was equityworthy or unequityworthy at the time of the 1985 equity infusion.

As explained in the Equity Methodology section, above, we first examined any analysis relied upon by the GOB in making its decision to invest in ALZ. Based on our review of this information, we have preliminarily determined that no objective studies of ALZ had been prepared prior to the GOB's investment decision on which the GOB could have based its investment decision. *See* the Department's April 16, 2001, memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement entitled ''Government of Belgium Equity Infusions: 1984 Infusion in Sidmar, 1985 Infusion in ALZ, and the Conversion of Sidmar's Debt to Equity (OCPC-to-PB) in 1985'' (''Equity Infusions Memorandum'') (on file in the CRU).

Therefore, we preliminarily determine that the GOB's purchases of ALZ's ordinary and preferred shares in 1985 constitute a countervailable subsidy within the meaning of section 771(5) of the Act. These investments provide a financial contribution, as described in section 771(5)(D)(i) of the Act. Also, in *Plate in Coils from Belgium,* we determined that benefits under Royal Decree No. 245 are available only to the steel sector. On this basis, we preliminarily determine that this program is specific under section 771(5A)(D)(i) of the Act. Finally, because no analysis was performed containing information typically examined by potential private investors considering an equity investment prior to the GOB's decision to invest in ALZ, the investment decision was inconsistent with the usual investment practice of private investors. Therefore, a benefit exists according to section 771(5)(E)(i) of the Act in the amount of the equity infusion.

To calculate the benefit applicable to the POR, we applied the Department's standard grant methodology. Because we could not determine according to section 351.524(b)(2) of the Department's regulations whether we should allocate this non-recurring expense to the year in which it was approved because we did not have relevant sales information for that year, we preliminarily allocated the benefit over the AUL for ALZ. We will seek information from ALZ with respect to the appropriate sales information for the final results. We divided the total benefit attributable to 1998 and 1999 by ALZ's total sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.69 percent ad valorem, and the countervailable subsidy for 1999 to be 0.62 percent ad valorem.

*B. 1987 ALZ Common Share Transaction Between the GOB and Sidmar (also identified as 1985 ALZ Share Subscriptions and Subsequent Transactions in Plate In Coils from Belgium)*

As discussed above, in 1985, the GOB made three share subscriptions in ALZ involving both common shares and preference shares. In 1987, the GOB sold the common shares it had purchased to Kempense Investeringsvennootschap, a company controlled by Sidmar.

In *Plate in Coils from Belgium*, we concluded that the GOB did not behave as a private investor when selling its shares in 1987 because it accepted a lower price than it otherwise could have obtained for the shares. Therefore, we determined that the GOB's 1987 sale of ALZ's common shares to Sidmar constituted a countervailable subsidy

within the meaning of section 771(5) of the Act. The sale provided a financial contribution, as described in section 771(5)(D)(i) of the Act. Moreover, we found that benefits under Royal Decree No. 245 were available only to the steel sector. On this basis, we determined that the program was specific under section 771(5A)(D)(i) of the Act. In this review, no new information has been placed on the record which would warrant reconsideration of this determination.

To calculate the benefit conferred during the POR, we took the difference between market value for ALZ's common stock and the price paid by Sidmar for the stock, and treated the difference as a grant. We then applied the Department's standard grant methodology and divided the benefit in 1998 and 1999 by Sidmar's total consolidated sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.07 percent ad valorem, and the countervailable subsidy for 1999 to be 0.07 percent ad valorem.

*C. Industrial Reconversion Zones*

Alfin

Alfin was established as a ''proper'' reconversion company in 1985 under the reconversion program ''Herstelwet 1984.'' Alfin was financed by a government agency, Nationale Investeringsmaatschappij (''NIM''), and ALZ. In exchange for its investment, NIM received non-voting preferred shares and a two percent annual return on its investment. ALZ was obligated to repurchase all of the shares purchased by NIM at the issued price over a ten-year period.

Using the hierarchical criteria discussed in the ''Classification of Hybrid Financial Instruments Issue'' section of the General Issues Appendix to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria,* 58 FR 37217, 37239 (July 9, 1993), we found in *Plate In Coils from Belgium* that these shares constituted debt instruments because they have a fixed repayment period. These debt instruments remained outstanding during part of the POR.

In *Plate In Coils from Belgium,* we found that this program conferred a countervailable subsidy within the meaning of section 771(5) of the Act. This program provided a financial contribution as described in section 771(5)(D)(i) of the Act. Moreover, because benefits under the ''Herstelwet 1984'' law were limited to firms in certain regions of the country, the program was specific under section 771(5A)(D)(iv) of the Act. In this review, no new information has been placed on the record which would warrant reconsideration of this determination.

To measure the benefit conferred by this loan during the POR, we used our long-term fixed-rate loan methodology. We divided the subsidy allocated to 1998 by ALZ's total sales for 1998. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.17 percent ad valorem.

ALZ reported that it completed its repurchase of the shares held by NIM in 1998. Therefore, we preliminarily determine that this program did not confer a countervailable subsidy in 1999.

Albufin

Albufin was established as an ''improper'' reconversion company in 1989, also under the reconversion program ''Herstelwet 1984.'' Albufin received its initial capital from the government (NIM), the Sidmar Group (FININDUS), a private company (Klockner Stahl), and ALZ. In *Plate In Coils from Belgium,* we determined that, because Klockner Stahl was a private company at the time of Albufin's establishment, and it invested on the same terms as the government, there was no countervailable benefit resulting from the establishment of the company. However, we found that, as an ''improper'' reconversion company, Albufin benefitted from a tax exemption on dividend payments and was exempt from the capital registration tax.

In *Plate In Coils from Belgium,* we determined that these tax benefits received by Albufin were countervailable subsidies within the meaning of section 771(5) of the Act. The tax benefits were a financial contribution as described in section 771(5)(D)(ii) of the Act which provided a benefit to the recipient in the amount of the tax savings. Because benefits under the ''Herstelwet 1984'' law were limited to firms in certain regions of the country, we determined that this program was specific under section 771(5A)(D)(iv) of the Act. In this review, no new information has been placed on the record which would warrant reconsideration of this determination.

During the POR, Albufin (which merged into ALZ on November 1, 1998), did not receive tax savings under the capital registration tax; Albufin did, however, benefit during the POR from the exemption on dividend payments. To measure the benefit from this tax exemption, we treated the 1998 and 1999 tax savings as a recurring benefit and divided them by ALZ's total sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.05 percent ad valorem, and the countervailable subsidy for 1999 to be 0.03 percent ad valorem.

*D. Regional Subsidies under the Economic Expansion Law of 1970*

The 1970 Law offers various incentives to enterprises located within designated disadvantaged regions. Although the GOB originally oversaw the implementation of the 1970 Law, pursuant to the overall devolution of power from the GOB to the regional governments since the early 1980s, the authority to administer the 1970 Law has been transferred to the regional governments. With respect to Flanders, many of the 1970 Law subsidy programs have been implemented and administered by the GOF since the late 1980s and the ''execution modalities'' have been amended by several Flemish decrees. Currently, the GOB funds the programs under the 1970 Law as part of a lump sum provided to finance the overall operations of the GOF.

The Department found in *Plate in Coils from Belgium* that ALZ received several types of assistance under the 1970 Law subsidy: 1993 Expansion Grant, Investment and Interest Subsidies, Accelerated Depreciation, and Real Estate Tax Exemption. Most of this assistance was provided after the GOF assumed control of the subsidy programs. Therefore, pursuant to *Plate in Coils from Belgium*, we are treating the GOF as the authority providing these subsidies. However, ALZ received one grant in 1983 (Investment and Interest Subsidies). The Department considers this grant bestowed by the GOB because it was received prior to the GOF takeover of 1970 Law authority.

The GOF's framework for economic expansion consists of the 1970 Law (for medium and large-sized businesses located in a disadvantaged region), the Act of August 4, 1978 (''1978 Act,'' for small businesses and one-man companies), and the 1993 Economic Expansion Decree (''1993 Decree,'' for medium and large-sized businesses not eligible for assistance under the 1970 Law). These laws provide various subsidies designed to promote expansion, employment, investment, research and development, and conformance with environmental standards.

In *Plate in Coils from Belgium*, the Department determined that, in certain instances, subsidies provided under the current economic expansion laws—the 1978 Act, the 1993 Decree, and the 1970 Law—should be considered as one

program for specificity purposes. Specifically, the Department found that the environmental grants and environmental real estate tax exemptions provided pursuant to those laws are integrally linked. Moreover, we determined that environmental grants and environmental real estate tax exemptions are not specific and, therefore, not countervailable. However, with respect to the other subsidies received by Albufin under the 1970 Law (*i.e.,* the 1993 Expansion Grant, the Real Estate Tax Exemption for Albufin's expansion investment, and Accelerated Depreciation), these subsidies were either not available to large companies under the 1993 Decree or the 1978 Act, or, in the case of the 1993 Expansion Grant, the 1993 Decree was not in effect at the time the subsidy was approved. Therefore, we determined that these subsidies provided under the 1970 Law cannot be integrally linked with the 1993 Decree or the 1978 Act.

Following is a discussion relating to the Expansion Real Estate Tax Exemption and Accelerated Depreciation programs. The 1993 Expansion Grant and Investment and Interest Subsidies programs can be found below in the Programs Preliminarily Determined to Be Not Used section.

Expansion Real Estate Tax Exemption

Pursuant to Article 16 of the 1970 Law, assets acquired using benefits received under the 1970 Law may be exempted from real estate taxes for up to five years, depending on the extent to which objectives of the 1970 Law are achieved. Albufin utilized this tax exemption for an expansion project.

In *Plate in Coils from Belgium*, we found that this expansion real estate tax exemption was countervailable within the meaning of section 771(5) of the Act. We determined it to be a financial contribution as described in section 771(5)(D)(ii) of the Act that provides a benefit to the recipient in the amount of the tax savings. As noted above, only the 1970 Law provides tax exemptions for expansion investments to large enterprises and since the 1970 Law only provides subsidies to companies located in certain regions, we determined that this expansion real estate tax exemption was specific under section 771(5A)(D)(iv) of the Act. In this review, no new information has been placed on the record that would warrant reconsideration of this determination.

In 1998, Albufin received tax savings under this plan. To measure the benefit from this tax exemption, we treated the 1998 tax savings as a recurring benefit and divided it by ALZ's total sales during 1998. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.10 percent ad valorem. This tax benefit expired for Albufin in 1998. Therefore, we preliminarily determine that this program did not confer a countervailable subsidy in 1999 upon Albufin.

Accelerated Depreciation

Article 15 of the 1970 Law allows certain companies to declare twice the standard depreciation for assets acquired using grants bestowed under the law.

In *Plate in Coils from Belgium*, we found that this tax benefit received by Albufin, an ALZ subsidiary, was countervailable within the meaning of section 771(5) of the Act. The Department determined this tax benefit to be a financial contribution as described in section 771(5)(D)(ii) of the Act that provides a benefit to the recipient in the amount of the tax savings. The Department also determined this program to be specific under section 771(5A)(D)(iv) of the Act because only enterprises that were situated in certain development zones were eligible to apply for accelerated depreciation. In this administrative review, no new information has been placed on the record that would warrant reconsideration of this determination.

In the instant review, ALZ claimed accelerated depreciation related to environmental investment projects during fiscal years 1997 (tax form filed in 1998) and 1998 (tax form filed in 1999). In *Plate in Coils from Belgium*, we found environmental grants and environmental real estate tax exemptions provided pursuant to the 1970 Law, the 1978 Act, and the 1993 Decree to be integrally linked, because in this respect, each of these laws complements and cross references the others in its ''area of application.'' The 1970 Law provides environmental grants and real estate tax exemptions for investments by medium- and large-sized enterprises located in development zones, the 1993 Decree provides them for investments by medium- and large-sized firms ''not eligible for assistance under the 1970 Law,'' and the 1978 Act provides the same subsidies for investments by small-sized companies.

In *Plate in Coils from Belgium*, we did not make a similar determination with respect to accelerated depreciation as ALZ was in a tax loss position during the period of investigation and, thus, did not benefit from this program. However, because only the 1970 Law allows accelerated depreciation claims on environmental investment projects (grants), we preliminarily find the 1970 Law not to be integrally linked with the 1978 Act and the 1993 Decree in this regard.

In calculating ALZ's benefit from accelerated depreciation, we treated the tax savings as a recurring benefit and divided it by ALZ's total sales during the POR. On this basis, we preliminarily determine ALZ's countervailable subsidy for 1998 to be 0.06 percent ad valorem.

As in *Plate in Coils from Belgium*, we did not find ALZ's use of accelerated depreciation to confer a countervailable benefit in 1999 as ALZ was in a tax loss position for the return filed in that year.

*E. Belgian Industrial Finance Company (''Belfin'') Loans*

Belfin was established by Royal Decree on June 29, 1981, as a mixed corporation with 50 percent GOB participation and 50 percent private industry participation. In the *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium*, 58 FR 37273 (July 9, 1993) (''*Certain Steel*''), we determined that Belfin's objective is to finance investments needed for the restructuring and development of various sectors of industry, commerce, and state services. Belfin borrows money in Belgium and on international markets, with the benefit of government guarantees, in order to obtain the funds needed to make loans to Belgian companies. The government's guarantee makes it possible for Belfin to borrow at favorable interest rates and to pass the savings along when it lends the funds to Belgian companies. Belfin loans to Belgian companies are not guaranteed by the GOB. Moreover, these loans carry a one percent commission which is used to maintain a guarantee fund to support the GOB's guarantee of Belfin's borrowing. ALZ had Belfin loans outstanding during the POR.

In *Plate in Coils from Belgium*, we determined that this program constituted a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provided a financial contribution, as described in section 771(5)(D)(i) of the Act, with the benefit equal to the difference between the benchmark rate and the rate ALZ pays on these loans. Although the objective of Belfin loans is to assist the restructuring and development of various sectors, we found that steel companies were the predominant recipients of Belfin loans. Therefore, we determined that the Belfin loans to the steel industry were specific under section 771(5A)(D)(iii) of the Act. In this review, no new information has been

placed on the record that would warrant reconsideration of this determination.

To measure the benefit of these loans, we used our long-term fixed-rate loan methodology. For the outstanding Belfin loan to ALZ, we divided the subsidy amount received in 1998 by ALZ's total sales during 1998. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.00 percent ad valorem. The Belfin loan to ALZ was repaid in 1998. Therefore, we preliminarily determine that this loan did not confer a countervailable subsidy on ALZ in 1999.

There was also an outstanding Belfin loan to Alfin. We preliminarily determine that no benefit was conferred in either 1998 or 1999; therefore, this loan did not confer a countervailable subsidy within the POR.

*F. Societe Nationale de Credite a l'Industrie (''SNCI'') Loans*

SNCI was a public credit institution, which, through medium-term and long-term financing, encouraged the development and growth of industrial and commercial enterprises in Belgium. SNCI was organized as a limited liability company and, until 1997, was 50 percent owned by the Belgian government. ALZ received investment loans from SNCI which were outstanding during the POR.

In *Plate in Coils from Belgium*, we determined that loans made through SNCI conferred countervailable subsidies within the meaning of section 771(5) of the Act. These loans provided a financial contribution as described in section 771(5)(D)(i) of the Act. As for the specificity of these loans, we determined that SNCI loans for the years 1987 through 1990 were not specific and, thus, not countervailable. For SNCI loans made since 1991, because we found that the GOB did not participate to the best of its ability with respect to providing information relating to these loans, we used adverse facts available to determine that SNCI loans provided after 1991 were specific under section 771(5A)(D)(iii) of the Act. (*See Plate in Coils from Belgium*, 64 FR at 15570.) In this review, no new information has been placed on the record that would warrant reconsideration of this determination.

To calculate the benefit applicable to the POR, we used both the former and the current regulations' long-term fixed-interest rate loan methodologies. We did this because, for certain of ALZ's SNCI loans, the fixed interest rates were revised for the POR. Therefore, in allocating the benefit, if the fixed interest rate changed since *Plate in Coils from Belgium*, we utilized the methodology from the new regulations; if the interest rate did not change, we continued to follow the methodology used in *Plate in Coils from Belgium.*

To measure the benefit of these loans, we divided the benefit attributable to 1998 and 1999 by ALZ's total sales in 1998 and 1999, respectively. On this basis, we preliminarily determined the countervailable subsidy for 1998 to be 0.04 percent ad valorem, and the countervailable subsidy for 1999 to be 0.01 percent ad valorem.

*G. Subsidies Provided to Sidmar that are Attributable to ALZ*

As discussed in the Responding Producers section above, Sidmar owns either directly or indirectly 100 percent of ALZ's voting shares. Because ALZ is a fully consolidated subsidiary of Sidmar, any untied subsidies provided to Sidmar are attributable to ALZ (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review,* 63 FR 18367 (April 15, 1998)). In *Plate in Coils from Belgium, Certain Steel,* and the Department's redetermination on remand of *Certain Steel,* we found that Sidmar received countervailable benefits that were attributable to the entire Sidmar Group. Thus, we determine that the following three programs provide countervailable benefits to ALZ via its parent company, Sidmar:

1984 Purchase of Sidmar's Common and Preference Shares

In 1984, the GOB made two share subscriptions (one for preference shares and the other for common shares) in Sidmar. The purchase of preference shares was authorized by Royal Decree 245 of December 31, 1983. This Royal Decree allowed the GOB to make preference share subscriptions in the steel industry as long as the subscriptions did not exceed one-half of the social capital of the company.

On January 13, 1984, a Memorandum of Understanding (''MOU'') was signed with respect to the ordinary and preference share subscriptions in Sidmar. On April 27, 1984, NMNS (the GOB agency purchasing the shares), Sidmar, and the GOB signed an agreement committing to these share subscriptions. On May 2, 1984, Sidmar's shareholders approved both the ordinary share and the preference share increases. However, as a result of EC objections, the preference share transaction previously approved by the shareholders was nullified on September 25, 1984. Sidmar shareholders approved a modified preference share subscription on October 16, 1984. The original April 27, 1984 agreement between NMNS, Sidmar, and the GOB was modified in December 1984 to reflect the preference share subscription changes noted above.

In *Certain Steel* and its attendant litigation, the Department examined the early redemption of the preference shares purchased by the GOB as part of this 1984 transaction, but not the original purchase of the shares, as we found that the petition did not contain enough evidence to support the allegation that Sidmar was unequityworthy in 1984.

As there was no market price for a similar newly-issued equity at the time of the 1984 GOB equity infusions into Sidmar, we examined whether Sidmar was equityworthy or unequityworthy at the time of the 1984 subscriptions. As explained in the Equity Infusions Memorandum, we have preliminarily determined that the January 13, 1984 MOU was the point at which the GOB determined that it would make the equity infusions into Sidmar in exchange for ordinary and preference shares. Furthermore, we have preliminarily determined that the April 14, 1983 study, the only study performed prior to the GOB's decision to invest in Sidmar, was not sufficient to allow the GOB to evaluate the potential risk versus the expected return in its investment in Sidmar. Thus, the analyses did not contain information typically examined by potential private investors considering an equity investment.

Therefore, we preliminarily determine that the GOB's purchases of Sidmar's ordinary and preferred shares in 1984 constitute a countervailable subsidy within the meaning of section 771(5) of the Act. This investment provides a financial contribution, as described in section 771(5)(D)(i) of the Act. Also, in *Plate in Coils from Belgium* we determined that benefits under Royal Decree No. 245 are available only to the steel sector. On this basis, we preliminarily determine that this program is specific under section 771(5A)(D)(i) of the Act. Finally, because the analysis performed prior to the 1984 infusion in Sidmar did not contain information typically examined by potential private investors considering an equity investment, the investment decision was inconsistent with the usual investment practice of private investors. Therefore, a benefit exists according to section 771(5)(E)(i) of the Act in the amount of the equity infusion.

To calculate the benefit applicable to the POR, we applied the Department's standard grant methodology and divided the benefit attributable to 1998 and 1999 by Sidmar's total sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 1.14 percent ad valorem, and the countervailable subsidy for 1999 to be 1.10 percent *ad valorem.*

Conversion of Sidmar's Debt to Equity (OCPC-to-PB) in 1985

Between 1979 and 1983, the GOB assumed the interest costs associated with medium- and long-term loans for certain steel producers, including Sidmar. In exchange for the GOB's assumption of financing costs, Sidmar agreed to the conditional issuance of convertible profit sharing bonds (''OCPCs'') to the GOB. In 1985, Sidmar and the GOB agreed to substitute parts beneficiaires (''PBs'') for the OCPCs.

In *Plate in Coils from Belgium,* we analyzed this program according to the equity methodology that was in place prior to the issuance of the Department's current subsidy regulations. We found in our investigation that: (1) The GOB's initial assumption of interest costs were specific under section 771(5A) of the Act; (2) the OCPCs were properly classifiable as debt and that the conversion of OCPCs to PBs constituted a debt-to-equity conversion; and (3) based on a comparison of the price paid for the PBs to an adjusted market value of Sidmar's common stock, the debt-to-equity conversion provided a benefit to Sidmar as the share transactions were on terms inconsistent with the usual practice of a private investor.

On this basis, we determined that this program constituted a countervailable subsidy within the meaning of section 771(5) of the Act. The debt-to-equity conversion provided a financial contribution, as described in section 771(5)(D)(i) of the Act. Moreover, because benefits under this program were available only to certain steel producers, we determined that the program was specific under section 771(5A)(D)(i) of the Act.

In the instant review, we are re-examining this debt-to-equity conversion based on the change in our equity methodology effected by our new regulations, noted above. *See* New Allegations Memo.

Information on the record indicates that no private investors purchased the PBs or similar shares at the time of the GOB's debt-to-equity conversion. Therefore, we examined whether Sidmar was equityworthy or unequityworthy at the time of the 1985 debt-to-equity conversion.

As explained in the Equity Methodology section, above, we examined any analysis relied upon by the GOB in making its decision to purchase the PBs as part of the debt-to-equity conversion. Based on our review of this information, we have preliminarily determined that no objective studies of Sidmar, containing information typically examined by potential private investors considering an equity investment, had been prepared prior to the GOB's investment decision on which the GOB could have based its decision to participate in the debt-for-equity conversion. *See* the Equity Infusions Memorandum.

Therefore, we preliminarily determine that the GOB's 1985 debt-to-equity conversion constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This debt-to-equity conversion provides a financial contribution, as described in section 771(5)(D)(i) of the Act. Also, in *Plate in Coils from Belgium,* we determined that because benefits under this program were available only to certain steel producers, the program was specific under section 771(5A)(D)(i) of the Act. Finally, because the analyses performed prior to the debt-to-equity conversion did not contain information typically examined by potential private investors considering an equity investment, the investment decision was inconsistent with the usual investment practice of private investors. Therefore, a benefit exists according to section 771(5)(E)(i) of the Act in the amount of the equity infusion.

In *Plate in Coils from Belgium,* to measure the benefit from the debt-to-equity conversion, we calculated the premium paid by the government as the difference between the price paid by the government for the PBs and the adjusted market price of the common shares. For purposes of these preliminary results, we have treated the entire price paid by the government as the amount of the benefit. For the portion of the benefit that was previously countervailed, we have continued to rely on an AUL of 19 years as we did in *Plate in Coils from Belgium;* for the portion not previously allocated, we allocated the remaining amount over Sidmar's current AUL for this review, also 19 years. We applied the Department's standard grant methodology and divided the total benefit in 1998 and 1999 by Sidmar's total sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.68 percent ad valorem, and the countervailable subsidy for 1999 to be 0.67 percent *ad valorem.*

SidInvest

The right to establish ''Invests'' was limited to the five national industries, including the steel industry. SidInvest was incorporated on August 31, 1982, as a holding company jointly owned by Sidmar and the Societe Nationale d'Investissement, S.A. (''SNI'') (a government financing agency). SidInvest was given drawing rights on SNI to finance specific projects. The drawing rights took the form of conditional refundable advances (''CRAs''), which were interest-free, but repayable to SNI based on a company's profitability.

SidInvest made periodic repayments of the CRAs it had drawn from SNI. However, in 1987, the GOB moved to accelerate the repayment of the CRAs. The government agency NMNS and SidInvest discussed two options including (i) paying back the CRAs at a rate of three percent per year and (ii) repaying immediately the discounted value calculated as if the full amount were due 32 years later. In early 1988, under the first option, SidInvest agreed to pay back the outstanding balance on the CRAs at a rate of 3 percent per year.

Later, in July 1988, an agreement was reached for NMNS to become a shareholder in SidInvest by contributing the CRAs owed to the government by SidInvest in exchange for SidInvest stock. In a second agreement, through a series of transactions, the Sidmar Group then repurchased the SidInvest shares obtained by NMNS.

Consistent with *Plate In Coils from Belgium* and *Certain Steel,* we determine that the CRAs were interest-free loans with no fixed repayment period. However, the various agreements that took place on July 29, 1988, changed the CRAs. First, it was agreed that repayment would be achieved over 32 years. Second, the GOB swapped that repayment obligation for shares in SidInvest and sold those shares back to various members of the Sidmar group. The benefit to Sidmar in these transactions was that it was able to purchase the GOB's shares at too low a price. This occurred because: (i) The GOB agreed to accept in payment the net present value of the amount due in 32 years and (ii) it calculated the net present value using a non-commercial interest rate. The combination of these two elements of the July 29, 1988 agreements meant that the GOB forgave a considerable portion of the amount it had loaned through the CRAs.

In *Plate In Coils from Belgium,* we found that this program conferred a

countervailable subsidy within the meaning of section 771(5) of the Act. This program provided a financial contribution as described in section 771(5)(D)(i) of the Act. Moreover, because the right to establish ''Invests'' (and, consequently, any forgiveness of loans given to the Invests) was limited to the five national sectors, the program was specific under section 771(5A)(D)(i) of the Act. In this review, no new information has been placed on the record which would warrant reconsideration of this determination.

To measure the benefit arising from the events of July 29, 1988, we have deducted from SidInvest's outstanding indebtedness the cash received by the GOB. We have treated the remainder as a grant and allocated the benefit over Sidmar's AUL. We divided the total benefit attributable to 1998 and 1999 by Sidmar's total sales during 1998 and 1999, respectively. On this basis, we preliminarily determine the countervailable subsidy for 1998 to be 0.40 percent ad valorem, and the countervailable subsidy for 1999 to be 0.40 percent ad valorem.

**II. Programs Preliminarily Determined to Be Not Used**

We examined the following programs and preliminarily determine that ALZ did not apply for or receive benefits under these programs during the POR:

*A. Government of Belgium Programs*

1. Subsidies Provided to Sidmar that are Potentially Attributable to ALZ Water Purification Grants
2. Societe Nationale pour la Reconstruction des Secteurs Nationaux
3. Regional subsidies under the 1970 Law Investment and Interest Subsidies
4. Reduced Social Security Contributions Pursuant to the Maribel Scheme (Article 35 of the Law of June 29, 1981)

Under Article 35 of the Law of June 29, 1981 (called the ''Maribel scheme''), companies in Belgium that employed manual workers were granted a reduction in social security contributions for each manual worker. This law was amended several times to allow even smaller contributions for companies employing manual laborers in certain industries. A 1993 Royal Decree introduced the ''Maribel Bis'' scheme, which reduced contributions for companies employing manual workers in processing industries most exposed to internal competition. The 1994 Royal Decrees, which introduced the ''Maribel Ter'' scheme, reduced contributions for companies employing manual workers in sectors most exposed to international competition, as well as the international transportation, horticulture, forestry, and the exploitation of forestry sectors.

ALZ and the GOB both claimed in their responses that neither ALZ nor Sidmar received benefits under the Maribel Bis or Maribel Ter systems. Both parties stated that the Maribel Bis and Maribel Ter systems were terminated effective July 1, 1997, although neither ALZ nor the GOB was able to produce any decree or other document clearly stating that the program was terminated as of that date (or any other date). Pursuant to a Royal Decree of December 24, 1999, the GOB required the companies that had received reductions under Maribel Bis and Ter to repay to the GOB the monies they received under Maribel Bis and Ter. Since the GOB terminated Maribel Bis and Maribel Ter, and neither ALZ, Albufin, nor Sidmar have received reductions in their social security contributions as a result of these systems since the second quarter of 1997, the respondents claimed that no benefit could have possibly accrued to ALZ, Albufin, or Sidmar during the POR.

Despite the claims by the GOB and ALZ that the companies under review did not benefit from these programs, the petitioners argue that the Department has not made a determination that these programs were recurring or non-recurring and allege that record evidence suggests that the respondents continue to receive benefits under the Maribel Schemes. In particular, the petitioners point out that (1) the 1998 and 1999 financial statements of ALZ and Sidmar confirm that benefits were provided by the GOB to these companies; (2) the GOB admits that no specific document terminating this program exists; and (3) ALZ and the GOB failed to provide any documentation showing that payments received were returned to the GOB by ALZ, Albufin or Sidmar.

For purposes of these preliminary review results, we are not calculating a subsidy for this program. We agree with ALZ that the Department normally treats reduced social security contributions as recurring benefits under section 351.524(c) of our regulations. Consequently, if the Maribel Bis and Ter schemes were terminated in 1997, there would be no benefit to ALZ during the POR. ALZ has explained that the references to Maribel in its 1998 and 1999 financial statements are to the general Maribel scheme and not to Maribel Bis and Ter (the only parts of the Maribel program being reviewed).

Prior to our final results, we intend to seek further information from the GOB and ALZ regarding the termination of the Maribel Bis and Ter schemes, or repayment of any benefits received by ALZ under these programs.

*B. Government of Flanders Programs*

1. Regional subsidies under the 1970 Law
   a. Corporate Income Tax Exemption
   b. Capital Registration Tax Exemption
   c. Government Loan Guarantees
   d. 1993 Expansion Grant
2. Special Depreciation Allowance
3. Preferential Short-Term Export Credit
4. Interest Rate Rebates

*C. Programs of the European Commission*

1. ECSC Article 54 Loans and Interest Rebates
2. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid
3. European Social Fund Grants
4. European Regional Development Fund Grants
5. Resider II Program

**Preliminary Results of Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for ALZ, the only producer/exporter subject to this administrative review. For the period September 4, 1998 through December 31, 1998, we preliminarily determine the net subsidy rate for ALZ to be 3.40 percent; for January 1, 1999 and for the period May 11, 1999 through December 31, 1999, we preliminarily determine the net subsidy rate for ALZ to be 2.90 percent. (In accordance with section 703(d) of the Act, countervailing duties will not be assessed on entries made during the period January 2, 1999 through May 10, 1999.) If the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to assess countervailing duties at these net subsidy rates.

The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the 1999 rate on the f.o.b. value of all shipments of the subject merchandise from ALZ entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and

reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation* v. *United States,* 822 F.Supp. 782 (CIT 1993), and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review,* 65 FR 13368, 13369 (March 13, 2000). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the periods September 4, 1998 through January 1, 1999 and May 11, 2000 through December 31, 1999, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days of the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act. Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: April 16, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01–9977 Filed 4–20–01; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Advanced Technology Program Advisory Committee

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Advanced Technology Program Advisory Committee, National Institute of Standards and Technology (NIST), will meet Tuesday, May 15, 2001, from 9:00 a.m. to 3:45 p.m. The Advanced Technology Program Advisory Committee is composed of eight members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, education, and management consulting. The purpose of this meeting is to review and make recommendations regarding general policy for the Advance Technology Program (ATP), its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an Update on ATP, a report of MEP Diffusion, a presentation from the National Governors Association, a presentation on ATP's Charter, an Economic Assessment Office panel discussion on The Life of an ATP Project: What to Measure When, and updates on the competition and outreach efforts. Discussions scheduled to begin at 9:00 a.m. and to end at 10:00 a.m. and to begin at 3:00 p.m. and to end at 3:45 p.m. on May 15, 2001 on the ATP budget issues and staffing of positions will be closed.

**DATES:** The meeting will convene May 15, 2001, at 9:00 a.m. and will adjorn at 3:45 p.m. on May 15, 2001.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Janet R. Russell, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–2107.

**SUPPLEMENTARY INFORMATION:** The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 22, 2001 that portions of the meeting of the Advanced Technology Program Advisory Committee which involve discussion of proposed funding of the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of staffing of positions in ATP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 16, 2001.

**Karen H. Brown,**

*Acting Director.*

[FR Doc. 01–9942 Filed 4–20–01; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[I.D. 032101I]**

## Small Takes of Marine Mammals Incidental to Specified Activities; Missile Launch Operations from San Nicolas Island, California

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received an application from the U.S. Navy, Naval Air Warfare Center Weapons Division (NAWCWD), Point Mugu, CA for an incidental harassment authorization (IHA) to take small numbers of marine mammals by harassment incidental to missile launch operations from the western end of San Nicolas Island, CA (SNI). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize NAWCWD to incidentally take, by harassment, small numbers of pinnipeds on SNI during 15 launches of Vandal (or similar) vehicles and 5 launches of smaller subsonic targets per year commencing in 2001.

**DATES:** Comments and information must be received no later than May 23, 2001.

**ADDRESSES:** Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the NAWCWD Point Mugu application and a list of references used in this document are available upon request from the same address. In addition, supporting documentation is available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Simona P. Roberts, NMFS, (301) 713–2322, ext. 106 or Christina Fahy, NMFS, (562) 980–4023.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 et seq.) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations (IHAs) under section 101(a)(5)(D) of the MMPA for activities in Arctic waters. For additional information on the procedures to be followed for this authorization, please refer to that document.

### Summary of Request

On February 5, 2001, NMFS received an application from NAWCWD Point Mugu requesting an authorization for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations on SNI, one of the Channel Islands in the Southern California Bight. These operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. The NAWCWD Point Mugu's request for an authorization to incidentally harass small numbers of marine mammals on SNI anticipates 15 launches of Vandal (or similar sized) vehicles from the Alpha Launch Complex on SNI and 5 launches of smaller subsonic targets from either the Alpha Launch Complex or Building 807 for 1 year and commencing as early in 2001 as possible. A detailed description of the operations is contained in the application (LGL Ltd. Environmental Research Associates 2001) which is available upon request (see **ADDRESSES**).

### Measurement of Airborne Sound Levels

The types of sounds discussed in NAWCWD Point Mugu's IHA application are airborne and impulsive. For this reason, the applicant has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa$^2$-second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa, which is 26 dB above the underwater sound pressure reference of 1 micro-Pa. However, the conversion from air to water intensities is more involved than this (Buck, 1995) and beyond the scope of this document. Also, airborne sounds are often expressed as broadband A-weighted sound levels (dBA). A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. While it is unknown whether the pinniped ear responds similar to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, A-weighted is better than unweighted pressure levels because the pinniped's highest hearing sensitivity is at higher frequencies than that of humans. As a result, whenever possible, NMFS provides both A-weighted and unweighted sound pressure levels; where not specified for in-air sounds, A-weighting is implied (ANSI, 1994). In this document, all sound levels have been provided with A-weighting.

### Description of the Specified Activity

Target missile launches from SNI are used to support test and training activities associated with operations on the NAWCWD Point Mugu Sea Range. In general, two types of launch vehicles are used, the Vandal and the smaller subsonic targets. Other vehicles used would be similar in size and weight or slightly smaller and would have characteristics generally similar to the Vandal.

*Vandal Target Missiles*

The Vandal target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 meters (m) (25.2 feet (ft)) in length with a mass at launch of 3,674 kilograms (kg)

(8,100 pounds (lbs)) including the solid propellant booster. The three variants of the Vandal (standard, ER and ERR) all have the same dimensions but differ in their operational range. The Vandals are remotely-controlled, non-recoverable missiles that are launched from a land-based launch site (hereafter referred to as Alpha Launch Complex) on the western part of SNI. The Alpha Launch Complex is 153 m (502 ft) above sea level and is approximately 6 kilometers (km) (3.7 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from Alpha Launch Complex vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft).

Vandal launches produce the strongest noise source originating from aircraft or missiles in flight over SNI beaches. Sound measurements were collected during two Vandal launches in 1997 and 1999 and are reported in Burgess and Greene (1998) and Greene (1999). Greene (1999) reported that received A-weighted SPL were found to range from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa$^2$–sec) at 945 m (3,100 ft) to 136 dB (re 20 micro-Pa) (SEL of 131 dB re 20 micro-Pa$^2$–sec) at 370 m (1,215 ft). The most intense sound exposure occurred during the first 0.3 to 1.9 seconds after launch.

*Subsonic Targets and Other Missiles*

The subsonic targets and other missiles are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM-34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Other types of small missiles that may be launched include the Exocet, Tomahawk, and Rolling Airframe Missile (RAM). All of these smaller targets are launched from either the Alpha Launch Complex or from Building 807, a second launch site on the west end of SNI. Building 807 is approximately 3 m (10 ft) above sea level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. Launch trajectories from Building 807 range from 6 to 45 degrees and cross over the nearest beach at altitudes from 9 to 183 m (30 to 600 ft).

Sound measurements were collected from the launch of a BQM–34S at Naval Air Station (NAS) Point Mugu in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa$^2$–sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa2 -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999).

*General Launch Operations*

Aircraft and helicopter flights between NAS Point Mugu on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites two hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal launches and various environmental protection restrictions exist near the island's beaches during other times of the year.

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and does not need to be repeated here.

**Marine Mammals**

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity either regularly or in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and the others can be found in Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Barlow *et al.* (1993), Lowry *et al.*(1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). Please refer to those documents and the application for further information on these species.

**Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals**

Sounds generated by the launches of Vandal target missiles (including the standard, ER, and ERR variants) and smaller subsonic targets and missiles (BQM–34 or BQM–74 type) as they depart sites on SNI towards operational areas in the Point Mugu Sea Range have the potential to take marine mammals by harassment. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. Extremely rapid departure of the Vandal and smaller targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of marine mammal harassment. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on studies of other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart et al., 1993), anticipated impacts can be predicted. In general, other studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms or sonic booms

accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM–34 targets from NAS Point Mugu have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches. Given the variability in pinniped response to acoustic disturbance, the Navy conservatively assumes that biologically significant disturbance (i.e. takes by harassment) will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa$^2$–sec) or higher.

From Lawson *et al.* (1998), the Navy determined a conservative estimate of the SEL at which the disturbance known as temporary threshold shift (TTS) may be elicited in harbor seals and California sea lions (SEL of 145 dB re 20 micro-Pa$^2$–sec) and northern elephant seals (SEL of 165 dB re 20 micro-Pa$^2$–sec). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by missiles launched from SNI (see below), suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100 dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria out to a distance of 4,263 m from the Alpha Launch Complex. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100 dBA contour for Vandal launches. For BQM–34 launches from Alpha Launch Complex, the Navy assumes that the 100 dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM–34, the 100 dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM–74 and Exocet missiles, the Navy predicts that the 100 dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100 dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Since preliminary observations of the responses of pinnipeds to Vandal launches at SNI have not shown injury, mortality, or extended disturbance, the Navy anticipates that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Given that this activity will happen infrequently, and will produce only brief, rapid-onset sounds, it is unlikely that pinnipeds hauled out on beaches at the western end of SNI will exhibit much, if any, habituation to target missile launch activities. In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. Therefore, the Navy assumes that these occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

**Numbers of Marine Mammals Expected to Be Taken by Harassment**

NAWCWD Point Mugu estimates that the following numbers of marine mammals may be subject to Level B harassment, as defined in 50 CFR 216.3:

| Species by MMPA Stock Designation | Minimum Abundance Estimate of Stock[1] | Harassment Takes in 2001 |
|---|---|---|
| Northern Elephant Seal (California Stock) | 51,625 | < 2,390 |
| Harbor Seal (California Stock) | 27,962 | < 457 |
| California Sea Lion (U.S. Stock) | 109,854 | 9,614–10,086 |
| Northern Fur Seal (San Miguel Stock) | 2,336 | 3 |

1. From 1999-2000 NMFS Marine Mammal Stock Assessment Reports.

In their original request, NAWCWD Point Mugu estimated the take of 3 Guadalupe fur seals by harassment incidental to missile launch operations on SNI. On March 19, 2001, the U.S. Navy sent NMFS a modified request eliminating the incidental take of Guadalupe fur seals on SNI. Based on their observational records, the Navy found that when Guadalupe fur seals do occur on SNI, they are found on beaches not affected by missile launch activities.

**Effects of Target Missile Launches and Associated Activities on Subsistence Needs**

There are no subsistence uses for these pinniped species in California waters, and thus there are no anticipated effects on subsistence needs.

**Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on San Nicolas Island**

During the period of proposed activity, harbor seals, California sea lions, and northern elephant seals will use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Corral Beach) and rocky cobble (e.g., Vizcaino Beach). The pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will not persist in the water near the island for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall

into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

**Mitigation**

To avoid additional harassment to the pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within two hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will not launch target missiles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will limit launch activities during the night.

**Monitoring**

As part of its application, NAWCWD Point Mugu provided a proposed monitoring plan for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in LGL Ltd. Environmental Research Associates (2001).

NAWCWD Point Mugu proposes to conduct the following monitoring:

*Land-Based Monitoring*

The Navy, in conjunction with a biological contractor, proposes to establish a land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring would occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring would be via autonomous digital video cameras or, when possible, through direct visual observation.

During the day of each missile launch, the observer would place three digital video cameras on tripods overlooking chosen haul out sites. Each camera would be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Two hours prior to the launch, the observer would circulate among the tripod-mounted cameras to change videocassettes, to adjust camera fields of view (as required by changes in the geometry of the focal groups), and to record visual observations in a field logbook. Following the launch, the observer would return to the site when access is permitted.

During smaller launches when personnel are allowed to remain near one or more haul out beaches that might be impacted, a marine mammal observer would observe pinnipeds at one of those beaches in a systematic manner before, during, and after the launch. The observer(s) would scan the selected haul out site(s) from one end to the other at a rate of once per minute. Seven x 50 reticle binoculars would be used during the daytime for scanning and supplemented by night vision equipment if launches occur at night.

Following each launch, a biologist would review and code the videotapes as they are played back to a high-resolution color monitor. A VCR with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates (2001).

*Acoustical Measurements*

During each launch, the Navy (in conjunction with an acoustical contractor) would obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data would be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 days. Insofar as possible, acoustic recording locations would correspond with the sites where video monitoring is taking place. The collection of acoustic data would provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL Ltd. Environmental Research Associates (2001).

**Reporting**

If the IHA is granted, NAWCWD Point Mugu will provide an initial report on activities to NMFS after the first 90 days of the authorization period. This report will summarize the timing and nature of the launch operation(s), summarize pinniped behavioral observations, and estimate the amount and nature of all takes by harassment or in other ways. In the event that any cases of pinniped mortality are judged to result from launch activities, this information will be reported to NMFS immediately.

A draft final technical report will be submitted to NMFS 120 days prior to the expiration of the IHA. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first 6 months of the IHA period, plus preliminary information for launches during months 7 and 8. This draft final report will be reviewed by NMFS, and based on comments, revised as necessary.

The revised final technical report, including all monitoring results during the authorization, will be due 90 days after the end of the 1-year IHA period.

**Consultation**

NAWCWD Point Mugu has not requested the take of any listed species. Therefore, NMFS has determined that a section 7 consultation under the Endangered Species Act is not required at this time.

**National Environmental Policy Act (NEPA)**

In July 2000, NAWCWD Point Mugu issued a Draft Environmental Impact Statement/Overseas Environmental Impact Statement (DEIS) to assess the effects of its ongoing and proposed operations in the Sea Range off Point

Mugu. While this DEIS analyzes other activities beyond the scope of this IHA request, Section 4.7 describes launches of target missiles from SNI and notes that these launches sometimes cause pinnipeds hauled out on beaches on the western end of SNI to move into the water. Accordingly, the U.S. Navy determined that it should request this 1-year IHA to ensure that its planned missile launch operations are conducted in full compliance with the MMPA.

## Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds. While behavioral modifications may be made by these species as a result of launch activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of launch operations, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

## Proposed Authorization

NMFS proposes to issue an IHA for 15 launches of Vandal (or similar) missiles and 5 launches of smaller subsonic targets from San Nicolas Island, CA westward towards the Point Mugu Sea Range for a 1–year period, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of northern elephant seals, harbor seals, California sea lions, and northern fur seals; would have no more than a negligible impact on these marine mammal stocks; and, would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses.

## Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: April 16, 2001.

**Donald Knowles,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01–9870 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–22–S

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 041701A]**

## Mid-Atlantic Fishery Management Council (MAFMC); Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) and its Dogfish Committee, Comprehensive Management Committee, Executive Committee, and Law Enforcement Committee with Advisors will hold a public meeting.

**DATES:** The meetings will be held between Tuesday May 8, 2001, and Thursday, May 10, 2001. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held at the Carousel Hotel, 11200 Coastal Highway, Ocean City, MD, telephone 410–524–1000.

*Council address*: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

**SUPPLEMENTARY INFORMATION:**

## Meeting Dates

*Tuesday, May 8, 2001*, there will be a Dogfish Committee meeting (Mid-Atlantic Fishery Management Council section only) from 1–3 p.m. There will be a concurrent Comprehensive Management Committee meeting from 1–3 p.m.

*Wednesday, May 9, 2001*, the Executive Committee will meet from 8–11:30 a.m. There will be a concurrent Law Enforcement Committee meeting with Advisors from 8–11:30 a.m. Council will convene from 12:30–5:30 p.m. to receive a gear technology report and address Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP.

*Thursday, May 10, 2001*, the Council will convene to conduct regular business at 8 a.m. and is scheduled to adjourn at 4 p.m.

## Meeting Agendas

Agenda items for the meetings are: the Dogfish Committee will review and consider Atlantic States Marine Fisheries Commission's (ASMFC) dogfish actions; and, review and consider development of Amendment 1 to the Dogfish Fishery Management Plan (FMP). The Comprehensive Management Committee will review the outcome of its priority setting process; evaluate and define Council priorities; and, develop an action plan. The Executive Committee will address timing of election of new officers; discuss pending summer flounder facilitated meeting with NMFS, ASMFC and stakeholders; review Scientific and Statistical Committee membership for appointment and reappointment purposes; discuss summer flounder Framework 3 (biological reference points) schedule; and, seek NMFS commitment to expedite summer flounder Framework 3 for 2002 implementation if necessary. The Law Enforcement Committee will review and discuss state and Federal law enforcement capabilities, activities and concerns; develop a MAFMC ''Enforcement Guideline''; review law enforcement concerns regarding marine protected areas; and, review and recommend Fishery Achievement Award recipients. The Council will receive a report from Manomet regarding its Gear Technology Study, review and consider comments received from an earlier scoping meeting regarding Amendment 13 (black sea bass); develop management options to be included in the public hearing document for Amendment 13; review and discuss possible adoption of enforcement guidelines; review and approve Framework 2 management measures regarding extension of *Illex* moratorium, *Loligo* exemption in *Illex* fishery, real time management of *Loligo*, and rule roll-over for mackerel; receive a special report on NMFS MARFIN Program; approve March minutes; receive organizational and committee reports, including the New England Council's report where the Council may address possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting. The Council may also address possible actions from the South Atlantic Council.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal

Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at 302–674–2331 at least 5 days prior to the meeting date.

Dated: April 17, 2001.

**Richard W. Surdi,**

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

[FR Doc. 01–9983 Filed 4–20–01; 8:45 am]

BILLING CODE 3510–22–S

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, May 4, 2001.

**PLACE:** 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–10074 Filed 4–19–01; 11:23 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, May 11, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–10075 Filed 4–19–01; 11:23 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, May 18, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–10076 Filed 4–19–01; 11:23 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, May 25, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01–10077 Filed 4–19–01; 11:23 am]

BILLING CODE 6351–01–M

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Availability of Funds for National Providers of Training and Technical Assistance to Corporation for National and Community Service Programs; Correction

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice; correction.

**SUMMARY:** The Corporation for National and Community Service (Corporation) published a document in the **Federal Register** of March 15, 2001, availability of funds for national providers of training and technical assistance to Corporation for National and Community Service programs. For one of the categories of training and technical assistance, Civic Engagement, the provider will be expected to conduct training of trainer sessions, but not at the National and Community Service Conference in June 2001 as stated in the original notice.

**FOR FURTHER INFORMATION CONTACT:** Jim Ekstrom or Margie Legowski at the Corporation for National and Community Service, (202) 606–5000, ext. 414, TTY (202) 565–2799; e-mail *jekstrom@cns.gov* or mlegowsk@cns.gov. This Notice is available on the Corporation's web site, http://www.nationalservice.org/whatshot/notices. Upon request, this information will be made available in alternate formats for people with disabilities.

### Correction

In the **Federal Register** of March 15, 2001, in FR Doc. 01–6396, on page 15094, in the second column, correct paragraph 3.e to read as follows: Conduct training of trainers sessions on how to use the materials.

Dated: April 17, 2001.

**David Rymph,**

*Acting Director, Department of Evaluation and Effective Practices, Corporation for National and Community Service.*

[FR Doc. 01–9956 Filed 4–20–01; 8:45 am]

BILLING CODE 6050–$$–P

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.330]**

### Office of Elementary and Secondary Education—Advanced Placement Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* The Advanced Placement Incentive Program provides grants to States to enable them to pay advanced placement test fees on behalf of eligible low-income individuals, and to undertake activities designed to increase the participation of low-income students in advanced placement courses and tests. For FY 2001, we encourage applicants to design projects that meet the invitational priorities in the PRIORITIES section of this application notice.

*Eligible Applicants:* State educational agencies (SEAs) in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

*Deadline for Transmittal of Applications:* June 7, 2001.

*Deadline for Intergovernmental Review:* June 22, 2001.

*Applications Available:* April 23, 2001.

*Estimated Available Funds:* $5,500,000.

*Estimated Range of Awards:* $50,000 to $800,000 per year.

*Estimated Average Size of Awards:* $300,000 per year.

*Estimated Number of Awards:* 18.

**Note:** These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

**Allowable Activities**

States receiving grants under this program may use the grant funds to pay part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. In addition, SEAs in States in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use grant funds for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas (hereinafter referred to as ''section 810(d)(1) activities'').

Examples of section 810(d)(1) activities may include, but are not limited to, projects that provide student access to advanced placement courses online and professional development institutes designed to prepare teachers to teach advanced placement courses. An SEA may apply for funds under this program both to assist it in meeting the requirement that no eligible low-income student in the State be required to pay more than a nominal fee to take advanced placement tests in core subjects and for section 810(d)(1) activities.

**Priorities**

(a) *Absolute Priority.* The Department is establishing an absolute priority for proposals to use grant funds to pay advanced placement test fees on behalf of eligible low-income individuals. We have chosen this priority from the allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 810(a) of Title VIII, Part B of the Higher Education Amendments of 1998 (20 U.S.C. 1070a–11, note)).

To implement this priority, the Department intends to fund, at some level, all applications (1) meeting the minimum REQUIREMENTS FOR APPROVAL OF APPLICATIONS described in the application package; and (2) proposing to use grant funds for the purpose of paying part or all of the cost of advanced placement test fees on behalf of eligible low-income individuals in the State. For applications that propose to use grant funds to pay advanced placement tests fees and to support section 810(d)(1) activities, the section of the application proposing to use grant funds for section 810(d)(1) activities will be evaluated based on the SELECTION CRITERIA described in the application package (*see* 34 CFR 75.05(c)(3)).

**Note:** This absolute priority does not apply to current Advanced Placement Incentive Program grantees that are scheduled to receive non-competing continuation awards for the payment of advanced placement test fees in FY 2001.

(b) *Invitational Priorities.* The Department is particularly interested in applications from the following:

(1) Consortia, or groups, of SEAs proposing to undertake section 810(d)(1) activities. Because SEAs are the only eligible applicants under this program, the consortium must be comprised solely of SEAs. Members of the consortium may represent any combination of States but must designate one SEA to apply for the grant on behalf of the consortium. *See* 34 CFR 75.128(a).

(2) Applications proposing to undertake section 810(d)(1) activities to provide advanced placement courses to students in rural and other underserved areas that otherwise would not have access to such courses. These courses may be provided through the Internet or other innovative means.

**Note:** Under 34 CFR 75.105(c)(1), the Department does not give an application that meets an invitational priority a competitive or absolute preference over applications that do not meet an invitational priority.

**Allocation of Funds**

The Department intends to allocate approximately $200,000 of the funds available under this program to States for the purpose of paying advanced placement test fees on behalf of eligible low-income individuals. The Department intends to allocate approximately $5.3 million to States to support section 810(d)(1) activities. In determining grant award amounts, the Department will consider, among other things, the number of children in the State eligible to be counted under section 1124(c) of the Elementary and Secondary Education Act of 1965, in relation to the number of such children in all States.

**Selection Criteria**

The Secretary uses the selection criteia published in 34 CFR 75.209 and 75.210 to evaluate the section of the application that proposes to use grant funds to support section 810(d)(1) activities. The application package includes the SELECTION CRITERION and th epoints assigned to each criterion.

**Applicable Regulations and Statute**

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, and 99. Title VIII, Part B of the Higher Education Amendments of 1998 (1998 Amendments), 20 U.S.C. 1070A–11, note.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program authorizing statute, in Title VIII, Part B of the 1998 Amendments. They are repeated in this application notice for the convenience of the applicant.

**Definitions**

As used in this section:

(a) The term *advanced placement test* includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

**Note:** To date, the Secretary has approved advanced placement tests administered by The College Board and International Baccalaureate Organization. As part of the grant application process, applicants may request approval of tests from other educational entities that provide comparable programs of rigorous academic courses and testing through which students may earn college credit.

(b) The term *low-income individual* has the meaning given the term in section 402A(g)(2) of the Higher Education Act of 1965 (HEA) (20 U.S.C. 1070a–11(g)(2)).

**Note:** Under section 402A(g)(2) of the HEA, the term *low-income individual* means an

individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census (20 U.SC. 1070a–11(g)(2)).

### Information Dissemination

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors (20 U.S.C. 1070a–11, note (b)).

### Supplement, Not Supplant, Rule

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees (20 U.S.C. 1070a–11, note (d)(2)).

**FOR APPLICATIONS OR INFORMATION CONTACT:** Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, SW., Room 3C153, Washington, DC 20202–6140. Telephone (202) 260–2669. Internet address: Frank.robinson@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the *Federal Register*, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: www.ed.gov/legislation/FedRegister.

To use PDF, you must have Adobe Acrobat Reader, which is available free at the previous site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, Dc area at (202) 512–1530.

**Note:** The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 20 U.S.C. 1070a–11, note.

Dated: April 17, 2001.

**Thomas M. Corwin,**

*Acting Deputy Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 01–9940 Filed 4–20–01; 8:45 am]

**BILLING CODE 4000–01–M**

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## DEPARTMENT OF ENERGY

### Office of Science, Office of Science Financial Assistance Program Notice 01–25: Development of Diagnostic Systems for Magnetic Fusion Energy Sciences Experiments

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Fusion Energy Sciences (OFES) of the Office of Science (SC), U.S. Department of Energy (DOE), announces its interest in receiving grant applications for the development of new measurement capabilities in magnetic fusion plasmas, leading to improved understanding of plasma behavior in fusion experiments. Programs planning to submit applications for renewal funding in FY 2002, should submit to this Notice.

**DATES:** To permit timely consideration for awards, applications submitted in response to this Notice must be received no later than 4:30 p.m., August 1, 2001. Electronic submission of formal applications will not be accepted.

Applicants are requested to submit a letter-of-intent by June 28, 2001.

**ADDRESSES:** The completed formal applications referencing Program Notice 01–25 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–25. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand-carried by the applicant.

Letters-of-intent referencing Program Notice 01–25 should be forwarded to: U.S. Department of Energy, Office of Science, Office of Fusion Energy Sciences, SC–50, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: John Sauter. Letters-of-intent can also be submitted via e-mail at the following address: john.sauter@science.doe.gov.

The letter-of-intent should include the title of the application, the name, telephone number, and e-mail address of the principal investigator(s), the requested funding, names and institutions of any collaborators, and a one-page abstract. These letters-of-intent will be used to organize and expedite the review process. Failure to submit a letter-of-intent will not negatively prejudice a responsive formal application that is submitted in a timely manner. Electronic submission of letters-of-intent is acceptable.

**FOR FURTHER INFORMATION CONTACT:** Darlene Markevich, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4920, or by e-mail address, darlene.markevich@science.doe.gov. Or contact John Sauter, SC–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone 301–903–3287, or by e-mail address, john.sauter@science.doe.gov.

*General Information:* General information about development and submission of applications, eligibility, limitations, evaluations, and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is possible via the Internet using the following Web site address: http://www.science.doe.gov/production/grants/grants.html.

DOE is under no obligation to pay for any costs associated with the preparation or submission of applications.

**SUPPLEMENTARY INFORMATION:** Grant applications are sought for the development of new measurement capabilities in a given class of magnetic fusion devices that will lead to improved understanding of plasma behavior in magnetic fusion experiments. The magnetic fusion energy sciences community and OFES must recognize the measurement as necessary for advancing the magnetic fusion energy sciences program. Primary interest for this Notice is in experimental programs, although it is recognized that part of a coordinated application may include theory and modeling in support of experiments. Stand-alone theory applications will not be supported. Applications seeking funding to install and operate a routine diagnostic system will not be considered under this Notice. It is expected that funds provided to the

magnetic fusion experiments should be used to implement routine diagnostics, based on their own research program priorities. Diagnostics for the inertial fusion energy (IFE) program are not included in this Notice. These are developed and implemented separately under the OFES IFE program.

More detailed information about measurements that are needed for advancing the magnetic fusion program has been prepared by members of the fusion community. This information can be found at the following Web site: http://www.ofes.science.doe.gov/News/DiagDev.html. You may want to periodically check this Web site for any updates or additional information. Please keep in mind that only grant applications that are responsive to the requirements of this Notice will be considered for funding.

For more general information on the fusion energy sciences program, see the OFES Web site at http://www.ofes.science.doe.gov.

*Funding Information:* Approximately $2,200,000 of Fiscal Year 2002, funding will be available for awards resulting from this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Multi-year funding of awards is expected, generally for three years, with funding provided on an annual basis. You are encouraged to submit applications with three-year project periods, unless the nature of your research requires a project period of less than three years. However, due to the anticipated funding levels for Fiscal Year 2002, the initial funding period may be less than twelve months, with two subsequent funding periods of one year each. The project period will be determined by OFES. New projects (i.e., research that is not considered a renewal of a current grant) selected for award may have a funding start date in Fiscal Year 2003.

Because future year funding is not anticipated to increase, applications should propose constant year effort (allowing for inflation). Future year funding will depend upon suitable progress and the availability of funds. Because of the total amount of available funding and the intent to have a broadly based program, applications with an annual requirement in any year in excess of $400,000 are less likely to be funded. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements. In cases where the proposed work assumes the availability of a facility, experimental apparatus, or base group to perform the work, the funding source(s) for these additional needs must be identified in the grant application.

A parallel request for Field Work Proposals will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All proposed programs will be evaluated using the same criteria regardless of the submitting institution.

*Collaboration:* Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories, and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. In the case of collaborative applications submitted from different institutions, which are directed at a single research activity, each application must have a distinct scope of work and a qualified principal investigator who is responsible for the research effort being performed at his or her institution. Further information on preparation of collaborative proposals may be accessed via the Internet at http://www.science.doe.gov/production/grants/Colab.html.

*Application Format:* In order to enable the reviewers to read multiple applications, the technical discussion of the research in the application must be limited to a maximum of twenty-five (25) pages (not including figures). The progress report that must be included with renewal applications is not part of the page limit. Although it is not required, due to the anticipated number of reviewers, it would be helpful if applicants submitted fifteen (15) copies of their application; otherwise the standard number of copies must be received with each application as outlined in the Application Guide.

The application should include the name, telephone number, and e-mail address of the principal investigator(s).

The detailed description of the proposed research, in addition to the information required by 10 CFR Part 605, should contain the following items:

(1) A succinct statement of the goal of the research;

(2) A detailed research plan;

(3) The specific results or deliverables expected at the end of the project period;

(4) A detailed analysis of the adequacy of the facilities and budget;

(5) Evidence of the ability of the diagnostic system to make the proposed measurement;

(6) Discussion of how the research would lead to an improved understanding of plasma behavior in magnetic fusion devices;

(7) Discussion of why this research would have an important impact on the magnetic fusion science program;

(8) Discussion of the aspect of the proposed research that is developmental, as opposed to implementation of an existing measurement technique; and

(9) In cases where the proposed work assumes the availability of a facility, experimental apparatus, or base group to perform the work, include a letter of support from the principal investigator (or other appropriate person) of that facility or group. This letter should specify any technical, engineering, theory/modeling, etc. assistance that will be provided by that facility or group.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of the applicant's personnel and adequacy of the proposed resources;

4. Reasonableness and appropriateness of the proposed budget.

In addition to peer review, funding decisions will be based on program policy factors, such as relevance of the proposed research to the terms of this Notice and DOE's programmatic needs.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on April 11, 2001.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 01–9945 Filed 4–20–01; 8:45 am]

BILLING CODE 6450–01–U

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, May 2, 2001, 6:30 p.m.–8:30 p.m.

**ADDRESSES:** Greater Las Vegas Association of Realtors, 750 East Sahara, 2nd Floor Meeting Room, Las Vegas, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197, fax: 702–295–5300.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

6:00–6:30—Open house

6:30–9:00—1. Discussion on Nuclear Waste Operations in Nevada and New Mexico

2. Presentations on: Transportation Routes and Hazards, Disposal Operations, Protection of the Environment, and Emergency Response Plans and Capabilities

Copies of the final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on April 17, 2001.

**Belinda G. Hood,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–9943 Filed 4–20–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Wednesday, May 9, 2001, 6:00 p.m.–9:30 p.m.

**ADDRESSES:** Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN 37830.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov*.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*:

1. A presentation on Stewardship will be provided by Mr. David Geiser, Director of Long-Term Stewardship, DOE/Headquarters.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on April 17, 2001.

**Belinda G. Hood,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 01–9944 Filed 4–20–01; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[IC01–515–001, FERC–515]**

### Information Collection Submitted for Review and Request for Comments

April 17, 2001.

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

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 1, 2001 (66 FR 8576–77) and has made this notation in its submission to OMB.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before May 23, 2001.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at

(202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

**SUPPLEMENTARY INFORMATION:**

## Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–515 ''Hydropower License-Declaration of Intention''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0079. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is no change to the reporting burden. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–515 is filed in accordance with sections 23(b) of the FPA. Section 23(b) of the FPA authorizes the Commission to make a determination as to whether it has jurisdiction over a proposed hydroelectric project. Section 23(b) also requires that any person intending to construct project works on a navigable commerce clause water must file a declaration of their intention to do so with the Commission. If the Commission finds the proposed project will have an impact on ''interstate or foreign commerce'', then the person intending to construct the project must obtain a Commission license or exemption before starting construction. Such sites are generally on streams defined as U.S. navigation waters, and over which the Commission has jurisdiction under its authority to regulate foreign and interstate commerce. The information is collected in the form of a written application, declaring the applicant's intent and used by Commission staff to research the jurisdictional aspects of the project. This research includes examining maps and land ownership records to establish whether or not there is Federal jurisdiction over the lands and waters affected by the project. A finding of non-jurisdiction by the Commission eliminates a substantial paperwork burden for an applicant who might otherwise have to file a license or exemption application.

5. *Respondent Description:* The respondent universe currently comprises on average, 10 applicants for a declaration of intention (''DI'').

6. *Estimated Burden:* 800 total burden hours, 10 respondents, 1 response annually, 80 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 800 hours ÷ 2,080 hours per year × $117,041 per year = $45,016, average cost per respondent = $4,502.

**Statutory Authority:** Sections 23(b), of the Federal Power Act (FPA), 16 U.S.C. Section 617.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9904 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC01–511–001, FERC 511]**

### Information Collection Submitted for Review and Request for Comments

April 17, 2001.

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

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of February 1, 2001 (66 FR 8575–76) and has made this notation in its submission to OMB.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before May 23, 2001.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW., Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–1415, and by e-mail at *mike.miller@ferc.fed.us.*

**SUPPLEMENTARY INFORMATION:**

## Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–511 ''Application for Transfer of License''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0069. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a change to the reporting burden which is the result of an increase in the number of entities who have filed applications to transfer their licenses due to restructuring within the industry. This change has been indicated as an adjustment to the reporting burden. These are mandatory collection requirements.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–511 is filed in accordance with sections 4(e) and 8 of the FPA. Section 4(e) of the FPA authorizes the Commission to issue licenses for construction, operation and maintenance of dams, water conduits, reservoirs, and transmission lines or other facilities necessary for the development, transmission and utilization of power from bodies of water Congress has jurisdiction over. Section 8 of the FPA provides that the voluntary transfer of any license can only be made with the written approval of the Commission. Any successor to the licensee may assign the rights of the original licensee, but is subject to all of the conditions of the license. The information is collected in the form of a written application for transfer of a license, executed jointly by the parties to the proposed transfer. It is used by the Commission staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order.

5. *Respondent Description:* The respondent universe currently comprises on average, 40 applicants for transfer of a hydro electric license.

6. *Estimated Burden:* 1,600 total burden hours, 40 respondents, 1

response annually, 40 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,600 hours ÷ 2,080 hours per year × $117,041 per year = $90,032, or $2,251 per respondent.

**Statutory Authority:** Sections 4(e), 8 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9905 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2342–011 Washington]**

## PacifiCorp; Notice of Site Visit and Technical Conference

April 17, 2001.

Take notice that on Wednesday, May 16, 2001, Commission staff will conduct a site visit to the Condit Hydroelectric Project No. 2342. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at 10:00 a.m. at Northwestern Lake Park located on the upper end of Northwestern Lake near the highway bridge on Northwestern Lake Road. Anyone who wishes to attend the site visit should contact Ms. Gail Miller of PacifiCorp at (503) 813–5528 by 4:00 p.m. on Friday, May 11, 2001.

On Thursday, May 17, 2001, Commission staff will hold a technical conference with PacifiCorp and other interested parties to discuss PacifiCorp's Application for Amendment of License and for Approval of an Offer of Settlement filed with the Commission on October 21, 1999, for the Condit Hydroelectric Project. The conference will take place from 9:00 a.m. to 3:30 p.m. at the Holiday Inn—Portland Airport, 8439 N.E. Columbia Blvd., Portland, Oregon.

The purposes of the conference will be to learn more about the Settlement Agreement and discuss related procedural steps. All interested individuals, organizations, and agencies are invited to attend the conference.

For further information, please contact Nicholas Jayjack at (202) 219–2825.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9899 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–87–002]**

## Tennessee Gas Pipeline Company; Notice of Compliance Filing

April 17, 2001.

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Third Revised Sheet No. 95B, with an effective date of April 1, 2001.

Tennessee states that the revised tariff sheet is being filed in compliance with the Commission's Letter Order issued in the above referenced docket on March 28, 2001 (Letter Order). Tennessee Gas Pipeline Company, 94 FERC ¶61,354 (2001). Tennessee further states that the revised tariff sheet contains certain clarifications to its tariff provisions that allow Rate Schedule FS to permit shippers to make proportionate releases of storage and transportation capacity and still retain the right to excess deliverability.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9893 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–312–049]**

## Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 17, 2001.

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Virginia Power Energy Marketing, Inc. (VEPCO) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) for firm service commencing December 1, 2001 and ending December 31, 2001, and a copy of a March 26, 2001 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and VEPCO (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and VEPCO to be effective April 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9894 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–312–048]**

### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 17, 2001

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Virginia Power Energy Marketing, Inc. (VEPCO) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) for firm service commencing November 1, 2001 and ending November 30, 2001, and a copy of a March 26, 2001 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and VEPCO (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and VEPCO to be effective April 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9895 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–312–047]**

### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 17, 2001.

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Virginia Power Energy Marketing, Inc. (VEPCO) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) for firm service commencing March 1, 2002 and ending March 31, 2002, and a copy of a March 26, 2001 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and VEPCO (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and VEPCO to be effective April 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 382.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9896 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–312–046]**

### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 17, 2001.

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Virginia Power Energy Marketing, Inc. (VEPCO) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) for firm service commencing February 1, 2002 and ending February 28, 2002, and a copy of a March 26, 2001 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and VEPCO (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and VEPCO to be effective April 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 285.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9897 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–312–045]**

### Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 17, 2001.

Take notice that on April 11, 2001, Tennessee Gas Pipeline Company (Tennessee), tendered for filing and approval a Gas Transportation Agreement between Tennessee and Virginia Power Energy Marketing, Inc. (VEPCO) pursuant to Tennessee's Rate Schedule FT–A (FT–A Agreement) for firm service commencing January 1 , 2002 and ending January 31, 2002, and a copy of a March 26, 2001 Firm Transportation Negotiated Rate Agreement entered into between Tennessee and VEPCO (Negotiated Rate Agreement). The filed FT–A Agreement and the Negotiated Rate Agreement reflect a negotiated rate arrangement between Tennessee and VEPCO to be effective April 15, 2001.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9898 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP98–198–003 and RP85–177–128]**

### Texas Eastern Transmission Corporation; Notice of Compliance Filing

April 17, 2001.

Take notice that on April 11, 2001, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective as reflected thereon.

Texas Eastern states that the purpose of this filing is to comply with Section 4.05 of the Joint Stipulation and Agreement Amending Global Settlement (Amended Global Settlement) approved by the Commission in its order issued August 28, 1998, [See Texas Eastern Transmission Corp., 84 FERC 61,200 (1998)] and Section 157.217 of the Commission's Regulations (18 CFR 157.217). Texas Eastern states that pursuant to the Amended Global Settlement its customers were afforded rights to convert their Part 157 service to Part 284 open access service.

Texas Eastern also states that the Amended Global Settlement provided that the Commission's approval thereof shall constitute all abandonment and certificate authorization required to implement any such conversions. Texas Eastern states that the purpose of this filing is to make the appropriate tariff revisions to reflect contract conversions resulting from the exercise by those customers which so elected to exercise their Amended Global Settlement conversion rights.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9903 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–1647–001, *et al.*]**

### Virginia Electric and Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

April 16, 2001.

Take note that the following filings have been made with the Commission:

**1. Virginia Electric and Power Company**

[Docket No. ER01–1647–001]

Take notice that on April 10, 2001, Virginia Electric and Power Company, doing business as Dominion North Carolina Power (the Company) tendered for filing a substitute Original Sheet No. 34 for the North Carolina Electric Membership Corporation Agreement for the Purchase of Electricity for Resale from Virginia Electric and Power Company, Rate Schedule FERC No. 105. The substitute sheet updates Appendix D, List of Delivery Points, to reflect the new Hartsease delivery point for Edgecombe-Martin County Electric Membership Corporation, a North Carolina Electric Membership Corporation member cooperative. In the above-captioned proceeding, the Company filed a letter agreement to reflect the addition of this new Hartsease delivery point.

Copies of the filing were served upon NCEMC, North Carolina Utilities Commission and the Virginia State Corporation Commission.

*Comment date:* May 1, 2001, in accordance with Standard Paragraph E at the end of this notice.

**2. Southern California Edison Company**

[Docket No. ER01–1774–000]

Take notice that on April 11, 2001, Southern California Edison Company (SCE) tendered for filing the Interconnection Facilities Agreement

(Alamitos Agreement) between SCE and AES Alamitos, L.L.C. (AES Alamitos), and the Interconnection Facilities Agreement (Huntington Beach Agreement) between SCE and AES Huntington Beach, L.L.C. (AES Huntington Beach). These agreements set forth the terms for the parties to interconnect 1210 MW of additional generation capacity to the California Independent System Operator Controlled Grid pursuant to SCE's Transmission Owner Tariff, FERC Electric Tariff, First Revised Original Volume No. 6.

SCE requests that the Alamitos Agreement and the Huntington Beach Agreement become effective on June 1, 2001.

Copies of this filing were served upon the Public Utilities Commission of the State of California, AES Alamitos, and AES Huntington Beach.

*Comment date:* May 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

**3. Michigan Electric Transmission Company**

[Docket No. ER01–1775–000]

Take notice that on April 11, 2001, Michigan Electric Transmission Company (Michigan Transco) tendered for filing an executed revised Service Agreement for Network and Firm and Non-Firm Point to Point Transmission Service with Quest Energy, L.L.C. (Customer) pursuant to the Joint Open Access Transmission Service Tariff filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC). Michigan Transco is requesting an effective date of April 1, 2001.

Customer is taking service under the Service Agreement in connection with Consumers Energy Company's (Consumers) Electric Customer Choice program.

Copies of the filed agreement were served upon the Michigan Public Service Commission, ITC, Consumers and the Customer.

*Comment date:* May 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such 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 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. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9892 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–40–000, –001, and –002]**

## Florida Gas Transmission Company; Errata Notice; Notice of Availability of the Draft Environmental Impact Statement for the Proposed FGT Phase V Expansion Project

The Notice of Availability of the Draft Environmental Impact Statement (draft EIS) for the Proposed Florida Gas Transmission Company Phase V Expansion Project (70 FR 18767, published April 11, 2001) issued on April 5, 2001, and page 2 of the letter inside the cover of the draft EIS lists the locations of meetings that will be held to receive comments on the draft EIS. However, the time was not specified. Each of the meetings will start at 7:00 p.m.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9900 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP99–580–002]**

## Southern LNG, Inc.; Notice of Availability of the Environmental Assessment for the Proposed Sendout Modification Project

April 17, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Southern LNG, Inc. (Southern LNG) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed project which includes construction and operation of facilities at Southern LNG's existing liquefied natural gas (LNG) import terminal on Elba Island in Chatham County, Georgia. Southern LNG would increase the peak vaporization from 540 to 675 million cubic feet per day (MMCFD). This would allow Southern LNG to increase the throughput capacity of the LNG Terminal. LNG storage capacity would not change. Southern LNG proposes to:

- Replace the existing five 108 MMCFD Ryan Industries LNG submerged combustion vaporizers with five 135 MMCFD state-of-the-art submerged combustion water bath heaters; and
- Install an additional secondary LNG pump to supply additional LNG for the increased capacity of the vaporizers.

This filing is related to Docket No. CP99–582–003 (Section 284, Subpart G blanket certificate) where Southern LNG proposes to amend the initial rates approved in the Commission's March 16, 2000 *Order Issuing Certificate, Section 3 Authorization, and Denying Request for Rehearing.* No facilities are proposed for construction in this application.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that our comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 1, PJ11.1;
- Reference Docket No. CP99–580–002; and
- Mail your comments so that they will be received in Washington, DC on or before May 17, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9901 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Surrender of License and Soliciting Comments, Motions To Intervene, and Protests

April 17, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of License.

b. *Project No:* 2541–035.

c. *Date Filed:* April 2, 2001.

d. *Applicant:* Cascade Power Company.

e. *Name of Project:* Cascade.

f. *Location:* On the Little River in Transylvania County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 6.1 and 6.2.

h. *Applicant Contact:* Mark K. Seifert, 107 Saint Brides Court, Cary, NC 27511, (919) 362–4452.

i. *FERC Contact:* Héctor M. Pérez at (202) 219–2843, or *hector.perez@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* May 18, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Please include the project number (2541–035) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Surrender:* Cascade Power Company requests to surrender the license for this constructed project for economic reasons.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date above.

n. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–9902 Filed 4–20–01; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice

April 18, 2001.

The following notice of meering is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** April 25, 2001, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street, NE., Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note:** —Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Boergers, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**765th—Meeting April 25, 2001, Regular Meeting 10:00 a.m., Consent Agenda—Markets, Tariffs and Rates—Electric**

**Consent Agenda—Markets, Tariffs and Rates—Electric**

CAE–1.
DOCKET# ER01–1353,000, PACIFICORP
OTHER#S ER01–1354,000, PACIFICORP
ER01–1355,000, PACIFICORP
CAE–2.
DOCKET# ER01–798,000, PACIFICORP
OTHER#S ER01–798,001, PACIFICORP
CAE–3.
DOCKET# ER01–1329,000, IDAHO POWER COMPANY
CAE–4.
DOCKET# ER01–1385,000, CONSOLIDATED EDISON COMPANY OF NEW YORK
OTHER#S EL01–45,000, CONSOLIDATED EDISON COMPANY OF NEW YORK
CAE–5.
DOCKET# ER00–3591,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OTHER#S ER00–3591,001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
ER00–3591,002, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
EL00–70,003, NEW YORK STATE ELECTRIC AND GAS CORPORATION V. NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
EL00–70,002, NEW YORK STATE ELECTRIC AND GAS CORPORATION V. NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
ER00–1969,001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
ER00–3038,002, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
ER00–3038,001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–6.
DOCKET# ER01–1401,000, NEW ENGLAND POWER POOL
OTHER#S ER01–1401,001, NEW ENGLAND POWER POOL
CAE–7.
DOCKET# ER01–1517,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
OTHER#S ER01–181,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–8.
DOCKET# ER01–1489,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–9.
DOCKET# ER01–1440,000, PJM INTERCONNECTION, L.L.C.
CAE–10.
DOCKET# ER01–1400,000, WALTON ELECTRIC MEMBERSHIP CORPORATION
CAE–11.
DOCKET# ER01–1403,000, FIRSTENERGY OPERATING COMPANIES
CAE–12.
DOCKET# ER01–1398,000, NEW ENGLAND POWER POOL PARTICIPANTS COMMITTEE
CAE–13.
DOCKET# ER01–1417,000, RICHMOND COUNTY POWER, LLC
CAE–14.
DOCKET# ER01–1482,000, ISO NEW ENGLAND INC.
CAE–15.
OMITTED
CAE–16.
DOCKET# ER01–1520,000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–17.
DOCKET# ER01–1519,000, ARIZONA PUBLIC SERVICE COMPANY
CAE–18.
DOCKET# ER01–1305,000, WESTAR GENERATING, INC.
OTHER#S ER01–1305,001, WESTAR GENERATING, INC.
ER01–1305,002, WESTAR GENERATING, INC.
CAE–19.
DOCKET# ER01–1303,000, INTERNATIONAL TRANSMISSION COMPANY
CAE–20.
DOCKET# ER00–188,000, PSI ENERGY, INC.
CAE–21.
OMITTED
CAE–22.
DOCKET# ER01–314,000, SOUTHERN CALIFORNIA EDISON COMPANY
CAE–23.
DOCKET# ER01–813,000, CONNECTICUT YANKEE ATOMIC POWER COMPANY
CAE–24.
DOCKET# ER01–368,000, ISO NEW ENGLAND INC.
OTHER#S ER01–368,001, ISO NEW ENGLAND INC.
CAE–25.
DOCKET# RT01–35,000, AVISTA CORPORATION, BONNEVILLE POWER ADMINISTRATION, IDAHO POWER COMPANY, MONTANA POWER COMPANY, NEVADA POWER COMPANY, PACIFICORP, PORTLAND GENERAL ELECTRIC COMPANY, PUGET SOUND ENERGY, INC. AND SIERRA PACIFIC POWER COMPANY
OTHER#S RT01–15,000, AVISTA CORPORATION, MONTANA POWER COMPANY, NEVADA POWER COMPANY, PORTLAND GENERAL ELECTRIC COMPANY, PUGET SOUND ENERGY, INC. AND SIERRA PACIFIC POWER COMPANY
CAE–26.
DOCKET# EL99–26,001, HYDRO INVESTORS, INC. V. TRAFALGAR POWER, INC.
OTHER#S QF87–499,002, TRAFALGAR POWER, INC.
QF87–500,002, TRAFALGAR POWER, INC.
QF87–501,002, TRAFALGAR POWER, INC.
QF88–413,002, TRAFALGAR POWER, INC.
QF88–414,002, TRAFALGAR POWER, INC.
QF88–415,002, TRAFALGAR POWER, INC.
QF88–416,002, TRAFALGAR POWER, INC.
CAE–27.
DOCKET# ER01–318,004, CONSUMERS ENERGY COMPANY
CAE–28.
DOCKET# EC01–22,001, OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, THE TOLEDO EDISON COMPANY, PENNSYLVANIA POWER COMPANY, AMERICAN TRANSMISSION SYSTEMS, INC. AND THEIR PUBLIC UTILITY AFFILIATES AND JERSEY CENTRAL POWER & LIGHT COMPANY, METROPOLITAN EDISON COMPANY AND PENNSYLVANIA ELECTRIC COMPANY AND THEIR PUBLIC UTILITY AFFILIATES
CAE–29.
DOCKET# EL94–38,001, CITIES OF BATAVIA AND ST. CHARLES, ILLINOIS V. COMMONWEALTH EDISON COMPANY
OTHER#S ER94–913,001, CITIES OF BATAVIA AND ST. CHARLES, ILLINOIS V. COMMONWEALTH EDISON COMPANY
CAE–30.
DOCKET# ER94–1409,003, CAMBRIDGE ELECTRIC LIGHT COMPANY
OTHER#S EL94–88,003, CAMBRIDGE ELECTRIC LIGHT COMPANY
EL94–88,004, CAMBRIDGE ELECTRIC LIGHT COMPANY

ER94–1409,004, CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–31.
DOCKET# ER99–1142,003, NEW ENGLAND POWER POOL
CAE–32.
DOCKET# ER98–3853,005, NEW ENGLAND POWER POOL
CAE–33.
DOCKET# ER99–3888,001, PP&L, INC.
CAE–34.
DOCKET# ER00–801,001, TAMPA ELECTRIC COMPANY
CAE–35.
DOCKET# ER00–1830,001, EL SEGUNDO POWER, LLC
CAE–36.
DOCKET# EL00–62,004, ISO NEW ENGLAND, INC.
OTHER#S ER00–2052,005, ISO NEW ENGLAND, INC.
ER00–2016,002, NEW ENGLAND POWER POOL
EL00–59,002, CENTRAL MAINE POWER COMPANY, NORTHEAST UTILITIES SERVICE COMPANY, UNITED ILLUMINATING COMPANY, UNITIL POWER CORPORATION, FITCHBURG GAS AND ELECTRIC LIGHT COMPANY AND VERMONT ELECTRIC POWER COMPANY V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
ER00–2005,002, CENTRAL MAINE POWER COMPANY, NORTHEAST UTILITIES SERVICE COMPANY, UNITED ILLUMINATING COMPANY, UNITIL POWER CORPORATION, FITCHBURG GAS AND ELECTRIC LIGHT COMPANY AND VERMONT ELECTRIC POWER COMPANY V. NEW ENGLAND POWER POOL AND ISO NEW ENGLAND, INC.
CAE–37.
DOCKET# ER00–2413,004, AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–38.
DOCKET# EL01–55,000, MIRANT AMERICAS ENERGY MARKETING, LP, MIRANT NEW YORK, INC., MIRANT BOWLINE, LLC, MIRANT LOVETT, LLC AND MIRANT NY–GEN, LLC V. NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.
CAE–39.
DOCKET# OA01–4,000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
CAE–40.
DOCKET# EL01–20,000, CITIZENS COMMUNICATIONS COMPANY
OTHER#S ER95–1586,006, CITIZENS COMMUNICATIONS COMPANY
ER95–1586,007, CITIZENS COMMUNICATIONS COMPANY
ER95–1586,008, CITIZENS COMMUNICATIONS COMPANY
ER95–1586,009, CITIZENS COMMUNICATIONS COMPANY
EL96–17,002, CITIZENS COMMUNICATIONS COMPANY
EL96–17,003, CITIZENS COMMUNICATIONS COMPANY
OA96–184,004, CITIZENS COMMUNICATIONS COMPANY
OA96–184,005, CITIZENS COMMUNICATIONS COMPANY
CAE–41.
DOCKET# EL00–79,000, MID-TEX G&T ELECTRIC COOPERATIVE, INC., BIG COUNTRY ELECTRIC COOPERATIVE, INC., COLEMAN COUNTY ELECTRIC COOPERATIVE, INC., CONCHO VALLEY ELECTRIC COOPERATIVE, INC., GOLDEN SPREAD ELECTRIC COOPERATIVE, INC., KIMBLE ELECTRIC COOPERATIVE, INC., LIGHTHOUSE ELECTRIC COOPERATIVE, INC., RIO GRANDE ELECTRIC COOPERATIVE, INC., SOUTHWEST TEXAS ELECTRIC COOPERATIVE, INC. AND TAYLOR ELECTRIC COOPERATIVE, INC. V. WEST TEXAS UTILITIES COMPANY
CAE–42.
DOCKET# EL00–95,012, SAN DIEGO GAS & ELECTRIC COMPANY, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S EL00–95,006, SAN DIEGO GAS & ELECTRIC COMPANY, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND CALIFORNIA POWER EXCHANGE CORPORATION
CAE–43.
DOCKET# ER98–4608,002, PP&L ENERGYPLUS COMPANY

**Consent Agenda—Markets, Tariffs and Rates—Gas**

CAG–1.
OMITTED
CAG–2.
DOCKET# RP01–272,000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–3.
DOCKET# RP01–350,000, COLORADO INTERSTATE GAS COMPANY
CAG–4.
OMITTED
CAG–5.
OMITTED
CAG–6.
DOCKET# RP01–361,000, NORTHERN BORDER PIPELINE COMPANY
CAG–7.
DOCKET# RP01–317,000, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–8.
OMITTED
CAG–9.
DOCKET# RP01–314,000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–10.
DOCKET# RP01–292,000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–11.
DOCKET# RP97–288,009, TRANSWESTERN PIPELINE COMPANY
OTHER'S RP97–288,010, TRANSWESTERN PIPELINE COMPANY
RP97–288,011, TRANSWESTERN PIPELINE COMPANY
RP97–288,012, TRANSWESTERN PIPELINE COMPANY
RP97–288,013, TRANSWESTERN PIPELINE COMPANY
RP97–288,014, TRANSWESTERN PIPELINE COMPANY
RP97–288,015, TRANSWESTERN PIPELINE COMPANY
RP97–288,016, TRANSWESTERN PIPELINE COMPANY
CAG–12.
OMITTED
CAG–13.
DOCKET# RP00–63,002, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–14.
OMITTED
CAG–15.
OMITTED
CAG–16.
DOCKET# RP98–40,000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–17.
DOCKET# RP01–298,000, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–18.
DOCKET# RP00–209,000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–209,001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP01–245,000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–19.
DOCKET# RP99–507,004, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
OTHER#S RP99–507,005, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP99–507,006, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP99–507,007, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP99–507,008, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP99–507,009, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP99–507,010, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY V. EL PASO NATURAL GAS COMPANY
RP00–139,001, KN MARKETING, L.P. V. EL PASO NATURAL GAS COMPANY
RP00–139,002, KN MARKETING, L.P. V. EL PASO NATURAL GAS COMPANY

RP00–336,000, EL PASO NATURAL GAS COMPANY
CAG–20.
DOCKET# OR99–6,000, TE PRODUCTS PIPELINE COMPANY, L.P.
CAG–21.
OMITTED
CAG–22.
DOCKET# RP01–225,002, GULF SOUTH PIPELINE COMPANY, LP
OTHER#S RP01–225,001, GULF SOUTH PIPELINE COMPANY, LP
CAG–23.
DOCKET# RP00–372,002, ANR PIPELINE COMPANY
CAG–24.
OMITTED
CAG–25.
DOCKET# RP00–631,001, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER#S RP00–613,001, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–26.
DOCKET# RP01–23,001, ALGONQUIN GAS TRANSMISSION COMPANY
OTHER#S RP01–17,001, MARITIMES & NORTHEAST PIPELINE, L.L.C.
RP01–22,001, EAST TENNESSEE NATURAL GAS COMPANY
RP01–25,001, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–27.
OMITTED
CAG–28.
DOCKET# MG01–18,000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–29.
DOCKET# OR00–6,000, CHEVRON PIPE LINE COMPANY
CAG–30.
DOCKET# RP01–73,000, SOUTHWEST GAS TRANSMISSION COMPANY, A LIMITED PARTNERSHIP
CAG–31.
DOCKET# RM96–1,015, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
OTHER#S RP01–277,000, NORTHWEST PIPELINE CORPORATION
RP01–280,000, WYOMING INTERSTATE COMPANY, LTD.
RP01–281,000, YOUNG GAS STORAGE COMPANY, LTD.
RP01–281,001, YOUNG GAS STORAGE COMPANY, LTD.
RP01–282,000, EL PASO NATURAL GAS COMPANY
RP01–283,000, MOJAVE PIPELINE COMPANY
RP01–284,000, COLORADO INTERSTATE GAS COMPANY
RP01–285,000, KANSAS PIPELINE COMPANY
RP01–286,000, MIDCOAST INTERSTATE TRANSMISSION, INC.
RP01–287,000, MID LOUISIANA GAS COMPANY
RP01–288,000, NORTHERN BORDER PIPELINE COMPANY
RP01–289,000, ALGONQUIN GAS TRANSMISSION COMPANY
RP01–290,000, ALGONQUIN LNG, INC.
RP01–291,000, TEXAS EASTERN TRANSMISSION CORPORATION
RP01–294,000, BLUE LAKE GAS STORAGE COMPANY
RP01–295,000, ANR STORAGE COMPANY
RP01–296,000, STEUBEN GAS STORAGE COMPANY
RP01–297,000, ANR PIPELINE COMPANY
RP01–299,000, KERN RIVER GAS TRANSMISSION COMPANY
RP01–300,000, CLEAR CREEK STORAGE COMPANY, L.L.C.
RP01–301,000, MISSISSIPPI CANYON GAS PIPELINE, LLC
RP01–302,000, GARDEN BANKS GAS PIPELINE, LLC
RP01–303,000, DESTIN PIPELINE COMPANY, L.L.C.
RP01–304,000, NAUTILUS PIPELINE COMPANY, L.L.C.
RP01–306,000, KINDER MORGAN INTERSTATE GAS TRANSMISSION LLC
RP01–307,000, OVERTHRUST PIPELINE COMPANY
RP01–308,000, HIGH ISLAND OFFSHORE SYSTEM, L.L.C.
RP01–309,000, GULF STATES TRANSMISSION CORPORATION
RP01–310,000, TENNESSEE GAS PIPELINE COMPANY
RP01–311,000, STINGRAY PIPELINE COMPANY
RP01–312,000, U–T OFFSHORE SYSTEM, L.L.C.
RP01–313,000, K N WATTENBERG LIMITED LIABILITY COMPANY
RP01–318,000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
RP01–319,000, VIKING GAS TRANSMISSION COMPANY
RP01–321,000, SOUTHERN NATURAL GAS COMPANY
RP01–322,000, DAUPHIN ISLAND GATHERING PARTNERS
RP01–324,000, EGAN HUB PARTNERS, L. P.
RP01–325,000, MARITIMES & NORTHEAST PIPELINE, L.L.C.
RP01–326,000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
RP01–327,000, NATURAL GAS PIPELINE COMPANY OF AMERICA
RP01–328,000, TRAILBLAZER PIPELINE COMPANY
RP01–329,000, QUESTAR PIPELINE COMPANY
RP01–331,000, COVE POINT LNG LIMITED PARTNERSHIP
RP01–333,000, TUSCARORA GAS TRANSMISSION COMPANY
RP01–334,000, CANYON CREEK COMPRESSION COMPANY
RP01–335,000, TRANSCOLORADO GAS TRANSMISSION COMPANY
RP01–336,000, NATIONAL FUEL GAS SUPPLY CORPORATION
RP01–337,000, OZARK GAS TRANSMISSION, L.L.C.
RP01–338,000, MIDWESTERN GAS TRANSMISSION COMPANY
RP01–339,000, BLACK MARLIN PIPELINE COMPANY
RP01–340,000, GULF SOUTH PIPELINE COMPANY, LP
RP01–341,000, SABINE PIPE LINE LLC
RP01–342,000, COLUMBIA GULF TRANSMISSION COMPANY
RP01–343,000, GRANITE STATE GAS TRANSMISSION, INC.
RP01–344,000, PAIUTE PIPELINE COMPANY
RP01–345,000, COLUMBIA GAS TRANSMISSION CORPORATION
RP01–346,000, DISCOVERY GAS TRANSMISSION LLC
RP01–347,000, PETAL GAS STORAGE COMPANY
RP01–348,000, WESTGAS INTERSTATE, INC.
RP01–349,000, EAST TENNESSEE NATURAL GAS COMPANY
RP01–351,000, SOUTHWEST GAS STORAGE COMPANY
RP01–352,000, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
RP01–353,000, TRUNKLINE LNG COMPANY
RP01–354,000, SEA ROBIN PIPELINE COMPANY
RP01–356,000, TRUNKLINE GAS COMPANY
RP01–357,000, PANHANDLE EASTERN PIPE LINE COMPANY
RP01–358,000, MICHIGAN GAS STORAGE COMPANY
RP01–360,000, DOMINION TRANSMISSION, INC.
RP01–362,000, VENICE GATHERING SYSTEM, L.L.C.
RP01–363,000, TEXAS GAS TRANSMISSION CORPORATION
RP01–364,000, WILLIAMS GAS PIPELINES CENTRAL, INC.
RP01–365,000, TRANSWESTERN PIPELINE COMPANY
RP01–366,000, NORTHERN NATURAL GAS COMPANY
RP01–367,000, FLORIDA GAS TRANSMISSION COMPANY
RP01–368,000, RELIANT ENERGY GAS TRANSMISSION COMPANY
RP01–369,000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–32.
OMITTED

**Consent Agenda—Energy Projects—Hydro**

CAH–1.
DOCKET# P–1988,025, PACIFIC GAS AND ELECTRIC COMPANY
CAH–2.
DOCKET# P–2017,015, SOUTHERN CALIFORNIA EDISON COMPANY
CAH–3.
DOCKET# P–2355,008, PECO ENERGY COMPANY AND EXELON GENERATION COMPANY, L.L.C.
CAH–4.
DOCKET# DI99–3,001, CITY OF ATKA, ALASKA
CAH–5.
DOCKET# P–2842,029, CITY OF IDAHO FALLS, IDAHO
OTHER#S P–553,066, CITY OF SEATTLE, WASHINGTON
P–553,085, CITY OF SEATTLE, WASHINGTON
P–553,115, CITY OF SEATTLE, WASHINGTON 2
P–553,120, CITY OF SEATTLE, WASHINGTON
P–619,077, CITY OF SANTA CLARA, CALIFORNIA
P–619,081, CITY OF SANTA CLARA, CALIFORNIA

P–619,087, CITY OF SANTA CLARA, CALIFORNIA
P–619,090, CITY OF SANTA CLARA, CALIFORNIA
P–637,015, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–637,020, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–943,068, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–943,073, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–1417,052, THE CENTRAL NEBRASKA PUBLIC POWER IRRIGATION DISTRICT
P–1417,060, THE CENTRAL NEBRASKA PUBLIC POWER IRRIGATION DISTRICT
P–1417,089, THE CENTRAL NEBRASKA PUBLIC POWER IRRIGATION DISTRICT
P–1417,099, THE CENTRAL NEBRASKA PUBLIC POWER IRRIGATION DISTRICT
P–1862,041, CITY OF TACOMA, WASHINGTON
P–1862,052, CITY OF TACOMA, WASHINGTON
P–1862,079, CITY OF TACOMA, WASHINGTON
P–1862,086, CITY OF TACOMA, WASHINGTON
P–2000,019, NEW YORK POWER AUTHORITY
P–2000,024, NEW YORK POWER AUTHORITY
P–2000,030, NEW YORK POWER AUTHORITY
P–2016,033, CITY OF TACOMA, WASHINGTON
P–2016,040, CITY OF TACOMA, WASHINGTON
P–2016,048, CITY OF TACOMA, WASHINGTON
P–2016,049, CITY OF TACOMA, WASHINGTON
P–2042,009, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
P–2042,018, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
P–2101,057, SACRAMENTO MUNICIPAL UTILITY DISTRICT
P–2101,060, SACRAMENTO MUNICIPAL UTILITY DISTRICT
P–2101,072, SACRAMENTO MUNICIPAL UTILITY DISTRICT
P–2144,020, CITY OF SEATTLE, WASHINGTON
P–2144,022, CITY OF SEATTLE, WASHINGTON
P–2144,026, CITY OF SEATTLE, WASHINGTON
P–2144,027, CITY OF SEATTLE, WASHINGTON
P–2145,035, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–2145,038, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–2149,072, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY
P–2149,081, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY
P–2149,089, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY
P–2149,092, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY
P–2216,037, NEW YORK POWER AUTHORITY
P–2216,039, NEW YORK POWER AUTHORITY
P–2216,047, NEW YORK POWER AUTHORITY
P–2216,051, NEW YORK POWER AUTHORITY
P–2409,098, CALAVERAS COUNTY WATER DISTRICT
P–2409,106, CALAVERAS COUNTY WATER DISTRICT
P–2409,115, CALAVERAS COUNTY WATER DISTRICT
P–2409,117, CALAVERAS COUNTY WATER DISTRICT
P–2442,032, CITY OF WATERTOWN, NEW YORK
P–2442,043, CITY OF WATERTOWN, NEW YORK
P–2442,055, CITY OF WATERTOWN, NEW YORK
P–2442,056, CITY OF WATERTOWN, NEW YORK
P–2685,006, NEW YORK POWER AUTHORITY
P–2685,008, NEW YORK POWER AUTHORITY
P–2685,012, NEW YORK POWER AUTHORITY
P–2685,013, NEW YORK POWER AUTHORITY
P–2705,012, CITY OF SEATTLE, WASHINGTON
P–2705,016, CITY OF SEATTLE, WASHINGTON
P–2705,024, CITY OF SEATTLE, WASHINGTON
P–2705,025, CITY OF SEATTLE, WASHINGTON
P–2842,033, CITY OF IDAHO FALLS, IDAHO
P–2842,035, CITY OF IDAHO FALLS, IDAHO
P–2842,036, CITY OF IDAHO FALLS, IDAHO
P–2952,061, CITY OF IDAHO FALLS, IDAHO
P–2952,063, CITY OF IDAHO FALLS, IDAHO
P–2952,065, CITY OF IDAHO FALLS, IDAHO
P–2952,066, CITY OF IDAHO FALLS, IDAHO
P–2959,076, CITY OF SEATTLE, WASHINGTON
P–2959,088, CITY OF SEATTLE, WASHINGTON
P–2959,100, CITY OF SEATTLE, WASHINGTON
P–2959,106, CITY OF SEATTLE, WASHINGTON
P–2997,019, SOUTH SUTTER WATER DISTRICT
P–2997,025, SOUTH SUTTER WATER DISTRICT
P–3083,085, OKLAHOMA MUNICIPAL POWER AUTHORITY
P–3083,092, OKLAHOMA MUNICIPAL POWER AUTHORITY
P–3083,097, OKLAHOMA MUNICIPAL POWER AUTHORITY
P–3083,098, OKLAHOMA MUNICIPAL POWER AUTHORITY
P–3190,009, CITY OF SANTA CLARA, CALIFORNIA
P–3190,010, CITY OF SANTA CLARA, CALIFORNIA
P–3190,014, CITY OF SANTA CLARA, CALIFORNIA
P–3190,015, CITY OF SANTA CLARA, CALIFORNIA
P–3193,009, CITY OF SANTA CLARA, CALIFORNIA
P–3193,010, CITY OF SANTA CLARA, CALIFORNIA
P–3193,014, CITY OF SANTA CLARA, CALIFORNIA
P–3193,015, CITY OF SANTA CLARA, CALIFORNIA
P–6842,097, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
P–6842,123, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
P–6842,125, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
P–10551,069, CITY OF OSWEGO, NEW YORK
P–10551,076, CITY OF OSWEGO, NEW YORK
P–10551,084, CITY OF OSWEGO, NEW YORK
P–10551,087, CITY OF OSWEGO, NEW YORK
P–553,114, CITY OF SEATTLE, WASHINGTON
P–619,085, CITY OF SANTA CLARA, CALIFORNIA
P–637,019, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–943,072, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–1417,086, THE CENTRAL NEBRASKA PUBLIC POWER IRRIGATION DISTRICT
P–1862,075, CITY OF TACOMA, WASHINGTON
P–2000,029, NEW YORK POWER AUTHORITY
P–2016,047, CITY OF TACOMA, WASHINGTON
P–2042,017, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY
P–2101,071, SACRAMENTO MUNICIPAL UTILITY DISTRICT
P–2144,025, CITY OF SEATTLE, WASHINGTON
P–2145,037, PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY
P–2149,088, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY
P–2216,045, NEW YORK POWER AUTHORITY
P–2409,113, CALAVERAS COUNTY WATER DISTRICT
P–2442,053, CITY OF WATERTOWN, NEW YORK
P–2685,011, NEW YORK POWER AUTHORITY
P–2705,023, CITY OF SEATTLE, WASHINGTON
P–2959,098, CITY OF SEATTLE, WASHINGTON
P–2997,024, SOUTH SUTTER WATER DISTRICT
P–3083,095, OKLAHOMA MUNICIPAL POWER AUTHORITY
P–3190,012, CITY OF SANTA CLARA, CALIFORNIA
P–3193,012, CITY OF SANTA CLARA, CALIFORNIA
P–6842,122, CITIES OF ABERDEEN AND TACOMA, WASHINGTON
P–10551,083, CITY OF OSWEGO, NEW YORK

CAH–6.

DOCKET# P–10482,042, WOODSTONE

LAKES DEVELOPMENT, L.L.C. AND WOODSTONE TORONTO DEVELOPMENT, L.L.C. V. SOUTHERN ENERGY NY-GEN, L.L.C.
OTHER#S P–10482,043, WOODSTONE LAKES DEVELOPMENT, L.L.C. AND WOODSTONE TORONTO DEVELOPMENT, L.L.C. V. SOUTHERN ENERGY NY-GEN, L.L.C.

**Consent Agenda—Energy Projects—Certificates**

CAC–1.
DOCKET# CP01–97,000, NORNEW ENERGY SUPPLY, INC. AND NORSE PIPELINE, L.L.C.
CAC–2.
DOCKET# CP01–17,000, ALGONQUIN GAS TRANSMISSION COMPANY
CAC–3.
DOCKET# CP98–795,001, TRANSWESTERN PIPELINE COMPANY
CAC–4.
DOCKET# CP00–6,002, GULFSTREAM NATURAL GAS SYSTEM, L.L.C.
OTHER#S CP00–8,002, GULFSTREAM NATURAL GAS SYSTEM, L.L.C.
CP00–7,002, GULFSTREAM NATURAL GAS SYSTEM, L.L.C.
CAC–5.
DOCKET# CP00–48,002, TENNESSEE GAS PIPELINE COMPANY
OTHER#S CP00–48,000, TENNESSEE GAS PIPELINE COMPANY

**Energy Projects—Hydro Agenda**

H–1.
RESERVED

**Energy Projects—Certificates Agenda**

C–1.
RESERVED

**Markets, Tariffs and Rates—Electric Agenda**

E–1.
RESERVED

**Markets, Tariffs and Rates—Gas Agenda**

G–1.
RESERVED

**David P. Boergers,**

*Secretary.*

[FR Doc. 01–10078 Filed 4–19–01; 11:53 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6967–1]**

## National Drinking Water Advisory Council Notice of Open Meeting

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

**ACTION:** Notice.

**SUMMARY:** Under section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S3300f *et seq.*), will be held on May 16, 2001, from 9 a.m. until 5 p.m., May 17, from 9 a.m. until 3 p.m. at the Camino Real Hotel, 101 South El Paso St., El Paso, Texas. At this meeting the National Drinking Water Advisory Council will provide input on strategies concerning microbial contamination; make recommendations on the formation of a new subcommittee on infrastructure issues; hear presentations on EPA efforts concerning Clean Water Act and Safe Drinking Water Act program integration for source water protection; discuss implementation of new regulations; and receive updates on regulatory actions and the Research subcommittee.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–9194 before May 4, 2001.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Janet Pawlukiewicz, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460. The telephone number is Area Code (202) 260–9194 or 260–5509 or E-Mail *pawlukiewicz.janet@epa.gov.*

Dated: April 10, 2001.

**Janet Pawlukiewicz,**

*Acting Director, Office of Ground Water and Drinking Water.*

[FR Doc. 01–9486 Filed 4–20–01; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 01–9; FCC 01–130]**

## Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, for Authorization To Provide In-Region InterLATA Services in the State of Massachusetts

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document the Federal Communications Commission grants the section 271 application of Verizon New England Inc., *et al.* (Verizon) for authority to enter the interLATA telecommunications market in the state of Massachusetts. The Commission grants Verizon's application based on our conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective May 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Eric Einhorn, Attorney-Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580, or via the Internet at *eeinhorn@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order* in CC Docket No. 01–9 released April 16, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC. It is also available on the Commission's website at *http://www.fcc.gov/ccb/ppp/2001ord.html.*

### Synopsis of the Order

1. *History of the Application.* On January 16, 2001, Verizon filed an application (Massachusetts II Application), pursuant to section 271 of the Communications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Massachusetts. The Massachusetts II Application incorporated by reference the record that developed in an earlier

proceeding evaluating Verizon's first Massachusetts application (Massachusetts I Application), which was filed on September 22, 2000, and withdrawn on December 18, 2000.

2. *The State Commission's Evaluation.* The Massachusetts Department of Telecommunications and Energy (Massachusetts Department) advised the Commission, following sixteen months of extensive review, that Verizon met the checklist requirements of section 271(c) and has taken the statutorily required steps to open its local markets to competition. Consequently, the Massachusetts Department recommended that the Commission approve Verizon's in-region, interLATA entry in both its October 16, 2000 evaluation of the Massachusetts I Application, and its February 6, 2001 evaluation of the Massachusetts II Application.

3. *The Department of Justice's Evaluation.* The Department of Justice (DOJ) filed its evaluation of Verizon's Massachusetts I Application on October 27, 2000. It recommended that the Commission not approve the application until Verizon had demonstrated that it provides nondiscriminatory access to and suitable performance measures regarding DSL loops. The DOJ submitted an evaluation of Verizon's Massachusetts II Application on February 21, 2001. It stated that although ''a number of changes have taken place'' since its evaluation of the Massachusetts I Application, it still could not find at that stage of the proceeding that Verizon had adequately demonstrated its ability to provide nondiscriminatory access to DSL loops. Recognizing that its evaluation reflected only the evidence in the record at the time, however, the DOJ urged the Commission to consider the full record in its final determination.

**Primary Issues in Dispute**

*Checklist Item 2—Unbundled Network Elements*

4. *Pricing of Network Elements.* The Commission finds that Verizon's charges for UNEs made available in Massachusetts to other telecommunications carriers are just, reasonable, and nondiscriminatory in compliance with checklist item 2. Verizon relies on switching, transport, and signaling rates equivalent to those currently in place in New York. The Commission finds that Verizon's voluntarily-adopted rates that are equivalent to those currently in place in New York provide competitive LECs with rates that are within a reasonable TELRIC (total element long-run incremental costs) range. As the Commission noted in the *SWBT Kansas/Oklahoma Order* (66 FR 8596, February 1, 2001), under appropriate circumstances, a BOC's UNE rates will be entitled to a presumption of TELRIC compliance if they are adopted in whole from another state whose rates have been found to comply with TELRIC, and if costs are demonstrated to be at or above the costs in the state whose rates were adopted. The Commission finds that Verizon's Massachusetts rates meet the TELRIC-presumption test set forth in the *SWBT Kansas/Oklahoma Order.* Additionally, the Commission finds the Massachusetts loop rates to be within the range that the reasonable application of TELRIC principles would produce.

5. *Access to Operations Support Systems (OSS).* The Commission concludes that Verizon provides nondiscriminatory access to its operations support systems (OSS). Verizon demonstrates that its pre-ordering systems permit competing carriers to build and use application-to-application interfaces and integrate pre-ordering and ordering interfaces. The interfaces are consistently available and provide reasonably prompt response times. The Commission also finds that Verizon offers nondiscriminatory access to the OSS functions associated with determining whether a loop can support DSL. With respect to Verizon's ordering OSS, the Commission finds that Verizon's OSS provides timely confirmation notices, rejection notices, completion notices, and jeopardy information. The Commission also finds that Verizon's OSS are capable of achieving high overall levels of flow-through. Regarding provisioning, the Commission concludes that Verizon provisions competing carriers' resale and UNE–P orders in substantially the same time and manner as it provisions orders for its own retail customers. With respect to maintenance and repair, the Commission finds that Verizon offers requesting carriers access to the same functions that are available to Verizon's retail representatives, and that it provides nondiscriminatory access to the maintenance and repair systems and processes. With respect to billing, Verizon demonstrates that it provides timely and accurate usage information to competing carriers, as well as wholesale bills in a manner that affords competing carriers a meaningful opportunity to compete. Finally, the Commission concludes that Verizon has a sufficient process in place for handling changes to its OSS, that competing carriers have input in this process, and that Verizon adheres to it over time. Verizon also provides the documentation and help desk support that competitors need to build interfaces and make full use of the OSS Verizon provides to them.

6. *UNE Combinations.* The Commission concludes that Verizon provides nondiscriminatory access to combinations of UNEs. The record indicates first that Verizon provides access to UNE combinations, and also that it provides access to UNEs in a manner that allows requesting carriers to combine those elements. The Commission bases its conclusion on evidence of actual commercial usage, and also on Verizon's legal obligation to provide such access as established in its tariff and interconnection agreements.

7. *Checklist Item 4—Unbundled Local Loops.* Verizon has adequately demonstrated that it provides unbundled local loops as required by section 271. More specifically, Verizon establishes that it provides access to loop make-up information in compliance with the *UNE Remand Order* and nondiscriminatory access to stand alone xDSL-capable loops and high-capacity loops. Also, Verizon provides voice grade loops, both as new loops and through hot-cut conversions, in a nondiscriminatory manner. Finally, Verizon has demonstrated that it has a line-sharing and line-splitting provisioning process that affords competitors nondiscriminatory access to these facilities.

8. In the Commission's overview of Verizon's performance data, it relies on Massachusetts performance data collected and submitted by Verizon under the state-adopted carrier-to-carrier standards. Verizon provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner. Verizon also establishes that it provides competing services with voice grade unbundled loops through new stand-alone loops and hot-cuts in substantially the same time and manner compared to its retail affiliates.

9. The Commission also finds that Verizon provides nondiscriminatory access to the high-frequency portion of the loop and it makes it possible for competing carriers to provide voice and data service over a single loop (''line splitting''). Moreover, Verizon demonstrates that it provides maintenance and repair functions, for both line-shared and stand-alone xDSL-capable and voice-grade loops, for competing carriers in substantially the

same time and manner as Verizon does for its own retail services.

**Other Checklist Items**

10. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders. Pursuant to this checklist item, Verizon must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic, using any available method of interconnection at any available point in Verizon's network. The Commission finds that Verizon makes interconnection available at any technically feasible point, including the option interconnect at only one technically feasible point within a LATA.

11. Verizon demonstrates that its collocation offerings in Massachusetts satisfy the requirements of sections 251 and 271 of the Act. Verizon provides physical and virtual collocation through state-approved tariffs. Verizon's Massachusetts physical and virtual collocation tariffs are virtually identical to the New York physical and virtual collocation tariffs, which we found to satisfy checklist item 1 in our *Bell Atlantic New York Order.* Verizon demonstrates that it offers interconnection in Massachusetts to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

12. *Checklist Item 3—Poles, Ducts, Conduits and Rights of Way.* Based on the evidence in the record, the Commission concludes, as the Massachusetts Department does, that Verizon demonstrates that it provides nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates in accordance with section 271(c)(2)(B)(iii). The Commission rejects commenters' requests to find Verizon's policies and practices nondiscriminatory, because section 224(c)(1) gives Massachusetts jurisdiction over such matters.

13. *Checklist Item 5—Unbundled Local Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide ''local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.'' The Commission concludes, based upon the evidence in the record, that Verizon demonstrates that it provides both shared and dedicated transport in compliance with the requirements of checklist item 5.

14. *Checklist Item 13—Reciprocal Compensation.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) and is making all required payments in a timely fashion. Verizon thus satisfies the requirements of checklist item 13.

15. *Checklist Item 14—Resale.* Based on the evidence in the record, we conclude that Verizon demonstrates that it makes telecommunications services available in Massachusetts for resale in accordance with sections 251(c)(4) and 252(d)(3), and thus satisfies the requirements for checklist item 14. The Commission rejects commenters' assertions that Verizon should fail this item because its advanced services affiliate was not offering advanced services at resale discounts in accordance with *ASCENT* v. *FCC,* because the mandate in that decision had not been issued when Verizon filed its Massachusetts II Application.

16. *Checklist Items 6–12.* An applicant under section 271 must demonstrate that it complies with checklist item 6 (unbundled local switching), item 7 (911/E911 access and directory assistance/operator services), item 8 (white page directory listings), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), and item 12 (local dialing parity). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Verizon demonstrates that it is in compliance with checklist items 6, 7, 8, 9, 10, 11 and 12 in Massachusetts. The Massachusetts Department also concludes that Verizon complies with the requirements of each of these checklist items.

17. *Compliance with Section 271(c)(1)(A).* The Commission concludes that Verizon demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Massachusetts. The record demonstrates that competing LECs serve a sufficient number of business and residential customers using predominantly their own facilities. The Massachusetts Department likewise concluded that Verizon satisfies the requirements of section 271(c)(1)(A).

18. *Section 272 Compliance.* Verizon has demonstrated that it complies with the requirements of section 272. Significantly, Verizon provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Massachusetts as it does in New York, a state in which Verizon has already received section 271 authority.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

20. Among other factors, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of this Application. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission also finds that the record confirms our view that a BOC's entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

21. The Commission also finds that the performance monitoring and enforcement mechanisms developed in Massachusetts, in combination with other factors, provide meaningful assurance that Verizon will continue to satisfy the requirements of section 271 after entering the long distance market.

22. *Section 271(d)(6) Enforcement Authority.* Working with the Massachusetts Department, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01–10090 Filed 4–19–01; 1:14 pm]

BILLING CODE 6712–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3164–EM]**

### Maine; Amendment No. 2 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Maine (FEMA–3164–EM), dated March 20, 2001, and related determinations.

**EFFECTIVE DATE:** April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** This notice reopens the incident period for this emergency. The incident period for this emergency is now March 5–31, 2001. The notice is further amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of March 20, 2001:

Androscoggin, Aroostook, Cumberland, Franklin, Oxford, Penobscot, Piscataquis, Somerset and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(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.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–9987 Filed 4–20–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1364–DR]**

### Massachusetts; 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 Commonwealth of Massachusetts (FEMA–1364–DR), dated April 10, 2001, and related determinations.

**EFFECTIVE DATE:** April 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 10, 2001, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as follows:

I have determined that the damage in certain areas of the Commonwealth of Massachusetts, resulting from severe storms and flooding beginning on March 5, 2001, 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, 42 USC 5121 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Massachusetts.

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 Hazard Mitigation 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 Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

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 Louis H. Botta 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 Commonwealth of Massachusetts have been affected adversely by this declared major disaster:

Essex, Middlesex, and Norfolk Counties for Individual Assistance.

All counties within the Commonwealth of Massachusetts 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.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–9986 Filed 4–20–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3167–EM]**

### Vermont; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of Vermont (FEMA–3167–EM), dated April 10, 2001, and related determinations.

**EFFECTIVE DATE:** April 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 10, 2001, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121, as follows:

I have determined that the emergency conditions in certain areas of Vermont, resulting from record/near record snow on March 5–7, 2001, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5121 (the Stafford Act). I, therefore, declare that such an emergency exists in the State of Vermont.

You are authorized to provide emergency protective measures (Category B) under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at

a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for subgrantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

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.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

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 David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared emergency:

The counties of Addison, Bennington, Chittenden, Grand Isle, Lamoille, Orleans, Rutland, Windham, and Windsor for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(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.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 01–9989 Filed 4–20–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1361–DR]**

### Washington; Amendment No. 5 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 Washington, (FEMA–1361–DR), dated March 1, 2001, and related determinations.

**EFFECTIVE DATE:** April 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Washington 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 March 1, 2001:

Cowlitz, Douglas, Pacific, and Walla Walla 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.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 01–9985 Filed 4–20–01; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 2001.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

*1. GB&T Bancshares, Inc.,* Gainesville, Georgia; to merge with Community Trust Financial Services Corporation, Hiram, Georgia, and thereby indirectly acquire Community Trust Bank, Hiram, Georgia.

Applicant also proposes to acquire Community Loan Company, Inc., Cartersville, Georgia, and thereby engage in extending credit and servicing loans (consumer finance business), credit insurance, and tax planning and preparation services, pursuant to sections 225.28(b)(1), 225.28(b)(11)(i), and 225.28(b)(6)(vi) of Regulation Y; Metroplex Appraisals, Inc., Hiram, Georgia, and thereby engage in real estate and personal property appraising, pursuant to section 225.28(b)(2)(i) of Regulation Y, and 49 percent of Cash Transactions, LLC, Dallas, Georgia, and thereby engage in data processing activities, pursuant to section 225.28(b)(14) of Regulation Y.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. First Muskogee Financial Corporation,* Muskogee, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Muskogee, Muskogee, Oklahoma.

Board of Governors of the Federal Reserve System, April 17, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01–9912 Filed 4–20–01; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 01093]**

## Notice of Availability of Funds; Nutrition and Physical Fitness Programs

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for grant programs for Nutrition and Physical Fitness Programs. This program addresses the ''Healthy People 2010'' focus areas of Nutrition and Overweight, and Physical Activity and Fitness.

The purpose of the program is to establish and strengthen nutrition and physical activity programs to prevent physical fitness and nutrition related health problems.

### B. Eligible Applicants

Assistance will be provided only to the organizations listed below. No other applications are solicited. The Conference Report H.R. 4577, Consolidated Appropriations Act, 2001, specified these funds for the organizations listed below.

1. Grenada Lake Medical Center in Grenada, Mississippi, to conduct a demonstration project on physical fitness to shift the community focus on healthcare from ''sickness'' to ''health'' becoming a prototype for health status improvement in small and rural communities. ($430,013)

2. Institutes for Health, Science, and Society, in Greensboro, North Carolina, for the Children's Healthy Life Skills initiative to coordinate, implement and assess the effectiveness of specific interventions designed to promote fitness and prevent obesity in children. ($277,969)

3. National Youth Fitness and Obesity Institute at the University of Northern Iowa, to conduct a demonstration project on physical fitness in rural areas. ($233,196)

### C. Availability of Funds

Approximately $941,178 is available in FY 2001 to fund three awards. It is expected that the award will begin on or about July 15, 2001, and will be made for a 12-month budget period within a one-year project period. Funding estimates may change.

### D. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov.* Click on Funding then Grants and Cooperative Agreements.

To obtain business management technical assistance, contact: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01093, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2746, E-mail Address: rnh2@cdc.gov.

For program technical assistance, contact: Dan Sadler, CDC/National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Nutrition and Physical Activity, 4770 Buford Highway, NE, MS K–24, Atlanta, Georgia 30341–3717, Telephone: (770) 488–6042, E-Mail Address: DSadler@CDC.GOV.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9932 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 01059]**

## Notice of Availability of Funds; Improving Patient Safety and Health Outcomes

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program with the Iowa Department of Public Health. This program addresses the ''Healthy People 2010'' focus area of Immunization and Infectious Diseases. For additional information on ''Healthy People 2010'' visit the internet site: *http://www.health.gov/healthypeople.*

The purpose of the program is to address the occurrence of medical errors by implementing a system-wide strategy in Iowa to improve patient safety and health outcomes.

### B. Eligible Applicants

Assistance will be provided only to the Iowa Department of Public Health. No other applications are solicited.

Eligibility is limited to the Iowa Department of Public Health because Fiscal Year 2001 Federal appropriations specifically directs CDC to award this applicant funds to implement a system wide strategy to improve patient safety and health outcomes.

The House of Representatives Conference Report accompanying the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Bill, 2000 (Pub. L. 106–544), recognized the Iowa Department of Public Health's unique qualifications for carrying out the activities specified in this cooperative agreement (H.R. Rep. 106–1033).

**Note:** Title 2 of the United States Code, chapter 26, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

### C. Availability of Funds

Approximately $422,000 is available in FY 2001 to fund the award. It is expected that the award will begin on or about August 1, 2001, and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

### D. Where to Obtain Additional Information

Program technical assistance may be obtained from: Ben Kupronis, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., M/S A–07, Atlanta, GA 30333, Telephone: (404) 639–4341, Facsimile: (404) 639–6483, Email address: BKupronis@cdc.gov

Business management technical assistance may be obtained from: Merlin Williams, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, M/S K75, Atlanta, GA 30341–4146, Telephone: (770) 488–2765, Email address: mqw6@cdc.gov.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9927 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 01039]**

### Notice of Availability of Funds; Friendly Access and Workforce Development

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY)2001 funds for a cooperative agreement program for Friendly Access and Workforce Development. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to focus areas of Access to Quality Health Services; Maternal, Infant, and Child Health; and Public Health Infrastructure. For the conference copy of ''Healthy People 2010,'' visit the internet site: *http://www.health.gov/healthypeople.*

The purpose of the program is to improve the quality of perinatal and early childhood health services delivery through community-based demonstration projects that incorporate, evaluation, intervention development, training, and public health leadership.

**B. Eligible Applicant**

Assistance will be provided only to the Lawton and Rhea Chiles Center for Healthy Mothers and Babies Friendly Access Program, University of South Florida. No other applications are solicited. The Conference Report H.R. 4577, consolidated appropriations ACT, 2001, specified these funds for Lawton and Rhea Chiles Center.

**C. Availability of Funds**

Approximately $2,800,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about July 15, 2001, and will be made for a 12-month budget period within a one year project period. Funding estimates may change.

*Direct Assistance*

You may request Federal personnel, as direct assistance, in lieu of a portion of financial assistance.

**D. Where To Obtain Additional Information**

Business management technical assistance may be obtained from: Van A. King, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2751, Email Address: vbk5@cdc.gov.

For program technical assistance, contact:

Deborah Wetterhall, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health, Promotion (NCCDPHP), 4770 Buford Highway, NE, MS K–20, Atlanta, Georgia 30341, Telephone: (770) 488–5193, E-Mail Address: djw2@cdc.gov.

or

Joan Cioffi, Public Health Practice Program Office (PHPPO), 4770 Buford Highway, NE, MS K–36, Atlanta, Georgia 30341, Telephone: (770) 488–2480, E-Mail Address: mal7@cdc.gov.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9925 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 01078]**

### Grant for Reducing Unintentional Injuries Among Children in Public Housing; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant to reduce unintentional injuries among children in public housing. This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention. The purpose of this program is to reduce the burden of unintentional injuries among children 14 years and younger who reside in public housing and communities through training and technical assistance to parents, other care-givers, and community leaders.

**B. Eligible Applicants**

Assistance will be provided only to the National SAFE KIDS Campaign, Washington, D.C. No other applications are solicited. FY 2001 federal appropriations specifically directs CDC to award funds to this organization.

**Note:** Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $400,000 is available in FY 2001 to fund one award. It is expected that the award will begin on or about September 1, 2001, and will be made for a 12-month budget period within a one-year project period.

*Use of Funds:* funds may not be used for human subject research.

**D. Where to Obtain Additional Information**

For program technical assistance, contact: Tim Groza, MPA, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop K63, Atlanta, GA 30341–3724, Telephone (770) 488–4676, Email: tgroza@cdc.gov.

To obtain business management technical assistance, contact: Angelia Hill, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01078, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone (404) 488–2785, Email address aph8@cdc.gov.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9930 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 01080]**

### Notice of Availability of Funds; Rhode Island Tobacco Cessation Program

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program for the University of Rhode Island. This program addresses the ''Healthy People 2010'' focus area Tobacco Use.

The purpose of the program is to compare media and policy interventions

on smoking cessation and adoption of no smoking policies in the home.

**B. Eligible Applicants**

Assistance will be provided only to the University of Rhode Island. No other applications are solicited. The Conference Report H.R. 4577, Consolidated Appropriations Act, 2001, specified these funds for The University of Rhode Island to establish a program to compare media and policy interventions.

**C. Availability of Funds**

Approximately $839,506 is available in FY 2001 to fund one award. It is expected that the award will begin on or about July 15, 2001, and will be made for a 12-month budget period within a one year project period. Funding estimates may change.

**D. Where to Obtain Additional Information**

Business management technical assistance may be obtained from: Lucy Picciolo, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01080, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone Number (770) 488–2683, Email Address: lip6@cdc.gov.

Program technical assistance may be obtained from: Corinne Husten, MD, MPH, Branch Chief, Epidemiology Branch, Office of Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), 4770 Buford Highway, NE, MS K–57, Atlanta, GA 30341, Telephone Number (770) 488–5756, Email Address: EHusten@cdc.gov.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9931 Filed 4–20–01; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 01074]**

## Intervening With Children and/or Adolescents With Fetal Alcohol Syndrome/Alcohol Related Neurodevelopmental Disorders; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for participation in a collaborative research consortium for identifying, developing, and evaluating effective strategies for Intervening with Children and/or Adolescents with Fetal Alcohol Syndrome (FAS)/Alcohol Related Neurodevelopmental Disorders (ARND). This program addresses the ''Healthy People 2010'' focus area(s) of Substance Abuse and Maternal, Infant, and Child Health. The purpose of the program is to conduct innovative research to identify and evaluate components of a systematic intervention approach for children and/or adolescents with FAS or ARND and their families that (1) improves developmental outcomes, (2) prevents secondary conditions, and (3) provides education and support to care givers and families.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $1,200,000 is available in FY 2001 to fund approximately 3 awards. It is expected that the average award will be $300,000, ranging from $250,000 to $400,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Develop a general approach for identifying, diagnosing, evaluating, and intervening with children and/or adolescents with FAS or ARND. Applicants may target a specific age group (i.e., preschoolers or adolescents), or propose a comprehensive intervention with the capacity of serving individuals across several ages. The approach must include intervention components focusing on parent involvement in the intervention as well as parent education and advocacy training or support.

b. Develop a proposed set of diagnostic and evaluation procedures for study participants. Describe the specific set of proposed intervention components targeting core deficits (e.g., impaired social skills, social communication deficits, visual-motor impairment, behavioral issues) to intervene with the targeted population of children and/or adolescents with FAS or ARND.

c. Develop the goals and objectives of the study, the data collection instruments, study procedures, and evaluation plan to be used in determining the effectiveness of intervention components.

d. Collaborate with other grantees in identification and/or development of science-based best practices for assessment and intervention with children and/or adolescents with FAS or ARND.

e. Develop outreach and recruitment procedures for identification of affected children and/or adolescents from multiple sources to maximize the possibility of ascertaining a population-based sample. Recruit a population of at least 50 children and/or adolescents with FAS or ARND to participate in each of the intervention and comparison groups.

f. Develop research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

g. Recruit and train appropriate staff to ensure proper implementation of all aspects of the research and intervention.

h. Develop and implement a research protocol with appropriate quality assurance procedures to assure that the research and intervention activities are being properly implemented.

i. Compile and disseminate results of intervention program.

j. Collaborate with other grantees and CDC to develop education and training materials derived from the intervention and research for dissemination to a broad spectrum of potential agencies that provide services to affected individuals.

*2. CDC Activities*

a. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project.

b. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Provide technical assistance, if requested, for the overall coordination as well as development of the intervention and evaluation research plans.

d. Provide technical consultation and advice on all aspects of recipient activities. Provide up-to-date, scientific information about the intervention.

e. Facilitate collaborative efforts to compile and disseminate program results through publications.

**E. Application Content**

*a. General Instructions*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font. Do not include any spiral or bound materials or pamphlets.

*b. Specific Instructions*

*Abstract:* A one-page single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization name and address, project director and telephone number. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization and composition. The abstract should follow the printed forms and precede the Program Narrative. Program Narrative (not to exceed 25 pages) The Program Narrative Section should address the following:

1. *Background.* Briefly describe:

a. Understanding of the problem of FAS and other conditions associated with prenatal alcohol exposure, and why the applicant is interested in participating in a project to develop and evaluate interventions for this population.

b. Understanding of the need for targeted interventions for the core deficits of children and/or adolescents with FAS or ARND and understanding of the need for individualization of interventions for affected children and/or adolescents and their families.

c. The proposed study, including purpose, objectives, and core components with justification for their inclusion.

d. Description of the challenges, barriers, and problems associated with developing and implementing an intervention for children and/or adolescents with FAS or ARND.

e. Understanding of the need to include parent involvement, parent education, and parent advocacy training or support for care givers of children and/or adolescents with FAS or ARND.

f. Demonstration of population based approach to case ascertainment including description of target population, size, age distribution, race/ethnicity, care giving arrangements (e.g., adoptive families), and other relevant sociodemographic characteristics.

g. Current patterns of service delivery to the target population, including educational placement, auxiliary services (e.g., occupational therapy, psychotherapy), family support services, and access to social services (e.g., SSI, respite).

2. *Organization.* Briefly describe:

a. How the applicant will access intervention participants.

b. How the applicant will provide the proposed diagnostic, evaluation, and intervention study components to study participants.

c. How the applicant proposes to evaluate the effectiveness of the intervention study.

d. Proposed organization structure, with lines of authority, for implementing and managing intervention and research activities. Staff should include a principal investigator (recommend at least 15 percent time of an individual with a Doctorate Degree with published research to provide oversight), a project coordinator who oversees all intervention and research activities (recommend 100 percent time of an individual with at least a Master's Degree), diagnostic persons, parent educator, intervention staff, and data/statistical expert. In addition, specialized staff required for proposed intervention should be included as appropriate.

e. Current working relationship with research, academic, scientific, or community-based organizations with relevant expertise in delivering services to children with FAS, ARND, or other developmental disabilities.

f. Plans for conducting the intervention and research activities while meeting other current clinical or research commitments.

g. The degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institutional review committees.

h. The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation.

3. *Capacities.* Briefly describe the capacity and experience of the applicant and the clinical/agency site(s) in which the intervention and research activities will be conducted, including:

a. Description of previous intervention and developmental research conducted.

b. Description of the setting in which participants will be recruited into the study, including provision to access potential participants from the general population in addition to clinic-based recruitment. In addition, the setting for conduct of diagnostic and evaluation procedures as well as facilities for research activities. Commitment to designate office/operating space for these activities should be described.

c. Commitment to begin intervention and research activities by January 1, 2002, including letters of commitment from study sites to begin participation by this date.

4. *Current Level of Service Delivery.* Briefly describe data from the past year on the following:

a. The number of individuals with FAS and ARND who are assessed annually by the applicant (e.g., must document a population of a least 75 to 100 children or adolescents per year). Information concerning age distribution, racial/ethic composition, and care giving situation must be provided.

b. The proportion of clients seen in one year for initial diagnosis and evaluation versus follow-up clients previously examined.

c. Rate of return appointments in relation to rate of loss to follow-up.

d. Description of any other studies currently being conducted in the proposed study site.

5. *Approach.* Briefly describe:

a. The general approach the applicant will use to develop and implement the proposed intervention, including recruitment of participants, diagnostic and evaluation of potential participants, delivery of the essential components of the intervention, follow-up of intervention participants, and quality assurance of data collection and protocol implementation.

b. Procedures to identify, evaluate, and recruit children and/or adolescents outside clinic referred samples.

c. The area of deficit and proposed targeted interventions to be developed and/or implemented.

d. Research design to evaluate the effectiveness of the general intervention approach and targeted interventions.

e. Development or implementation of parent involvement, parent education, and parent advocacy training or support for care givers.

6. *Potential Implementation Issues.* Briefly describe:

Any foreseeable problems that might arise based on previous experience with implementation of this type of intervention or evaluation research in your selected target population, and a plan for how these problems would be dealt with.

7. *Assurances.* The applicant must provide the following:

a. Assurance that study documents will be handled and stored to ensure confidentiality and assure retention;

b. Assurance that project staff will be hired in a timely manner; and

c. Assurance that key project personnel (or designees if the individuals filling these positions have not been employed at the time) will meet with CDC within 2 months of award to discuss initial collaborative activities.

8. *Budget and Line-Item Justification:* This section must include a detailed first-year budget and narrative justification with future annual projections. The applicant should describe the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown or a justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance, and the method of selection. The budget should include travel for the key study personnel to meet 3 times per year with CDC and other grantees. Incentives for study participants may be included in the budget.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

A letter indicating intent to respond to this announcement should be submitted. Your letter of intent should include the following information: Name of applying organization, name of principal investigator, address, telephone number, whether a specific age group will be targeted by the proposed intervention, and a brief description of core areas to be addressed as well as the general approach to intervening in these areas. The letter of intent must be submitted on or before May 18, 2001, to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Application*

Submit the original and 5 copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS–398. Forms are available at the following Internet address: *www.cdc.gov,* or in the application kit. On or before June 20, 2001, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Applicant's Understanding of the Problem (20 percent)*

The extent to which the applicant demonstrates an understanding of FAS or ARND, the need for targeted interventions for this population, and the challenges, barriers, and problems associated with developing and implementing an intervention for this population. The applicant should also demonstrate understanding of the need for individualization of interventions for children and/or adolescents with FAS or ARND, as well as the importance of care giver education and support as necessary components to an intervention approach.

*2. Description of the Intervention Target Population, Outline of General Intervention Approach, and Area(s) of Targeted Intervention (50 Percent)*

The extent to which the applicant has provided a full and comprehensive description of the proposed intervention target population, including recruitment procedures and methods to achieve a generalizable sample. How the applicant will address diagnosis and initial evaluation of potential participants should be described. The general approach to intervening with children and/or adolescents with FAS or ARND should be described as should implementation or development of specific targeted areas of intervention. Methods for evaluation of the overall intervention approach and specific targeted interventions should be described.

Implementation, development, and/or enhancement of parent education (including advocacy training) should be described.

The applicant must provide adequate demonstration of its ability to access a study population of at least 50 children and/or adolescents with FAS or ARND to participate in each of the intervention and comparison groups. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project must be demonstrated. This includes: (a) The proposed plan for the inclusion of both sexes and racial/ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for intervention participants includes the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*3. Capacity To Conduct Project Activities and Begin Study Operations in a Timely Fashion (30 Percent)*

The extent to which the applicant has provided information to support its ability to conduct the activities of

intervention and evaluation research, including documentation of previous intervention and research experience in behavioral science focusing on children and/or adolescents with FAS, ARND, and/or other developmental disabilities; documentation of institutional support for the project; demonstrated ability to identify qualified personnel to fill key positions (including principal investigator, project coordinator, intervention staff, and diagnostic staff) and begin study activities in a timely fashion; and a description of how space required for the study will be acquired or designated.

*4. Budget Justification and Adequacy of Facilities (Not Scored)*

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the awarded funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

*5. Human Subjects Review (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

**H. Other Requirements**

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (semi-annual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7—Executive Order 12372 Review
AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2010
AR–12—Lobbying Restrictions
AR–14—Accounting System Requirements
AR–15—Proof of Non-Profit Status

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874).

You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Virginia Hall-Broadnax, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2710, Email address vdh2 @cdc.gov.

For program technical assistance, contact: Dr. Jacquelyn Bertrand, (770) 488–3529: Email address: jbertrand@cdc.gov, or Connie Granoff, (770) 488–7513; Email address: clg4@cdc.gov Division of Birth Defects, Child Development, and Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, (F–49), Atlanta, Georgia 30341–3724.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9928 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 01076]**

## Notice of Availability of Funds; Programs for the Prevention of Fire Related Injuries

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement for unintentional injury intervention programs to prevent fire-related injuries. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Injury and Violence Prevention. For the conference copy of ''Healthy People 2010'', visit the internet site: *http://www.health.gov/healthypeople.* The purpose of this cooperative agreement is to reduce the number of residential fire-related injuries and fatalities in high risk communities.

**B. Eligible Applicants**

Assistance will be provided only to the official public health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Applicants funded under Program Announcement 98054 are eligible to apply under this Announcement as a competing continuation applicant. The proposed target areas for this Announcement must be different than those currently being funded by CDC.

**Note:** 2 U.S.C. section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $1,900,000 is available in FY 2001 to fund approximately 14 awards, ranging from $135,000 to $160,000. It is expected that the awards will begin on or about September 30, 2001, and will be made for a 12-month

budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and review of outcomes as evidenced by required reports and the availability of funds.

**D. Program Requirements**

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities), and CDC will be responsible for the activities under 2 (CDC Activities).

1. Recipient Activities

(a) Through a competitive process, solicit participation from a minimum of two different communities each year that have the capacity and willingness to conduct smoke alarm installation combined with fire-safety education and evaluation programs. Each community should have a population of 50,000 or less and should demonstrate fire mortality and fire incidence rates above the State and National averages and mean household income below the poverty line.

(b) Provide program oversight to each program selected. Identify coordinators at the state and local levels to oversee the program.

(c) Collaborate with, as a minimum, local health departments, fire departments (both paid and volunteer), community based organizations and the private sector at the local level.

(d) Facilitate the acquisition, distribution and installation of 10-year, lithium-powered smoke alarms in targeted communities through collaboration with fire-safety personnel and/or community workers.

(e) Ensure personnel conducting installation and education activities are trained in fire-safety education, proper installation and placement of smoke alarms.

(f) Develop an evaluation plan that will allow progress toward program goals and objectives to be assessed and outcomes of the program to be measured such as a comparison of pre- and post-intervention residential fire incidence, injuries, and deaths in intervention communities. Evaluation plan should include, as a minimum, follow-up assessment in each intervention community to determine the continued presence and functionality of program-installed smoke alarms.

(g) Ensure written materials that are routinely provided in English to clients, and the public, are available in regularly encountered languages other than English where the Limited English Proficiency language group constitutes ten percent (10%) or 3,000, whichever is less, of the population of persons eligible to be served or affected by the program.

(h) Compile and disseminate the results of the project.

2. CDC Activities

(a) Provide technical consultation and advice on all aspects of recipient activities.

(b) Provide up-to-date scientific information about fire-related injuries and prevention methods.

(c) Establish communication mechanisms by facilitating the transfer of technical and programmatic information across similarly funded programs.

(d) Assist and collaborate with states, as needed, in the development of a comprehensive fire-safety educational program and evaluation components.

(e) Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

(f) Participate with recipient agencies in workshops, training, meetings, and advisory committees to exchange information among the states.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and no smaller than 12 point font. Number each page consecutively and provide a complete table of contents. The entire application with appendices should be no longer than 70 pages total. The application must include a one-page abstract and summary of the proposed effort.

**F. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 18, 2001, submit the application to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' Section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 percent)

The extent to which the applicant provides background information about the fire injury morbidity and mortality problem in the state and presents data justifying the need for the program using epidemiologic and local data.

The extent to which the applicant provides a detailed description of the efforts in their state, both recent past and present, that have, or currently are, being implemented to address the prevention of fires and fire-related injuries.

The extent to which the applicant describes the benefits of developing, implementing, and evaluating the proposed intervention program.

2. Goals, Objectives, and Methods (30 percent)

The extent to which the applicant describes the overall goals and indicates the outcomes expected at the end of the project period.

The extent to which the applicant describes the specific program objectives needed to accomplish each goal. The extent to which the objectives are time-framed, measurable, and achievable.

The extent to which the applicant includes methods and criteria by which they will solicit and select a minimum of two program communities.

The extent to which the applicant provides detailed descriptions (i.e., who, what, how, and when) of the specific activities that will be undertaken to achieve each of the program objectives.

The extent to which the applicant includes a detailed time-line for year one indicating when each activity will occur and the responsible person; and a projected time-line for the second and third years of program activities.

Include an organizational chart that shows placement of the program within the agency's organizational system.

The extent to which the applicant provides detailed descriptions of the intervention design, implementation plans, and all methods that will be used in each phase of the intervention(s) in the communities served.

The extent to which the applicant clearly describes the methodology for establishing the magnitude of the problem in the target population and methods to be used in collecting baseline and post-intervention measures.

The extent to which the applicant has the knowledge and documented skills needed to carry out data collection, entry, and management; analyze data and report findings; perform surveillance activities and conduct program evaluation.

3. Evaluation (25 percent)

The extent to which the applicant provides detailed descriptions for evaluation of each program component and for the program overall, including process, impact, and outcome evaluations.

Descriptions should include what data will be used, how it will be evaluated, how it will be collected, who will perform the evaluation including epidemiological analysis, and the time-frame for the evaluation. This should include progress in meeting the objectives and conducting activities during the project period.

The extent to which the applicant provides sample data collection and evaluation instruments.

The extent to which the applicant demonstrates that there will be available staff with the expertise and capacity to perform the proposed evaluation.

4. Collaboration (15 percent)

The extent to which the applicant describes any proposed collaboration with other entities, such as, municipal departments, injury control research centers, professional organizations, local businesses, school systems, parent/teacher organizations, health care providers, fire departments, police, civic organizations, local public officials, and the media.

The extent to which the applicant provides the documented evidence of partnerships and access to local injury data.

The extent to which the applicant provides letters of commitment from each outside entity documenting their willingness, skills, and capacities to fulfil their specific roles and responsibilities.

The extent to which the applicant provides a clear description of the working relationships between the program and its partners.

5. Facilities, Staff, and Resources (15 percent)

The extent to which the applicant demonstrates prior experience in the intervention area and has demonstrated the capacity for conducting and evaluating the proposed injury prevention program.

The extent to which the applicant describes the facilities and resources that are available for this program.

The extent to which the applicant describes proposed staffing, and includes job descriptions and curriculum vitae indicating the applicant's ability to carry out the objectives of the program. Descriptions should include the position titles, education and experience, capabilities, and the percentage of time each person will devote to the program.

Where applicable, identify a state and/or community program level coordinator(s) who has/have the authority, responsibility, and expertise to conduct and manage the program.

6. Budget and Justification (not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of

1. semiannual progress reports;
2. financial status report, 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b-1, 280b-2, 280b-3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page on the Internet: http://www.cdc.gov. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

This announcement and forms may be downloaded from the CDC Web Site. If you cannot download the needed information you may receive additional written information and an application kit, by calling 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

Please refer to Program Announcement 01076 when making your request. If you have questions after reviewing the content of all documents, business management and assistance may be obtained from: Angela Webb, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 01076, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone (770) 488–2784, Email address awebb@cdc.gov.

For program technical assistance, contact: Mark Jackson, R.S., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention 4770 Buford Highway, NE, Mailstop K63, Atlanta, GA 30341–3724, Telephone (770) 488–4754, E-mail address: mcj4@cdc.gov.

Dated: April 17, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 01–9929 Filed 4–20–01; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Studies of Adverse Effects of Marketed Drugs; Availability of Grants (Cooperative Agreements); Request for Applications; Correction

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

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 4, 2001 (66 FR 17907). The document announced the anticipated availability of funds for cooperative agreements to study adverse affects of drugs marketed in the United States and its territories. The document was published with some inadvertent errors. This document corrects those errors.

**DATES:** Submit applications by June 4, 2001.

**ADDRESSES:** Application kits are available from, and completed applications should be submitted to Rosemary T. Springer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182.

**Note**: Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852. Please DO NOT send applications to the Center for Scientific Review (CSR), National Institutes of Health. Applications mailed to CSR and not received by FDA in time for orderly processing will be returned to the applicant without consideration. Application forms can also be found at http://www.nih.gov/grants/phs398/forms-toc.html.

**FOR FURTHER INFORMATION CONTACT:** Rosemary T. Springer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 01–8246, appearing on page 17907 in the **Federal Register** of Wednesday, April 4, 2001, the following corrections are made:

1. On page 17910, in the first column, section VI.B.1.*b* is corrected to read as follows:

*b. Size (70 points).* Applicants should list number of patients enrolled in their database as of December 31, 2000.

- >3 million covered lives (70 points)
- >2.5 to 3 million covered lives (40 points)
- >2 to 2.5 million covered lives (30 points)
- >1.5 to 2 million covered lives (10 points)

2. On page 17910, in the first column, section VI.B.1.*c* is corrected to read as follows:

*c. Duration (55 points).* The calender time-period for which detailed patient longitudinal data are available and linked for routine, day-to-day analysis from at least 80 percent of the multiple State sites.

- <5 years of data online (0 points)
- 5 years of data online (25 points)
- 6 points for each additional year beyond 5 years of online data to a possible total of 55 points

3. On page 17910, in the third column, section VI.B.2. is corrected to read as follows:

2. New Molecular Entity (NME) Identification (200 points)

In table 1 of this document, 40 recently approved NMEs are listed. Applicants should respond with the number of unique patients in their system with at least 1 outpatient prescription for each of the 40 drug products listed in table 1. For each drug, points will be awarded by the review panel according to the following schedule:

- >25,000 exposed patients (5 points)
- 20,001 to 25,000 exposed patients (4 points)
- 15,001 to 20,000 exposed patients (3 points)
- 10,001 to 15,000 exposed patients (2 points)
- 5,001 to 10,000 exposed patients (1 point)
- 5,000 or fewer exposed patients (0 points).

Dated: April 17, 2001.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 01–9949 Filed 4–20–01; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01D–0162]**

### Draft Guidance for Industry on Using FDA-Approved Patient Labeling in Consumer-Directed Print Advertisements; 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 ''Using FDA-Approved Patient Labeling in Consumer-Directed Print Advertisements.'' This draft guidance describes how sponsors can use certain FDA-approved patient labeling to fulfill the requirement that prescription drug and biological product advertisements directed toward consumers (DTC) in print media contain adequate risk disclosure. FDA does not intend to object to the use of certain FDA-approved patient labeling, reprinted exactly as approved, to fulfill the requirement that DTC print advertisements contain a brief summary of the product's risks.

**DATES:** Submit written comments on the draft guidance by July 23, 2001. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit phone requests to 800–835–4709. 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. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

Regarding prescription human drugs: Nancy M. Ostrove, Center for Drug Evaluation and Research (HFD–42), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828.

Regarding prescription human biological products: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–600), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6190.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Using FDA-Approved Patient Labeling in Consumer-Directed Print Advertisements.'' The draft guidance describes how sponsors can use certain FDA-approved patient labeling to fulfill the requirement that prescription drug and biological product advertisements DTC in print media contain adequate risk disclosure.

The requirement that all prescription drug and biological product advertisements disclose product risks comes from section 502(n) of the Federal Food, Drug, and Cosmetic Act

(the act) (21 U.S.C. 352(n)). This section of the act requires that advertisements for prescription drugs and biological products include a true statement of information ''in brief summary'' about the benefits and risks of using the advertised product. This is often called the ''brief summary'' requirement. The prescription drug advertising regulations (21 CFR 202.1(e)(3)(iii)) specify that the information about risks include every risk in the advertised drug's approved product labeling.

Some prescription drug and biological products have FDA-approved patient labeling that contains information that is most important for the safe and effective use of these products in language consumers are likely to understand. The draft guidance specifies that FDA does not intend to object to the use of certain FDA-approved patient labeling, reprinted exactly as approved, to fulfill the brief summary requirement for DTC print advertisements. The draft guidance describes the characteristics that such patient labeling should have to be used to fulfill the brief summary requirement.

This draft guidance is being issued as a level 1 guidance, consistent with FDA's good guidance practices regulations (21 CFR 10.115; 65 FR 56468, September 19, 2000). The draft guidance represents the agency's current thinking on using FDA-approved patient labeling in DTC print advertisements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may 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 are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm and at http://www.fda.gov/cber/guidelines.

Dated: April 17, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01–9948 Filed 4–20–01; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99D–2638]**

### Extra-Label Use of Medicated Feeds for Minor Species; Compliance Policy Guide; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a new compliance policy guide (CPG) section 615.115 entitled ''Extra-Label Use of Medicated Feeds for Minor Species.'' The purpose of this CPG is to provide guidance to FDA personnel concerning the agency's exercise of regulatory discretion with regard to the extra-label use of medicated feeds for minor species. This CPG has been revised in response to comments received on the draft.

**DATES:** Submit written comments at any time.

**ADDRESSES:** Submit written requests for single copies of the CPG to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the CPG to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the full title of the CPG and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for the electronic access to the CPG section 615.115 entitled ''Extra-Label Use of Medicated Feeds for Minor Species.''

**FOR FURTHER INFORMATION CONTACT:** Frances M. Pell, Center for Veterinary Medicine (HFV–235), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0188, e-mail: fpell@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of August 25, 1999 (64 FR 46400), FDA published a notice of availability of a draft CPG entitled ''Use of Medicated Feeds for Minor Species.'' This CPG was issued as a level 1 draft guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September, 2000). The purpose of this CPG is to provide guidance to FDA staff concerning the agency's exercise of regulatory discretion with regard to the extra-label use of medicated feeds for minor species. The CPG represents the agency's current thinking on this subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public.

The agency received comments regarding this CPG and has revised the CPG in response to the comments. Following is a discussion of the issues raised by the comments.

## II. The Final Guidance

The agency received 21 comments on the draft CPG. When finalizing the CPG, the agency considered the comments and, as appropriate, incorporated them into the final guidance. The final version of the CPG differs from the draft only in three areas. The first is a change in the minor species definition to reflect a corresponding change to the new animal drug regulations at 21 CFR 514.1. Sheep are now considered a minor species for all data collection purposes (see 65 FR 47668, August 3, 2000).

The second change is a minor clarification of existing provisions. The medicated feed must be manufactured and labeled in accordance with the approved conditions of use. This means that the feed cannot be reformulated in dosage, in form, or nutritional content such that it would no longer be appropriate as a feed for the species for which it is approved. For example, a medicated feed approved for chickens may not be pelleted for use in laboratory animals. An approved swine medicated feed may not be made to correspond to the nutrient requirements of pheasants or deer. All labeling must be truthful and in accordance with the approved conditions of use.

The third change is further clarification of limitations on the agency's intent to exercise regulatory discretion with regard to extra-label use of medicated feeds. If the medicated feed is to be used in a food-producing minor species, the product must be approved in a food-producing major species. The agency intends to exercise regulatory discretion only for farmed or confined species not for unconfined wildlife. In aquaculture, the agency intends to exercise regulatory discretion only for extra-label use of medicated

feeds already approved for an aquatic use because factors in the aquatic environment that may affect the safety and/or effectiveness of the medicated feed are so varied.

### III. Availability of Medicated Feeds for Minor Species

FDA plans to continue to address the issue of lack of availability of medicated feeds for minor species. There are serious shortcomings in the legal availability of medicated feeds for minor species. These include the need for specially formulated feeds for laboratory and zoo animals and the needs of species raised in aquaculture. Future guidance will be directed specifically at these needs.

### IV. Electronic Access

Persons with access to the Internet may obtain the CPG at http://www.fda.gov/cvm and http://www.fda.gov/ora.

### V. Comments

As with all of FDA's guidances, the public is encouraged to submit written comments with new data or other new information pertinent to this CPG. FDA will periodically review the comments and, where appropriate, the CPG will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: April 18, 2001.

**Dennis E. Baker,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 01–10164 Filed 4–19–01; 3:10 pm]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Clinical Development of a Biologically Active, Epitope-Tagged Transforming Growth Factor Beta (TGF–β) Protein

The National Cancer Institute's Laboratory of Cell Regulation and Carcinogenesis (LCRC) has created and characterized a recombinant transforming growth factor-beta (TGF–β) ligand that contains the FLAG epitope tag and yet retains full biological activity.

**AGENCY:** National Institutes of Health, PHS, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the preclinical and clinical development of a tagged form of the TGF–β protein. Initial studies from LCRC demonstrate that a specific, eight-amino acid tag (known as FLAG) can be inserted in at least three different sites in the TGF–β1 molecule, without interfering with its biological activity. LCRC has made three FLAG-tagged porcine TGF–β1 constructs and the identical murine FLAG–TGF–β1 cDNAs. Each construct differs only in the location of insertion of the FLAG tag, and these include either insertion immediately following the cleavage site N-terminal in the mature, processed TGF–β molecule, or between amino acids 4 and 5 or 11 and 12 of the mature TGF–β molecule. The tagged molecule can detected by using a number of different techniques, including: Immunohistochemistry, immunoprecipitation, flow cytometry, immunofluorescence microscopy, ELISA, immunoblotting (''western''), and affinity chromatography.

**DATES:** Interested parties should notify NCI in writing of their interest in filing a formal proposal no later than June 22, 2001. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. Additional proposals will be considered after the posted deadline in the event that a CRADA partner is not found during the initial posted timeperiod.

**ADDRESSES:** Inquiries and proposals regarding this opportunity should be addressed to Holly Symonds Clark, PhD., Technology Development Specialist (Tel. # 301–496–0477, FAX # 301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining a patent license(s) needed for participation in the CRADA opportunity should be addressed to John Rambosek, PhD., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 270; FAX 301–402–0220).

**SUPPLEMENTARY INFORMATION:** A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Act of 1986, NCI seeks a CRADA Collaborator to aid LCRC in the preclinical and clinical studies of a tagged form of the TGF–β protein. The expected duration of the CRADA would be from one (1) to five (5) years.

### Background Information

NCI's LCRC has produced the first epitope-tagged, biologically active version of a member of the transforming growth factor-β (TGF–β) family of proteins. Transforming growth factor-β1 (TGF–β1) is the prototype for a large family of secreted polypeptides including the three mammalian TGF–β isoforms (TGF–β1, TGF–β2, TGF–β3), the bone morphogenetic proteins (BMPs), the activins and several more distantly related factors that regulate cell growth and function. The various members of the TGF–β superfamily play roles in development, immune homeostasis, cancer progression, autoimmune disorders and wound repair. TGF–βs are produced and secreted from the cell as large latent (inactive) molecules (pro-proteins). The Latency Associated Peptide (LAP) encompasses amino acids 1 through 279 (porcine TGF–β1) of the pro-protein. Association of LAP through disulfide bonds with the mature TGF–β1 sequence keeps TGF–β in a biologically inactive form. Conversion of this pro-peptide to a biologically active form can be achieved in several ways. These include disruption of the disulfide bonds (for example, mutation of two cysteine residues involved in forming this bond), cleavage of the protein to release the smaller biologically active TGF–β (amino acids 280 through 391 in TGF–β1), or denaturation of the associated LAP by acidification or heat.

The ability to track the distribution of any exogenously administered, recombinant forms of these proteins has been restricted by the inability to distinguish between the endogenous forms of the protein produced in treated cells or tissues, and because most available antibodies exhibit some degree of cross-reactivity with related family members. LCRC's invention demonstrates a successful approach to adding an opitope tag to the mature TGF–β1 molecule. Epitope tags are short stretches of amino acids to which a specific antibody can be raised, allowing one to directly identify and track the tagged protein that has been added to a living organism or to cultured cells. Examples of useful epitope tags include FLAG, HA (hemagglutinin) and myc. In principle, any of these epitope tags could be used to tag TGF–β family members, but NCI's LCRC has been the first to identify a way to retain biological function of the molecule following addition of the tag. Thus, it will be possible to track LCRC's tagged TGF–β molecule when used in

preclinical studies or when administered to patients in a clinical setting.

The FLAG epitope tag is short amino acid sequence of just eight amino acids (DYKDDDDK). Because of its small size, LCRC hypothesized that addition of this sequence to a region of the mature TGF–β1 molecule where structural constraints were minimal would result in no loss of biological activity. LCRC chose to add the FLAG tag independently in two different locations, creating two FLAG-tagged versions of the molecule. The mature, cleaved TGF–β molecule should thus possess the FLAG epitope tag. Evaluation of the biological activities of the FLAG-tagged versions of TGF–β1 indicate that there is no loss of biological activity as a consequence of inserting the FLAG epitope tag. In principle, the FLAG epitope tag can be added in an analogous way to any of the other TGF–β isoforms or to closely related family members (e.g. the BMPs).

The described methods are the subject of a U.S. provisional patent application filed on October 20, 2000 by the Public Health Service on behalf of the Federal Government.

Under the present proposal, the goal of the CRADA will be to further characterize and develop the flag-tagged TGF–β molecule in the following areas:

1. Additional pre-clinical studies.

(a). These studies would include, but not be limited to analyses of functionality of the epitope-tagged TGF–βs. Of particular interest are the relative effects of different sites of tag insertion on the processing of the latent TGF–β precursor, on receptor affinity, and on the dose-dependent effects of TGF–β in a variety of functional assays, such as in vitro assays of leukocyte chemotaxis, epithelial and hematopoietic cell growth and differentiation, and lymphocyte activation. In addition, the epitope-tagged TGF–βs offer the unique potential to use immunofluorescence and confocal microscopy techniques to follow receptor trafficking and disposition following ligand binding.

(b). The availability of the epitope-tagged TGF–β also allows for a more quantitative evaluation of the pharmacodynamics of the peptide ligand. In vivo studies of plasma half-life, tissue distribution, CNS penetration, and elimination will be pursued. These studies will include assessment of both enteral and perenteral administration of TGF–β. Other studies currently proposed include the generation of a ''knock-in'' mouse, in which the epitope-tagged TGF–β is used to replace the endogenous TGF–β gene in mice, to confirm the absence of a deleterious effect of the epitope tag on normal function throughout development and in the adult organism. Such studies will allow for assessment of the transplacental transfer and distribution of maternal TGF–β during gestation.

(c). LCRC investigations also plan to focus on the development of diagnostic tools and screens based on the epitope-tagged TGF–β1. These experiments will include assays to provide a quantitative assessment of the level of functional TGF–β receptor expression in both normal and tumor tissues by quantitative histochemical techniques and flow cytometric analysis. ELISA-based screens for the epitope tag will be developed as tools for pharmacokinetic studies of the epitope-tagged TGF–β1 following either systemic, enteral, or local administration.

2. Clinical trials focused on the applications of functional epitope-tagged TGF–β ligands in the treatment of cancer, wound healing, and immune disorders.

There are several important implications of this discovery for the development and application of TGF–β family members for therapeutic purposes. To date, TGF–β family members have been studied in clinical trials in the treatment of rheumatoid arthritis, multiple sclerosis, wound healing, and in the prevention of chemotherapy-induced mucositis. Preclinical studies in animal models predict that a number of applications will be tested in the near future. These include the evaluation of TGF–β in the treatment of bronchial asthma, uveitis, osteoinduction following irradiation, management of inflammatory bowel disease, and a variety of autoimmune disorders and neuropathies having an autoimmune etiology. The ability to administer an epitope-tagged TGF–β to a patient in a clinical setting would allow the researcher to accurately follow drug (FLAG–TGF–β) distribution, half-life, elimination, and circulating levels without the complication of detecting the endogenous TGF–β that is already present in the patient's tissues. The epitope-tagged molecule now provides a unique and novel tool to detect receptors for the TGF–β proteins in tissues. The progression of many pathologic conditions, including cancer and immune system disorders, is often associated with loss of expression of these receptors.

Following the completion of the preclinical studies described in section 1 above, LCRC plans to test the epitope-tagged TGF–β in the following settings in the clinic:

(a). LCRC plans to study the utility of epitope-tagged TGF–β as a diagnostic tool for the quantitative, real-time measure of receptor expression in diseases in which altered expression of TGF–β receptors and binding proteins have been described, such as cancer and immune disorders. These studies will include, but not be limited to the following:

(i). Malignancies including lymphoid and those of the gastrointestinal tract, in which loss of receptor expression has been linked to disease pathogenesis.

(ii). Autoimmune disorders, such as Systemic Lupus Erthematosis (SLE) and Sjogren's Syndrome, where altered production and responsiveness to TGF–β may play a role in disease progression.

(iii). In patients with Hereditary Hemorrhagic Telangiectasia (HHT), a disorder that exists in two forms and results from mutational inactivation of specific cell surface receptors. FLAG–TGF–β 1 can serve as the basis for a number of new diagnostic tools that may be useful in determining disease severity and prognosis in each of these disorders.

(b). LCRC's tagged TGF–β provides an example of how the members of the extended TGF–β family might be tagged. Thus, an additional goal of the clinical phase of the research is to determine whether or not adding an epitope tag to other members of the extended TGF–β family will allow for efficient tracking of the tagged molecule.

(c). In the future, LCRC intends to examine the feasibility of inserting tag sequences that will not only allow for tracking, but will also enhance the delivery of these proteins by ferrying them into target tissues without loss of function. The latter represents an important area of ongoing research at NCI that will aim to reduce the incidence of adverse effects associated with the systemic administration of TGF–β and related proteins. This avenue of research is of primary importance, as the widespread expression of TGF–β receptors throughout vascular endothelia, and the rapid clearance of either active or latent forms from the circulation make the development of new delivery strategies essential.

(d). LCRC intends to test the therapeutic application of the above functionalized, tagged TGF–β molecules in the treatment of disorders, including, but not limited to the following:

- Disorders of chronic/delayed wound healing,
- Lymphoproliferative and autoimmune syndromes,
- Inflammatory disorders of the gastrointestinal tract, and

• Hematopoietic and epithelial malignancies.

**Party Contributions**

*The Role of the NCI in the CRADA May Include, But Not Be Limited To*

1. Providing intellectual, scientific and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the development and characterization of the epitope-tagged TGF–β ligands, *in vitro* and *in vivo* assays of TGF–β function, techniques for the detection and quantitation of epitope-tagged TGF–β proteins in biological specimens.
3. Planning research studies and interpreting research results.
4. Carrying out research to evaluate the pharmacokinetics and toxicity profiles of epitope-tagged TGF–β ligands.
5. Publishing research results.
6. Developing additional potential applications of the FLAG-tagged TGF–β molecule.

*The Role of the CRADA Collaborator May Include, But Not Be Limited To*

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
4. Publishing research results.
5. Providing resources and support for production and purification of the recombinant, epitope-tagged TGF–β ligands.

*Selection Criteria for Choosing the CRADA Collaborator Will Include*

1. A demonstrated record of success in the areas of cytokine expression systems, large scale purification of recombinant proteins and the evaluation of cytokine function.
2. A demonstrated background and expertise in the preclinical development of biological response modifiers and in the design and execution of clinical trials.
3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.
4. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
6. The demonstration of expertise in the commercial development and production of products related to this area of technology.
7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects and all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole or joint inventor.

Dated: April 12, 2001.

**Kathleen Sybert,**

*Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.*

[FR Doc. 01–9924 Filed 4–20–01; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the White House Commission on Complementary and Alternative Medicine Policy.

The purpose of the meeting is to convene the Commission for a public hearing to receive public testimony from individuals and organizations interested in the subject of Federal policy regarding complementary and alternative medicine. The major focus of the meeting is coverage and reimbursement by the private and public sectors for Complementary and Alternative (CAM) practices and products and the coordination of research on Complementary and Alternative Medicine practices and products. Comments received at the meeting may be used by the Commission to prepare the Report to the President as required by the Executive Order.

Invited speaker discussions focusing on the coverage and reimbursement for CAM practices and products on May 14–15 will include the following: Trends in the United States health care system including the underinsured and uninsured; Federal, state, and private sector providers' perspectives on the financing of health care and providing coverage and reimbursement for CAM practices and products; Employer coverage and reimbursement programs; and Health plans and CAM benefits. Invited speaker discussions focusing on the coordination of CAM research on May 15–16 will include the following: Not-for-profit support for CAM research; Approaches to evaluating research literature; Challenges of CAM research and research training—research methodology and the training of conventional and CAM research investigators; and Publication of peer-reviewed CAM research results.

Some Commission members may participate by telephone conference. Opportunities for oral statements by the public will be provided on May 16, from about 4:00 p.m.–5:00 p.m. (Time approximate).

*Name of Committee:* The White House Commission on Complementary and Alternative Medicine Policy.

*Date:* May 14–16, 2001.

*Time:* May 14—8:15 a.m.–6:00 p.m., May 15—8:15 a.m.–6:00 p.m., May 16—8:15 a.m.–5:00 p.m.

*Place:* Academy for Educational Development Conference Center, 1825 Connecticut Avenue, NW., Room 800, Washington, DC 20009–5721.

*Contact Persons:* Michele M. Chang, CMT, MPH, Executive Secretary, or, Stephen C. Groft, Pharm.D., Executive Director, 6701 Rockledge Drive, Room 1010, MSC 7707, Bethesda, MD 20817–7707, Phone: (301) 435–7592, Fax: (301) 480–1691, E-mail: WHCCAMP@mail.nih.gov.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

**SUPPLEMENTARY INFORMATION:** The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000 by Executive Order 13147. The mission of the White House Commission on Complementary and Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral comment may register by faxing a request to register at 301–480–1691 or by accessing the website of the Commission at *http://whccamp.hhs.gov* no later than May 4, 2001.

Oral comments will be limited to five minutes, three minutes to make a statement and two minutes to respond to questions from Commission members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. Priority may be given to participants who have not yet addressed the Commission at previous meetings. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or question (as described above) to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits, and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record.

When mailing or faxing written comments, please provide, if possible, an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed above no later than May 4, 2001.

Dated: April 16, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–9919 Filed 4–20–01; 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 Motor Map Plasticity in Constraint Therapy for Stroke and Prospective Memory in Normal and Head Injured Children.

*Date:* April 19, 2001.

*Time:* 2:00 PM to 3:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6100 Executive Blvd., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Norman Chang, PhD, Scientific Review Administrator, 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.

(Catalog of Federal Domestic Assistance Program Nos. 93.209, Contraception and infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 10, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–9920 Filed 4–20–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Deafness and Other Communication Disorders Advisory Council.

*Date:* May 24, 2001.

*Open:* 8:30 AM to 12:30 PM.

*Agenda:* Staff reports on divisional, programmatic and special activities.

*Place:* 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

*Closed:* 12:30 PM to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* 31 Center Drive, Bldg. 31, Conf. Rm. 10, Bethesda, MD 20892.

*Contact Person:* Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 13, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–9921 Filed 4–20–01; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel.
*Date:* April 23–24, 2001.
*Time:* 7:00 PM to 5:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn–Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel.
*Date:* May 2, 2001.
*Time:* 1:00 PM to 4:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Ramesh Vemuri, PhD., Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Population Models of Factors Affecting Health Trends.
*Date:* May 4, 2001.
*Time:* 10:00 AM to 1:00 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel.
*Date:* May 11, 2001.
*Time:* 2:00 PM to 3:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Ramesh Vemuri, PhD., Health Scientific Administrator, Office of Scientific Review, National Institute on Aging, The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Minaker P01 Teleconference.
*Date:* June 11, 2001.
*Time:* 3:00 PM to 5:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* William A. Kachadorian, PhD., The Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Sleep Centers Teleconference.
*Date:* June 13, 2001.
*Time:* 2:00 PM to 4:30 PM.
*Agenda:* To review and evaluate grant applications.
*Place:* 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* William A. Kachadorian, PhD., The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalog of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 13, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–9922 Filed 4–20–01; 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 Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel Review of Conference Grants (R13s)
*Date:* May 7, 2001.
*Time:* 2:00 p.m. to 4:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).
*Contact Person:* Zoe E. Huang, MD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grants (R13s).
*Date:* May 15, 2001.
*Time:* 2:00 p.m. to 4:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).
*Contact Person:* Zoe E. Huang, MD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institutes of Environmental Health Sciences, P.O. Box 12233, MD/EC–30, Research Triangle Park, NC 27709, 919/541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Evaluation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 10, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01–9923 Filed 4–20–01; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF THE INTERIOR

### Delaware and Lehigh National Heritage Corridor Commission Meeting

**AGENCY:** Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces an upcoming meeting of the Delaware and Lehigh National Heritage Corridor

Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

**MEETING DATE AND TIME:** Friday, May 11, 2001, Time: 1:30 p.m. to 4 p.m.

**ADDRESSES:** Palmerton Library, 402 Delaware Ave., Palmerton, PA 18071.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

**SUPPLEMENTARY INFORMATION:** The Delaware and Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

**FOR FURTHER INFORMATION CONTACT:** C. Allen Sachse, Executive Director, Delaware and Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: April 17, 2001.

**C. Allen Sachse,**

*Executive Director, Delaware and Lehigh National Heritage Corridor Commission.*

[FR Doc. 01–9933 Filed 4–20–01; 8:45 am]

BILLING CODE 6820–PE–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–920–01–1310–FI–P; NDM 87501, NDM 87502, NDM 87508]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NDM 87501, NDM 87502, and NDM 87508

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Per Public Law 97–451, the lessee timely filed a petition for reinstatement of oil and gas leases NDM 87501, NDM 87502, and NDM 87508, McKenzie County, North Dakota. The lessee paid the required rentals accruing from the date of termination.

We haven't issued any leases affecting the lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the leases and $148 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the leases per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the leases, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $148 cost of publishing this Notice.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5098.

Dated: April 5, 2001.

**Karen L. Johnson,**

*Chief, Fluids Adjudication Section.*

[FR Doc. 01–9946 Filed 4–20–01; 8:45 am]

BILLING CODE 4310–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[IDI–33409, ID–084–1430–EU]**

### Notice of Realty Action

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of Public Land in Custer County, Idaho.

**SUMMARY:** The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 at no less than the appraised fair market value of $5,940.00. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**Boise Meridian**

T. 16 N., R. 20E.,
Sec. 23, lot 03;
Sec. 26, lot 11;
Sec. 27, lot 07;

The area described contains 31.27 acres in Custer County, Idaho.

The patent, when issued, will contain a reservation to the United States for ditches and canals under the Act of March 30, 1890. The patent, when issued, will be made subject to the following existing right of record:

1. IDI–16925—A buried telephone line right-of-way authorized to Custer Telephone Cooperative.

Continued use of the land by valid right-of-way holder is proper subject to the terms and conditions of the grant. Administrative responsibility previously held by the United States will be assumed by the patentee.

**DATES:** Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act. The segregation will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

**ADDRESSES:** Upper Columbia-Salmon Clearwater District, Challis Field Office, HC 63, Box 1670, Challis, Idaho 83226–9304.

**FOR FURTHER INFORMATION CONTACT:** For additional detailed information, contact Gloria Jakovac, Realty Specialist, at the address shown above or (208) 756–5421.

**SUPPLEMENTARY INFORMATION:** This land is being offered by direct sale to Sydney and Karen Dowton of Ellis, Idaho, based on historic use and value of added improvements. Failure or refusal by Sydney and Karen Dowton to submit the required fair market appraisal amount by July 1, 2001, will constitute a waiver of this preference consideration and this land may be offered for sale on a competitive or modified competitive basis.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously. A separate non-refundable filing fee of $50.00 is required from the purchasers for conveyance of the mineral interests.

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 Challis Field Office Manager, Upper Columbia-Salmon Clearwater District, Challis Field Office, at the above address. Any adverse comments will be reviewed by the Field Office Manager, who may vacate or modify this realty action to accommodate the protests. If the protest is not accommodated, the comments are subject to review of the State Director who may sustain, vacate, or modify this realty action. This realty action will become the final determination of the Department of the Interior.

Dated: April 11, 2001.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 01–9947 Filed 4–20–01; 8:45 am]

BILLING CODE 4310–GG–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *University of Rhode Island,* Civil No. 01165ML was lodged on April 5, 2001, with the United States District Court for District of Rhode Island.

The consent decree settles claims alleged in the complaint for civil penalties and injunctive relief against the University of Rhode Island (''URI'') under the Clean Air Act, Clean Water Act and the Resource Conservation and Recovery Act and regulations promulgated thereunder. The complaint sought injunctive relief and civil penalties against URI pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b); Section 311(b) of the Clean Water Act, 33 U.S.C. 1321(b); and Sections 3008(a) and (g) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928(a) and (g), for violations of the Clean Air Act, Clean Water Act, and RCRA and the regulations promulgated thereunder. The violations occurred at URI's campus located in Kingston, Rhode Island.

Pursuant to the consent decree, URI will pay a civil penalty of $194,560. URI certifies that as of the date of its signature of the consent decree, it is in compliance with the provisions of the Clean Water Act, Clean Air Act and the Resource Conservation and Recovery Act that it is alleged to have violated in the complaint. URI shall also undertake a comprehensive environmental audit of its Kingston campus and undertake two supplemental environmental projects (''SEPs'') with a total cost of $550,000. The SEPs include construction of a state of the art hazardous waste storage facility and upgrades to septic systems in the environmentally sensitive area of Wickford Village, Rhode Island.

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 for the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *University of Rhode Island,* DOJ Ref. #90–7–1–928.

The proposed consent decree may be examined at the office of the United States Attorney, for the District of Rhode Island, Westminster Square Building, 10 Dorrance Street, Providence, Rhode Island 02903 (401) 528–5477 (916); and the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, MA 02203 (617) 565–3433. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $26.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Ronald Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–9908 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Federal Water Pollution Control Act

Notice is hereby given that, consistent with the policy of Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, a proposed Partial Consent Decree (the ''Decree'') in *United States* v. *ASARCO, et al.,* Civil Action No. 96–0122–N–EJL was lodged on April 18, 2001 with the United States District Court for the District of Idaho. The Decree resolves claims by the United States against two of the remaining named defendants in this action, Coeur d'Alene Mines Corporation and Callahan Mining Corporation and potential claims against Coeur Silver Valley, Inc. a subsidiary of Coeur d'Alene Mines Corporation (collectively the ''Coeur Defendants'').

The United States' Second Amended Complaint in this action alleges that the Coeur d'Alene Mines Corporation and Callahan Mining Corporation and other mining companies, including ASARCO, Inc. and Hecla Mining Co., are liable for past and future response costs and natural resource damages at the Bunker Hill Superfund Facility (the ''Facility'') in the Coeur d'Alene Basin (the ''Basin'') of northern Idaho, under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA''), 42 U.S.C. 9607, and Section 311(f) of the Federal Water Pollution Control Act (the ''Clean Water Act''), 33 U.S.C. 1321(f). Trial on liability, natural resource injury, and causation issues began on January 22, 2001 and will continue, after a recess, on May 14, 2001.

Under this proposed Decree, Coeur agrees to: (1) pay $3,871,924 for response costs or damages within 45 days of entry of the consent decree; (2) pay the United States 50 percent of any future insurance recovery in excess of $600,000; (3) convey title to a 74-acre parcel of land, called the ''Burns-Yaak Property,'' for possible use as a waste repository; (4) perform cleanup work and/or institute institutional controls on a closed mine site, the McFarran Gulch Property (a/k/a old Coeur d'Alene Mine) and pay EPA's oversight costs; and (5) commencing five years after entry of the consent decree, pay royalties to the United States on all of its silver and gold mining revenues whenever the market price of silver exceeds $6.50 per ounce or the price of gold exceeds $325 per ounce, up to a ceiling of $3 million. The Decree reserves claims by the United States for, among other things, response actions on certain properties in the Basin that the Coeur Defendants will continue to own.

The Department of Justice will receive comments relating to the proposed Decree until May 7, 2001. This period for comments has been limited in order to allow the parties to seek District Court approval of the Decree before the scheduled re-start of trial on May 14, 2001. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 950 Pennsylvania Avenue, NW., Washington, DC 20530, and should refer to *United States* v. *ASARCO,* DOJ Ref. #90–11–3–128L. 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 proposed Decree may be examined at the office of the United States Attorney, District of Idaho, 877 W. Main, Suite 201, Boise, Idaho 83702 (208) 334–1211; and the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044, or by telephonic request to Mr. Joe Davis at (202) 616–7940. In requesting a copy of the Consent Decree, please refer to the referenced case and

enclose a check in the amount of $17.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 01–10003 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–15–M

## 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 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Bernard Liedman*, Civil Action. No. JFM–00–111, was lodged on April 9, 2001, with the United States District Court for the District of Maryland. The Consent Decree resolves the claims of the United States under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of $684,377.71 of past response costs incurred in responding to contamination at the Mid-Atlantic Wood Preservers Superfund Site located in Harmans, Anne Arundel County, Maryland. The Consent Decree obligates Bernard Liedman to pay $575,000 in reimbursement of the past response costs incurred by EPA. The Consent Decree is consistent with the Superfund statute and is in the public interest.

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 for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Bernard Liedman*, DOJ Ref. # 90–11–2–305/1.

The Consent Decree may be examined at the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania, 19103; and by mail from the Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy from the Consent Decree Library, please refer to the referenced case and enclose a check in the amount of $38.25 (25 cents per page reproduction cost), payable to the U.S. Treasury.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 01–9907 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Eleventh Consent Decree in United States v. Nalco Chemical Company, et al., Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed eleventh Consent Decree in *United States* v. *Nalco Chemical Company, et al.,* Case No. 91–C–4482 (N.D. Ill.) entered into by the United States on behalf of U.S. EPA and Raco, Inc. was lodged on April 9, 2001 with the United States District Court for the Northern District of Illinois. The proposed Consent Decree resolves certain claims of the United States against Raco, Inc. under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* relating to the Byron Salvage Superfund Site in Ogle County, Illinois. This Consent Decree is a past costs only settlement and provides for Raco, Inc. to pay $122,866 to the Hazardous Substances Superfund.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. 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. *Nalco Chemical Company, et al.,* D.J. Ref. No. 90–11–3–687. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn St., Chicago, Illinois 60604; and the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by request addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $5.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**William D. Brighton,**

*Assistant Section Chief, Environmental Enforcement Section.*

[FR Doc. 01–9906 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Office of Attorney Personnel Management; Justice Management Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** Notice of information collection under review; extension of a currently approved collection; application booklets—attorney general's honor program, summer law intern program.

The Department of Justice, Justice Management Division, Office of Attorney Personnel Management, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** (Volume 66, Number 33, pages 10745–10747) on February 16, 2001, allowing 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comment until May 23, 2001. This process is in accordance with 5 CFR 1320.10.

Pursuant to 28 CFR 0.15(b)(2), the Deputy Attorney General of the United States Department of Justice has the responsibility of administering the ''Attorney General's recruitment program for honor law graduates and judicial law clerks.'' This includes the hiring of third-year law students and judicial law clerks for full-time employment following graduation or completion of a clerkship, and primarily second-year law students for summer employment. This program has been in existence for 46 years, and is considered the Federal Government's premier legal recruitment program. The Department of Justice currently hires approximately 150–160 third-year law students/judicial law clerks and 135 second-year law students each year under these programs. The Department of Justice is the largest legal employer in the country. Approximately 5,000 applications are received for these positions annually.

The responsibility for running these programs has been delegated by the Deputy Attorney General to the Director, Office of Attorney Personnel

Management (OAPM) pursuant to 28 CFR 0.15(c) and 0.15(e). OAPM together with other Department of Justice representatives who make the ultimate hiring determination have developed these application booklets to distribute information on the programs and in turn collect the information they consider essential to make an informed hiring decision on legal applicants.

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: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice, Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC.

**Your Comments Should Address One or More of the Following Four Points**

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application Booklets—Attorney General's Honor Program, Summer Law Intern Program.

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: None. Office of Attorney Personnel Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Individuals or households. Other: None. This data collection is the only vehicle for the Department of Justice (DOJ) to hire graduating law students. This application form is submitted voluntarily, submitted only once a year by students/judicial law clerks who will be in this applicant pool only once; and the information sought only relates to the hiring criteria established as an internal matter by DOJ personnel.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 5,000 respondents at 1 hour per response.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the Collection:* 5,000 annual hours.

If additional information is required contact Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: April 17, 2001.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 01–9915 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–26–M

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## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 227–2001]**

## Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Justice Management Division (JMD), Department of Justice (DOJ), proposes to establish a new system of records entitled ''Nationwide Joint Automated Booking System (JABS), Justice/DOJ–005.'' The JABS Pilot, originally conducted in South Florida, has now transitioned to the Nationwide JABS. The JABS represents a major information sharing project among DOJ's five investigative components: The Bureau of Prisons (BOP), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Naturalization Service (INS), and the U.S. Marshals Service (USMS). This notice of a new system of records replaces the Privacy Act notice previously published by the USMS. Accordingly, this Department-wide system notice replaces, and the Department hereby removes, on the effective date of this notice, the following notice previously published by the United States Marshals Service: ''Joint Automated Booking Stations, Justice/USM–014'', (60 FR 18853, April 13, 1995).

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 40-day period in which to review the system notice.

Therefore, please submit any comments by June 4, 2001. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building), (202) 307–1823.

A description of the system of records is provided below. In accordance with 5 U.S.C. 552a(r), DOJ has provided a report on the proposed new system to OMB and the Congress.

**SUPPLEMENTARY INFORMATION:** The JABS Pilot (February 1996–July 1999) successfully eliminated redundant booking procedures among participating agencies, reduce the time required to book an offender, improved interagency cooperation, and facilitated the sharing of offender information among participating federal criminal justice components. The Pilot proved that a nationwide JABS information sharing system among criminal justice agencies is beneficial and feasible, and therefore, validated both the value of information exchange and work reduction concepts that apply to a national system. Based on these accomplishments and key lessons learned from the JABS Pilot, the Attorney General approved the transition of the JABS Pilot into a permanent program.

Dated: April 9, 2001.

**Janis A. Sposato,**

*Acting Assistant Attorney General for Administration.*

**Justice/DOJ–005**

**SYSTEM NAME:**

Nationwide Joint Automated Booking System (JABS), Justice/DOJ–005.

**SYSTEM LOCATION:**

JABS Program Management Office, Department of Justice, Washington, DC

[1] Initially, these records will include only those of the Department of Justice (DOJ) law enforcement components.

20530 with data collection sites in multiple DOJ locations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Alleged criminal offenders who have been detained, arrested, booked, or incarcerated. The remainder of this notice will refer to all persons covered by the System as ''alleged criminal offender'' or ''arrestee''.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records may include certain generic or ''common'' data elements which have been collected by an arresting federal agency [1] at its automated booking station (ABS). An agency may book an alleged criminal offender on behalf of another agency which performed the arrest. Such common data (certain data elements) have been identified by law enforcement a those case and biographical data routinely collected by the law enforcement community during the booking process, e.g., name, date and place of birth, citizenship, hair and eye color, height and weight, occupation, social security number, place, date and time of arrest and jail location, charge, disposition, any other pertinent information related to known activities relevant or unique to the subject. Finally, such data may include electronic fingerprints, mugshots, and pictures of applicable scars, marks, and tattoos.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

8. U.S.C. 1324 and 1357 (f) and (g); 28 U.S.C. 534, 564, 566; 5 U.S.C. 301 and 44 U.S.C. 3101; 18 U.S.C. 3621, 4003, 4042, 4082, 4086; and Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513), 21 U.S.C. 801 *et seq.* and Reorganization Plan No. 2 of 1973.

**PURPOSE(S):**

Nationwide JABS will enable the conduct of automated booking procedures by participating law enforcement organizations and provide an automated capability to transmit fingerprint and image data to the Federal Bureau of Investigation's (FBI) Integrated Automated Fingerprint Identification System (IAFIS), Justice/FBI–009 Fingerprint Identification Records Systems (FIRS). JABS will define and maintain a repository of common offender data elements for identification of arrestees by participating federal law enforcement organizations. JABS will eliminate repetitive booking of offenders for a single arrest and booking, and thereby eliminate the need for duplicate bookings, i.e., the collection of much the same data by multiple agencies in prisoner processing activities involving such agencies from arrest through incarceration. (For example, an individual arrested by the DEA and transported by the USMS to a Federal correctional institution may be processed by the DEA, USMS, and the BOP.) In addition, JABS will standardize booking data elements, enable cross-agency sharing of booking information, enhance cooperation among law enforcement agencies, and reduce the threat to law enforcement officials and the public by facilitating the rapid and positive identification of offenders.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Where necessary and/or appropriate, the DOJ may disclose relevant information from the JABS repository and may allow electronic access as follows:

a. To authorized federal law enforcement agencies to input and retrieve booking and arrests data on criminal offenders. In addition, the JABS repository may be electronically accessed by these agencies for other law enforcement purposes such as to learn about the arrest of a fugitive wanted in several jurisdictions, to verify the identity of an arrestee, or to assist in the criminal investigation activities.

b. To other judicial/law enforcement agencies, i.e., courts, probation, and parole agencies, for direct electronic access to JABS to obtain applicable data which will assist them in performing their official duties.

c. To any authorized federal authorities to the extent necessary to permit them to perform their law enforcement responsibilities; or to any federal and/or international authorities to the extent necessary to permit them to perform their law enforcement responsibilities; or to any other entity or person, to the extent required to solicit information necessary for law enforcement purposes.

d. To a court or adjudicative body before which the appropriate DOJ component is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the appropriate DOJ component to be arguably relevant to the litigation:

(1) The DOJ component, or any subdivision thereof, or

(2) Any employee of the DOJ in his or her official capacity, or

(3) Any employee of the DOJ in his or her individual capacity where the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her, and

(4) The United States, where the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

e. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of an investigation or case (e.g., an arrest) arising from the matters of which they complained and/or of which they were a victim.

f. To any persons or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

g. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government, when necessary to accomplish an agency function related to this system of records.

h. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

i. To the news media and the public, pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

j. To the National Archives and Records Administration (NARA) and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

k. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Records are stored in computerized media and printed copies. Any paper

records kept by individuals will be appropriately secured.

**RETRIEVABILITY:**

Data may be retrieved by name, identifying number, or other data elements.

**SAFEGUARDS:**

Nationwide JABS will have a combination of technical elements that, together, integrate into a total security infrastructure to ensure access is limited to only pre-authorized users. The key technical design elements of this architecture will include: Encrypted user authentication, redundant firewalls, virtual private networks, nonrepudiation, data encryption, anti-virus content inspection, and intrusion detection capabilities. Access to the systems equipment is limited to pre-authorized personnel through physical access safeguards that are enforced 24 hours a day, 7 days a week. Facilities and offices which house computer systems will be protected at all times by appropriate locks, security guards, and/or alarm systems.

**RETENTION AND DISPOSAL:**

a. Temporary. Delete from the JABS data base 99 years after the date of the first entry. Disposal pending approval at the National Archives.

b. Fingerprints submitted by law enforcement agencies are removed from the system and destroyed upon the request of the submitting agencies. The destruction of fingerprints under this procedure results in the deletion from the system of all arrest information related to those fingerprints.

c. Fingerprints and related arrest data are removed from the JABS upon receipt of court orders for expunction when accompanied by necessary identifying information.

**SYSTEM MANAGER(S) AND ADDRESS:**

JABS Program Management Office, U.S. Department of Justice, Washington, DC 20530.

**NOTIFICATION PROCEDURE:**

Same as ''Record Access Procedures.''

**RECORD ACCESS PROCEDURE:**

Inquiries must be addressed in writing and should be sent to the JABS Program Management Office, at above address. Provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity as instructed in 28 CFR 16.41(d).

**CONTESTING RECORDS PROCEDURE:**

Same as above.

**RECORD SOURCE CATEGORIES:**

The record subject; federal law enforcement personnel; the courts; and medical personnel.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), the Attorney General has exempted records in this system from subsections (c)(3) and (4), (d), (3)(1), (2) and (3), (4)(G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and are published in today's **Federal Register**.

[FR Doc. 01–9910 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–FB–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Agency Information Collection Activities: Proposed Collection; Comment Requested

**ACTION:** Notice of information collection under review; extension of a currently approved collection; application for Procurement Quota for Controlled Substances (DEA Form 250).

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The Department of Justice, Drug Enforcement Administration (DEA), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 20, 2001, in Vol. 66, Number 34, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 23, 2001. 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: Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information**

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Procurement Quota for Controlled Substances.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* DEA Form 250. *Applicable component of the Department sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit. *Other:* None.

*Abstract:* Title 21, CFR 1303.12(b), requires that U.S. companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year, shall apply on DEA Form 250 for a procurement quota for such class.

5. *An estimate of the total number of respondents, responses and the amount of time estimated for an average respondent to respond/reply:* 243 respondents, 807 responses, one hour per response. A respondent may submit multiple responses. A respondent will take an estimate of one hour to complete each form.

6. *An estimate of the total public burden (in hours) associated with the collection:* 807 annual burden hours.

Public comments on this proposed information collection are strongly encouraged.

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, National Place Building, 1331 Pennsylvania Avenue, NW., Suite 1220, Washington, DC 20530.

Dated: April 17, 2001.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 01–9916 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Agency Information Collection Activities: Proposed collection; Comments Requested

**ACTION:** Notice of information collection under review; extension of a currently approved collection; application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes to 21 U.S.C. 952 (DEA Form 357).

The Department of Justice, Drug Enforcement Administration (DEA), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 16, 2001, at Volume 66, Number 33, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 23, 2001. 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: 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 Office, National Place Building, 1331 Pennsylvania Avenue, NW, Suite 1220, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of this Information**

1. *Type of information collection:* Extension of a currently approved collection.

2. *The title of the form/collection:* Application for Permit to Import Controlled Substances for Domestic and/or Scientific Purposes pursuant to 21 U.S.C. 952 (DEA Form 357).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* DEA Form 357. *Applicable component of the Department sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit. *Other*: None.

*Abstract:* Title 21, CFR, Section 1312.11 requires any registrant who desires to import certain controlled substances into the United States to have an import permit. In order to obtain the permit, an application must be made to the Drug Enforcement Administration on DEA Form 357.

5. *An estimate of the total number of respondents, responses and the amount of time estimated for an average respondent to respond/reply annually:* 80 respondents, 320 responses, .25 hour per response. A respondent may submit multiple responses. A respondent will take an estimate of 15 minutes to complete each form.

6. *An estimate of the total public burden (in hours) associated with the collection:* 80 annual burden hours.

Public comments on this proposed information collection are strongly encouraged. 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, National Place Building, 1331 Pennsylvania Avenue, NW, Suite 1220, Washington, DC 20530.

Dated: April 17, 2001.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 01–9917 Filed 4–20–01; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Agency Information Collection Activities; Proposed Collection; Comments Requested

**ACTION:** Notice of Information Collection Under Review; Extension of a Currently Approved Collection; National Sexual Offender Registry (National Crime Information Center Convicted Sexual Offender Registry File).

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** (Volume 66, Number 14, Pages 6675–6676) on January 22, 2001, allowing 60 days for the public to comment. Neither the Federal Bureau of Investigation or the Department of Justice received any comments.

The purpose of this notice is to allow an additional 30 days for public comment until May 23, 2001. This process is conducted in accordance with 5 CFR 1320.10.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments should be directed to Office of Management and Budget, Office of Information Regulatory Affairs, Attention: Department of Justice Desk

Officer, Washington, DC 20530. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: National Sexual Offender Registry.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Federal Bureau of Investigation.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: National sexual offender registry data is collected from the 50 states, 5 territories, and the District of Columbia. The registry was established by the FBI in accordance with federal law (42 U.S.C. 14072) in order to track the whereabouts and movements of persons convicted of a criminal offense against a victim who is a minor; a sexually violent offense; and/or are deemed sexually violent predators.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Estimated number of respondents: 56 Estimated time for average respondent to respond: 2 minutes per transaction (.033 hours).

(6) An estimate of the total of public burden (in hours) associated with the collection: Approximately 1500 annual burden hours.

If additional information is required contact: Robert B. Briggs, Department of Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place, Pennsylvania Avenue NW., Washington, DC 20530.

Dated: April 17, 2001.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 01–9918 Filed 4–20–01; 8:45 am]

**BILLING CODE 4410–02–M**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Federal Economic Statistics Advisory Committee; Notice of Open Meeting and Agenda

The third meeting of the Federal Economic Statistics Advisory Committee will be held on June 7–8, 2001 in the Postal Square Building, 2 Massachusetts Avenue NE., Washington, DC.

The Federal Economic Statistics Advisory Committee is a technical committee composed of economists, statisticians, and behavioral scientists who are recognized for their attainments and objectivity in their respective fields. Committee members are called upon to analyze issues involved in producing Federal economic statistics and recommend practices that will lead to optimum efficiency, effectiveness, and cooperation among the Department of Labor, Bureau of Labor Statistics and the Department of Commerce, Bureau of Economic Analysis and Bureau of the Census.

The meeting will be held in Meeting Rooms 1 and 2 of the Postal Square Building Conference Center. The schedule and agenda for the meeting are as follows:

*Thursday, June 7*

9:30 a.m.—Opening Session
10:00 a.m.—Measurement of hours worked
1:00 p.m.—Time use survey
3:00 p.m.—Statistics Canada Unified Enterprise Survey
4:00 p.m.—Service sector price measures, continuation
4:45 p.m.—Priorities for future meetings, part I
5:30 p.m.—Conclude (approximate time)

*Friday, June 8*

9:00 a.m.—Small area estimation
11:00 a.m.—Non-wage compensation: health benefits
1:00 p.m.—Priorities for future meetings, part II
1:30—Conclude (approximate time)

The meeting is open to the public. Any questions concerning the meeting should be directed to Margaret Johnson, Federal Economic Research Advisory Committee, on Area Code (202) 691–5600. Individuals with disabilities, who need special accommodations, should contact Ms. Johnson at least two days prior to the meeting date.

Signed at Washington, D.C. the 12th day of April 2001.

**Katharine G. Abraham,**

*Commissioner of Labor Statistics.*

[FR Doc. 01–9958 Filed 4–20–01; 8:45 am]

**BILLING CODE 4510–24–P**

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. RM 2001–3]**

### Public Roundtable on Intellectual Property Aspects of a Draft Convention on Jurisdiction and Foreign Judgments

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

**ACTION:** Notice Announcing Public Forum.

**SUMMARY:** The United States Copyright Office announces a public roundtable discussion on the intellectual property aspects of the preliminary draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters being negotiated by the Hague Conference on Private International Law that provides special jurisdiction rules for, among other things, international torts.

*Date and Time:* The roundtable will be held on Tuesday, May 15, 2001, beginning at 9:30 a.m. and ending at 5:00 p.m.

**ADDRESSES:** Library of Congress, John Adams Building, Room LA–202, 110 Second Street, SE., Washington, DC. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact the Library of Congress at least five (5) working days prior to the hearing by telephone or electronic mail at the respective contact points listed immediately below.

Registration is not required to attend the roundtable. Seating will be available on a first-come, first-served basis. Requests for participation as a member of the roundtable are required and should be directed (preferably via e-mail) to Marla Poor, Attorney-Advisor, Office of Policy and International Affairs, U.S. Copyright Office, Library of Congress, *mpoor@loc.gov.;* (202)707–2694 telephone, (202)707–8366 fax. Requests for participation as a member

of the roundtable should indicate the following information:

- The name of the person desiring to participate;
- The organization or organizations represented by that person, if any;
- Contact information (address, telephone, and e-mail);
- Information on the specific focus or interest of the participant (or his or her organization) and any questions or issues the participant would like to raise.

This request may be sent by e-mail (preferred), by mail, by fax or by hand-delivery. If sent by e-mail: requests to participate in the roundtable should be sent to Marla Poor at *mpoor@loc.gov.*

If delivered by mail: requests to participate in the roundtable should be addressed to Marla Poor, Attorney-Advisor, GC/I&R, PO Box 70400, Southwest Station, Washington, DC, 20024.

If sent by fax: requests to participate in the roundtable should be addressed to Marla Poor at 202–707–8366.

If delivered by hand: requests to participate in the roundtable should be delivered to Marla Poor, Office of Policy and International Affairs, Copyright Office, Library of Congress, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC.

The deadline for receipt of requests to participate in the roundtable is 5:00 p.m. on Thursday, May 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Marla Poor, Attorney-Advisor, Office of Policy and International Affairs, U.S. Copyright Office, Library of Congress (202) 707–2694, mpoor@loc.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

The draft Convention would create jurisdictional rules governing international lawsuits and provide for recognition and enforcement of judgments by the courts of Member States. Member States would be required to recognize and enforce judgments covered by the Convention if the jurisdiction in the court rendering the judgment is founded on one of the bases of jurisdiction required by the Convention.

Discussions on the draft Convention began in 1992, and various meetings have been held since then. The most recent meetings include an informal meeting on intellectual property aspects held in Geneva on February 1, 2001; a public roundtable sponsored by the Federal Trade Commission on dispute resolution for online business-to-consumer contracts held in Washington, DC on February 6, 2001; and a week long series of informal meetings (with an emphasis on electronic commerce and intellectual property) held in Ottawa the week of February 26, 2001. The Hague Conference posts various documents from these meetings, such as summaries of discussions, notes and reports, on its website (www.hcch.net).

The current text of the draft Convention was provisionally adopted by the Special Commission on June 18, 1999, and then was revised at a meeting held at The Hague from October 25–30, 1999. The current text of the draft Convention is available on The Hague Conference website (www.hcch.net). The first part of a Diplomatic Conference is planned for June 2001, and the second part will be held in 2002.

On October 17, 2000, the Patent and Trademark Office (PTO) published a **Federal Register** Notice requesting comments on the draft Convention. PTO received 27 comments. Specifically PTO was interested in assessing support for or opposition to the U.S. effort to negotiate the draft Convention as it relates to intellectual property. The public was asked for their views generally on the draft Convention and to comment on 16 questions that were presented in the Notice.

The purpose of the Copyright Office roundtable will be to bring together various parties, such as representatives from the copyright industries, representatives of users of copyrighted works, such as the American Library Association, consumer organizations and representatives from industries engaged in electronic commerce who are interested in the draft Convention. The participants should be prepared to identify and discuss more fully the issues and problems associated with the draft Convention, and to propose solutions that will aid the U.S. delegation to the Hague Conference as it participates in upcoming meetings to further the treaty negotiations.

Specific issues under discussion at the roundtable may include (but are not limited to):

- Does the draft Convention affect in any way the substantive law that applies to an activity of any party with respect to intellectual property?
- If a basis for jurisdiction is determined by where the injury occurs, in the context of electronic commerce, will this subject a seller to jurisdiction in an unforeseen country? Will there be any difference if the seller is an individual or a company?
- With respect to copyright liability issues, how will ISP's be implicated under the draft Convention?
- What effect could this Convention have on the enforcement of intellectual property rights with respect to the Internet?
- Under the draft Convention, will right holders be able to sue U.S. residents in foreign countries for intellectual property infringement for activities which are lawful in the United States? Will libraries, schools, businesses and individual consumers of information resources be required to defend themselves in courts far removed from their normal residence?
- In what circumstances will a U.S. court have to enforce a judgment of a foreign country's court against the U.S. user of intellectual property?
- What effect will the proposed Convention have on the ability to ensure consistent and predictable interpretation of licensing terms through choice of forum provisions in license agreements?
- What will be the practical impact of treaty provisions concerning the exercise of jurisdiction premised solely on a defendant's presence in the forum?
- How will the draft Convention affect traditional contractual freedom for parties to enter into agreements that typically designate the choice of jurisdiction and law?
- Will the draft Convention provide a predictable legal regime that will facilitate electronic commerce or impede electronic commerce? Will the draft Convention disrupt the predictability of conducting global business and electronic commerce?

Dated: April 18, 2001.

**Marybeth Peters,**

*Register of Copyrights, United States Copyright Office.*

[FR Doc. 01–10002 Filed 4–20–01; 8:45 am]

BILLING CODE 1410–30–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (01–048)]**

## NASA's Aerospace Technology Enterprise's 3rd Annual Turning Goals Into Reality Conference

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** NASA's Aerospace Technology Enterprise is holding its 3rd Annual Turning Goals Into Reality Conference in Washington DC. This year's theme is ''Innovation in Aerospace Transportation''. Luncheon and Reception keynotes will speak to the future of our aerospace

transportation system, the role of technology, and the challenges of innovation. Conference participants include industry and government leaders, futurists and technologists from across the full spectrum of the aerospace community.

The conference will be held in Washington, DC.

**DATES:** Tuesday, May 15, 2001, through Thursday, May 17, 2001.

**ADDRESSES:** The meeting locations are as follows:

—Library of Congress (Great Hall of the Thomas Jefferson Building), 101 Independence Avenue, SE., Washington, DC 20540.
—Ronald Reagan Internal Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.
—National Air and Space Museum, Independence Avenue at Sixth Street, SW., Washington, DC 20560.
—Ronald Reagan Internal Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony M. Springer, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546 (202/358–0848) or visit the conference web site for the agenda, session descriptions, speakers, and hotel information.

**SUPPLEMENTARY INFORMATION:** The conference is open to the public but registration is required. The conferences agenda is as follows:

—Opening Reception May 15, 2001, 6:00 p.m. to 10:00 p.m.
—Conference program and exhibits May 16, 2001, 7:00 a.m. to 6:30 p.m.
—Awards Ceremony May 16, 2001, 7:00 p.m. to 10:30 p.m.
—Conference program and exhibits May 17, 2001, 7:00 a.m. to 4:00 p.m.

Detailed conference information and electronic registration is available at: *http://www.aerospace.nasa.gov/curevent/tgir/.*

**Anthony M. Springer,**

*Alliance Development Manager, National Aeronautics and Space Administration.*

[FR Doc. 01–9939 Filed 4–20–01; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 01–049]**

### U.S. Centennial of Flight Commission; Notice of Meeting Cancellation

**AGENCY:** National Aeronautics and Space Administration.

**Federal Register** Citation of Previous Announcement: 66FR65.

Notice Number 01–041, April 4, 2001.

*Previously Announced Dates of Meeting:* Wednesday, April 26, 2001, 1 p.m. to 4 p.m. Meeting has been cancelled.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

Dated: April 18, 2001.

**Beth M. McCormick,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 01–9974 Filed 4–20–01; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (01–050)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that CO Guardian LLC of Tucson, AZ has applied for an exclusive license to practice the invention described in NASA Case No. KSC–12,168–1 entitled ''Personal Cabin Pressure Monitor and Warning System, which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Patent Counsel, Assistant Chief Counsel, NASA Mail Code: CC–A, Office of the Chief Counsel, John F. Kennedy Space Center, Kennedy Space Center, FL 32899.

**DATE(S):** Responses to this Notice must be received by June 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Patent Counsel/Assistant Chief Counsel, NASA, Office of the Chief Counsel, John F. Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: April 17, 2001.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 01–9976 Filed 4–20–01; 8:45 am]

BILLING CODE 7510–01–U

## NATIONAL CAPITAL PLANNING COMMISSION

### Senior Executive Service Performance Board Members

**AGENCY:** National Capital Planning Commission.

**ACTION:** Notice of Members of Senior Executive Service Performance Review Board.

**SUMMARY:** Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate, and make a final recommendation on performance appraisals assigned to individual members of the agency's Senior Executive Service (SES). The PRB established for the National Capital Planning Commission also makes recommendations to the agency head regarding SES performance awards, ranks and bonuses, and recertification. Section 4314 (c)(4) requires that notice of appointment of Performance Review Board Members be published in the **Federal Register**. The following persons have been appointed to serve as members of the Performance Review Board for the National Capital Planning Commission: Patricia E. Gallagher, Stephen E. Crable, Patricia Cornwell-Johnson, Solly Thomas, and Gloria J. Joseph, from May 21, 2001 to May 21, 2003.

**FOR FUTHER INFORMATION CONTACT:** Connie M. Harshaw, Assistant Executive Director (Management), National Capital Planning Commission, 401 9th Street, NW., Suite 500, Washington, DC 20576 Telephone (202) 482–7200.

Dated: April 4, 2001.

**Ash Jain,**

*General Counsel and Congressional Liaison, National Capital Planning Commission.*

[FR Doc. 01–9891 Filed 4–20–01; 8:45 am]

BILLING CODE 7520–01–P

## NATIONAL COUNCIL ON DISABILITY

### Advisory Committee Meeting/ Conference Call

**AGENCY:** National Council on Disability (NCD).

**SUMMARY:** This notice sets forth the schedule of the forthcoming meeting/ conference call for NCD's advisory committee—International Watch. Notice of this meeting is required under Section 10(a)(1)(2) of the Federal

Advisory Committee Act (Pub. L. 92–463).

*International Watch:* The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD's Foreign Policy Team on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

*Date and Time:* June 21, 2001, 12:00 p.m.–1:00 p.m. EDT.

*For International Watch Information, Contact:* Kathleen A. Blank, Attorney/Program Specialist, NCD, 1331 F Street NW., Suite 1050, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), kblank@ncd.gov (e-mail).

*Agency Mission:* NCD is an independent federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

This committee is necessary to provide advice and recommendations to NCD on international disability issues.

We currently have balanced membership representing a variety of disabling conditions from across the United States.

*Open Meeting/Conference Call:* This NCD advisory committee meeting/conference call will be open to the public. However, due to fiscal constraints and staff limitations, a limited number of additional lines will be available. Individuals can also participate in the conference call at the NCD office, which is located at 1331 F Street, NW., Suite 1050, Washington, DC. Those interested in joining this conference call should contact the appropriate staff member listed above.

Records will be kept of all International Watch meetings/conference calls and will be available after the meeting for public inspection at NCD.

Signed in Washington, DC, on April 17, 2001.

**Ethel D. Briggs,**

*Executive Director.*

[FR Doc. 01–9913 Filed 4–20–01; 8:45 am]

BILLING CODE 6820–MA–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–336]**

## Northeast Nuclear Energy Company, et al. Millstone Nuclear Power Station, Unit No. 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2 (MP2), located in New London County, Connecticut.

The proposed amendment would revise the MP2 Final Safety Analysis Report (FSAR), Chapter 14, description of the Steam Generator Tube Rupture (SGTR) event and its associated radiological dose consequences. The changes are not the result of hardware changes to the plant or changes in operating practices. Rather, the changes are the result of incorporating a postulated loss of offsite power into the event analyses as well as revised assumptions and analysis methodology. The proposed FSAR changes show that the postulated dose consequences for the updated SGTR analysis are higher than the dose consequences for the previous analysis.

Specifically, the proposed changes in the assumptions associated with the SGTR analyses will increase the dose consequences for two hypothetical cases: Case 1 involves a spike in the reactor coolant iodine activity level as a result of the SGTR accident; Case 2 involves a pre-accident spike in the iodine activity level. For Case 1, the revised calculations result in the following changes to the postulated accident doses for the Exclusion Area Boundary (EAB), and Low Population Zone (LPZ): EAB thyroid dose increases from .160 REM to 15.4 REM; EAB whole body dose increases from .146 REM to 2.2 REM; LPZ thyroid dose increases from .017 REM to 2.1 REM; and, LPZ whole body dose increases from .045 REM to .3 REM. For Case 2, the postulated doses would change as follows: EAB thyroid dose increases from .813 REM to 27.8 REM; EAB whole body dose increases from .146 REM to .8 REM; LPZ thyroid dose increases from .085 REM to 3.7 REM; and LPZ whole body dose increases from .045 REM to .1 REM.

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.

By May 21, 2001, 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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*). 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.

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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 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 Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut, 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).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 21, 2000, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 17th day of April 2001.

For the Nuclear Regulatory Commission.

**Daniel S. Collins,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–9954 Filed 4–20–01; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–271]**

## Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station; Exemption

### 1.0 Background

The Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) is the holder of Facility Operating License No. DPR–28 which authorizes operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC/the Commission) now or hereafter in effect.

The facility consists of a boiling water reactor located in Windham County, Vermont.

### 2.0 Purpose

Title 10 of the Code of Federal Regulations (10 CFR) part 50, appendix G, requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, 10 CFR part 50, appendix G states, ''The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' appendix G of 10 CFR part 50 specifies that the requirements for these limits; ''must be at least as conservative as the limits obtained by following the methods of analysis and the margins of safety of appendix G of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code).'' The approved methods of analysis in appendix G of Section XI require the use of $K_{Ia}$ fracture toughness curve in the determination of the P–T limits.

By letter dated December 19, 2000, VYNPC submitted a license amendment request to update the P–T limit curves for Vermont Yankee. In the license amendment request, VYNPC also requested NRC approval for an exemption to use Code Cases N–588 and N–640 as alternative methods for complying with the fracture toughness requirements in 10 CFR part 50, appendix G, for generating the P–T limit curves. Requests for such exemptions may be submitted pursuant to 10 CFR 50.60(b), which allows licensees to use alternatives to the requirements of 10 CFR part 50, appendices G and H, if the Commission grants an exemption pursuant to 10 CFR 50.12 to use the alternatives.

*Code Case N–588*

The methods of ASME Code Case N–588 provide alternative methods for calculating the stress intensities due to membrane stresses (i.e., $K_{Im}$ values) and thermal stresses (*i.e.*, $K_{It}$ values) for both axially and circumferentially oriented flaws. However, the alternative methods in Code Case N–588 for calculating the $K_{Im}$ values and $K_{It}$ values for axially oriented flaws are equivalent to those specified in the 1995 Edition of appendix G to Section XI of the ASME Code for axially oriented flaws. Appendix G of 10 CFR part 50 still requires that licensed utilities postulate the occurrence of an axially oriented flaw in each of the base metal materials and axial weld materials used to fabricate their RPVs. Exemptions to use ASME Code Case N–588 are, therefore, not necessary for RPVs that are limited in their beltline regions by base-metal or axial weld metal materials, because using the methods in the Code Case would not provide any benefit for evaluating the postulated axial flaws over those specified in the 1995 Edition of appendix G to Section XI of the

ASME Code. Since the Vermont Yankee RPV is currently limited by Plate No. I–14 (material heat 76492), use of Code Case N–588 does not provide benefit for VYNPC. Therefore, on February 2, 2001, as part of the request for additional information (RAI) for Vermont Yankee's proposed P–T limits, the staff requested that VYNPC withdraw its exemption request to apply Code Case N–588 to the P–T limit calculations or provide additional information that demonstrates a reduction in unnecessary burden. In a letter dated February 13, 2001, and as confirmed in VYNPC's RAI response dated February 23, 2001, VYNPC withdrew the Code Case N–588 exemption request.

*Code Case N–640 (formerly Code Case N–626)*

Code Case N–640 permits application of the lower bound static initiation fracture toughness value equation ($K_{Ic}$ equation) as the basis for establishing the curves in lieu of using the lower bound crack arrest fracture toughness value equation (*i.e.*, the $K_{Ia}$ equation, which is based on conditions needed to arrest a dynamically propagating crack, and which is the method invoked by appendix G to Section XI of the ASME Code). Use of the $K_{Ic}$ equation in determining the lower bound fracture toughness in the development of the P–T operating limits curve is more technically correct than the use of the $K_{Ia}$ equation since the rate of loading during a heatup or cooldown is slow and is more representative of a static condition than a dynamic condition. The $K_{Ic}$ equation appropriately implements the use of the static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a reactor vessel. However, since use of Code Case N–640 constitutes an alternative to the requirements of appendix G, licensees need staff approval to apply the Code Case methods to the P–T limit calculations.

**3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) The exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12 (a)(2)(ii), ''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.''

*Code Case N–640 (formerly Code Case N–626)*

VYNPC has requested, pursuant to 10 CFR 50.60(b), an exemption to use ASME Code Case N–640 (previously designated as Code Case N–626) as the basis for establishing the P–T limit curves. Appendix G of 10 CFR part 50 has required use of the initial conservatism of the $K_{Ia}$ equation since 1974 when the equation was codified. This initial conservatism was necessary due to the limited knowledge of RPV materials. Since 1974, the industry has gained additional knowledge about RPV materials, which demonstrates that the lower bound on fracture toughness provided by the $K_{Ic}$ equation is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the RPV P–T operating window is defined by the P–T operating and test limit curves developed in accordance with the ASME Code, Section XI, appendix G, procedure.

The ASME Working Group on Operating Plant Criteria (WGOPC) has concluded that application of Code Case N–640 to plant P–T limits is still sufficient to ensure the structural integrity of RPVs during plant operations. The staff has concurred with ASME's determination. The staff had concluded that application of Code Case N–640 would not significantly reduce the safety margins required by 10 CFR part 50, appendix G. The staff also concluded that relaxation of the requirements of appendix G to the Code by application of Code Case N–640 is acceptable and would maintain, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety for the Vermont Yankee RPV and reactor coolant pressure boundary (RCPB). Therefore, the staff concludes that Code Case N–640 is acceptable for application to the Vermont Yankee P–T limits.

The staff has determined that VYNPC has provided sufficient technical bases for using the methods of Code Case N–640 for the calculation of the P–T limits for the Vermont Yankee RCPB. The staff has also determined that application of Code Case N–640 to the P–T limit calculations will continue to serve the purpose in 10 CFR part 50, appendix G, for protecting the structural integrity of the Vermont Yankee RPV and RCPB. In this case, since strict compliance with the requirements of 10 CFR part 50, appendix G, is not necessary to serve the underlying purpose of the regulation, the staff concludes that application of Code Case N–640 to the P–T limit calculations meets the special circumstance provisions stated in 10 CFR 50.12(a)(2)(ii), for granting this exemption to the regulation.

**4.0 Conclusion**

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants VYNPC an exemption from the requirements of 10 CFR part 50, appendix G, for Vermont Yankee.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 18514).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of April 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–9953 Filed 4–20–01; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Federal Emergency Management Agency

**[Docket 30–7130]**

### Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Transportation Exemption

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of a one-time exemption, pursuant to 10 CFR 71.8, from the provisions of 10 CFR 71.73(c)(1) and (3) to the Federal Emergency Management Agency (FEMA). The requested exemption would allow FEMA to transport ten CDV–794 calibrators containing up to 85 curies of cesium-137 in packages that otherwise meet the performance requirements for a Type B transportation package pursuant to 10 CFR part 71 as exempted. Nine calibrators will be shipped to a central location so that disassembly of the calibrators and disposal of the

radioactive material can be done in a controlled environment to reduce worker radiation exposures. The tenth calibrator will be shipped 25 miles within the State of Hawaii, to another NRC licensee for use under its radiation protection program.

An NRC categorical exclusion for package approvals in 10 CFR 51.22(c)(13) does not apply to packaging authorized under an exemption. Consequently, an environmental assessment of the proposed exemption was prepared. The Department of Transportation (DOT) has already issued an exemption from DOT regulations for the proposed calibrator shipments.

**Environmental Assessment (EA)**

*Identification of Proposed Action:* By letter dated July 21, 1999, FEMA requested a package approval for the transport of ten CDV–794 calibrators by means of an exemption from the requirements of 10 CFR 71.71(c)(1) and (3). On December 19, 2000, FEMA submitted a Safety Analysis and Environmental Report (SA/ER) in support of its application for an exemption. While each calibrator may contain up to 130 curies of cesium-137, FEMA has indicated that the cesium sources are currently at an activity level of about 85 curies. FEMA also proposed compensatory safety measures to support the request for this exemption.

Each calibrator will contain a radioactive source that is designed to meet the special form requirements of 10 CFR 71.75. The source is contained in a tungsten alloy source holder which is bolted and sealed into the primary depleted uranium (DU) shield. The DU shield is bolted to an aluminum-lined steel calibration chamber. This entire assembly is then bolted in a rectangular steel cabinet mounted on a tubular steel stand. The cabinet has two hinged metal covers that allow the calibrator to be locked to prevent unauthorized access. The calibrator is then placed into a custom-design wooden overpack for shipment.

FEMA plans to dispose of nine cesium-137 sources contained in the CDV–794 calibrators by transfer to another licensee. To accomplish this task, nine CDV–794 calibrators will need to be transported from their present location to FEMA's Mount Weather Emergency Assistance Center in Berryville, Virginia; the tenth CDV–794 calibrator will be transferred for use at a U.S. Army facility in Hawaii. FEMA has contracted with the U.S. Army Communication-Electronic Command (CECOM) radiological specialists to supervise and conduct the required shipments. CECOM will travel to each of the ten sites and conduct contamination surveys and prepare the calibrators for shipment in accordance with FEMA's written procedures. CECOM will ship the calibrators in exclusive-use vehicles and accompany each shipment to its final destination. Upon arrival at FEMA's Mount Weather Emergency Assistance Center, CECOM will conduct physical inspection and contamination surveys. Other properly licensed personnel will then remove the cesium sources, consolidate them into NRC-certified transportation packages and ship them to a contractor's facility in California. Once the cesium sources are removed, CECOM will remove the depleted uranium shields and coordinate final disposition of all remaining calibrator components. FEMA estimates the transport and disposal project will end in 2002, pending the appropriation of sufficient funds for the activity.

Section 71.73(c)(1) and (3) concern tests for hypothetical accident conditions and require: (1) ''A free drop of the specimen through a distance of 9 m (30 feet) onto a flat, essentially unyielding, horizontal surface, striking the surface in a position for which maximum damage is expected.'', and (2) ''A free drop of the specimen through a distance of 1 m (40 in) in a position for which maximum damage is expected, onto the upper end of a solid, vertical, cylindrical, mild steel bar mounted on an essentially unyielding, horizontal surface. The bar must be 15 cm (6 in) in diameter, with the top horizontal and its edge rounded to a radius of not more than 6 mm (0.25 in), and of a length as to cause maximum damage to the package, but not less than 20 cm (8 in) long. The long axis of the bar must be vertical.'' FEMA determined that the calibrator would not survive a 30-foot drop test because the bolts holding the source shield to the calibrator cabinet would fail. FEMA stated that the calibrator could withstand an accidental 10-foot drop. FEMA also stated that the package meets the other tests for hypothetical accident conditions except for the 1 meter puncture test. FEMA further proposed compensatory safety measures to provide an adequate level of safety during the shipments.

By exempting FEMA from the hypothetical accident free drop and puncture tests in 10 CFR 71.73 the NRC will be able to approve the package for the shipment of nine calibrators to a central facility and one calibrator to another licensee under the general license in 10 CFR 71.12(a). The proposed action before the Commission is whether to grant these exemptions under 10 CFR 71.8 and approve the package for the one-time transport of these calibrators.

On December 19, 2000, FEMA submitted a SA/ER to NRC to address the proposed shipment of calibrators that does not meet the performance requirements of 10 CFR part 71. FEMA provided additional information on February 13, and March 9, 2001, in response to the NRC staff's requests. The NRC staff has reviewed the application and has determined that authorizing the one-time shipment of each of the ten calibrators, with compensatory safety measures, would not be inimical to public health and safety.

*Need for the Proposed Action:* FEMA is seeking the exemption to consolidate and properly dispose of calibrators containing a radioactive source to assure adequate protection of public health and safety of FEMA-owned calibrators currently in the possession of state organizations that no longer need, and do not want, to retain the calibrators. FEMA's termination of its Radiological Defense Program and state funding lead to the termination of state Radiological Defense Programs. Some states have requested removal of the FEMA-owned calibrators as quickly as possible because of state funding shortfalls and related difficulties in meeting licensing requirements. FEMA is concerned that persons in possession of the calibrators under the state emergency programs may not have sufficient resources to properly oversee the safety control of the material since FEMA stopped funding these programs. FEMA's Congressional funding does not allow for the development of a Type B package to make the relocations and the time constraints do not allow the use of an authorized package to make the shipments. Further, the state locations at which these units are in storage are not properly constructed to safely allow the removal and the proper packaging of the sources for shipment at the field location.

*Environmental Impacts of the Proposed Action:* The potential environmental impact of transporting radioactive material pursuant to 10 CFR part 71 was initially presented in the ''Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes'' for the Proposed Rule to amend 10 CFR part 71 (40 FR 23768 (1977)). The environmental statement was published in 1977 as NUREG–0170, Volumes 1 and 2.

The calibrators were originally manufactured by Technical Operations Inc. The manufacturer certified the calibrators to meet the requirements of DOT Specification 55 containers, which

was approved for use under NRC part 71 general license provisions. Hypothetical accident condition testing was not part of the requirements at the time this package was certified by the user. FEMA has acknowledged that the package would not survive hypothetical accident conditions that involved more than a 10 foot drop or a puncture of the package and that a radiological release could occur and has proposed compensatory safety measures that will provide an adequate level of safety consistent with the requirements of 10 CFR 71.8 by providing effective response to such a postulated accident. These compensatory measures include: (1) Pre and post-packing inspection for radiation hazard and proper packaging, (2) use of an exclusive use vehicle, (3) persons trained in radiation protection escorting the exclusive use vehicle, and (4) operational controls and procedures that would minimize accident risk and would ensure public safety in the event of a transportation accident. The NRC staff concluded by evaluation that the operations and administrative controls proposed by FEMA for the shipment provide reasonable assurance that any radiation exposure to the public or workers will not exceed regulatory limits in the event of an accident during shipment because of the quick response to such an event. Additionally, FEMA has selected transportation routes that will limit the road mileage traveled, further reducing the likelihood of an accident.

The staff concurs with FEMA's safety evaluation of the proposed exemption request and finds that FEMA's planned compensatory measures ensure that use of the package in accordance with the exemption requested does not pose a significant increased risk to public health and safety. Furthermore, the proposed action now under consideration would not change the potential environmental effects assessed in the 10 CFR part 71 rulemaking (40 FR 23768 (1977)).

Therefore, the staff has determined that there will be no significant environmental impacts as a result of approving the exemption for the one-time shipment of the specified calibrators.

*Alternatives to the Proposed Action:* The staff evaluated an alternative involving removal of the radioactive source at each site and found that this alternative produced a greater occupational exposure (200 mrem versus 20 mrem if shipped under the exemption), and an increased potential for radiation exposure to members of the public. Both of these results are not consistent with the NRC's as low as reasonably achievable (ALARA) concept, and this alternative would also result in increased handling and storage costs. Another alternative to the proposed action would be to require the state to continue to possess and store these calibrators until such time as FEMA can procure funding to design, test, and obtain NRC approval, and construct a transportation package that meets all 10 CFR part 71 requirements. This alternative would increase the likelihood of loss of control of material currently in the hands of state licensees which have lost Federal funding for their radiation protection programs. As such, both of the alternatives are less desirable than the proposed action.

*Agencies and Persons Consulted:* Officials from the DOT Office of Hazardous Materials Technology, and the Bureau of Radiological Health, Virginia Department of Health, were contacted about the EA for the proposed action and had no concerns.

**Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of approving a package with an exemption from 10 CFR 71.73(c)(1) and (3) so that FEMA may transport ten calibrators containing cesium-137 will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the FEMA exemption request dated July 21, 1999, and FEMA's Safety Analysis and Environmental Report dated December 19, 2000, as supplemented February 13, and March 9, 2001, which are docketed under 10 CFR part 30, Docket No. 30–7130.

The exemption request is available for public inspection at the Commission's Public Document Room, One White Flint North, 11555 Rockville, MD 20852, or from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 12th day of April 2001.

For the Nuclear Regulatory Commission.

**E. William Brach,**

*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 01–9952 Filed 4–20–01; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–412]**

## Pennsylvania Power Company, Ohio Edison Company, Firstenergy Nuclear Operating Company, Beaver Valley Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company, et al. (the licensee), for operation of Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Shippingport, Pennsylvania.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt the licensee from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.71(e)(4) regarding submission of revisions to the Final Safety Analysis Report (FSAR) for BVPS–2. The proposed action would extend the regulatory requirement for submission of the next required update to the BVPS–2 FSAR from April 25, 2001, to August 23, 2001. The revision submitted would be required to reflect all changes made from the date the last revision was filed on April 30, 1999, to October 25, 2000 (6 months prior to the originally-required filing date of April 25, 2000).

The proposed action is in accordance with the licensee's application for exemption dated March 13, 2001 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML010790328).

*The Need for the Proposed Action*

Section 50.71(e)(4) requires licensees to submit updates to their FSAR within 6 months after each refueling outage providing that the interval between successive updates does not exceed 24 months. BVPS–2's most recent refueling outage was completed on October 25, 2000, and the most recent revision to the BVPS–2 FSAR was filed on April 30, 1999. In order to comply with 10 CFR 50.71(e)(4), the licensee would need to

file its latest update to the BVPS–2 FSAR by April 25, 2001.

The need for the proposed action is based on taking advantage of the efficiencies of the NRC's recently commenced electronic information exchange (EIE) process which allows licensee's to voluntarily submit documents to the NRC over the internet or on a CD–ROM. The NRC issued Regulatory Issue Summary 2001–05, ''Guidance on Submitting Documents to the NRC by Electronic Information Exchange or on CD–ROM,'' on January 25, 2001 (ADAMS Accession No. ML003768343). The proposed action is requested due to the extensive nature of the planned FSAR revision (expected to exceed 1000 pages). Use of licensee and NRC resources to update the numerous hardcopies of the FSAR can be substantially reduced by providing an electronic version of the revised FSAR in its entirety. An additional 120 days from the currently required filing date reflects the licensee's estimated time required for production of an electronic version in lieu of the hardcopies.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that the proposed action is administrative in nature and is unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for BVPS–2, dated September 30, 1985 (Nuclear Documents System (NUDOCS) Accession No. 8509300559).

*Agencies and Persons Consulted*

In accordance with its stated policy, on March 23, 2001, the NRC staff consulted with the Pennsylvania State official, Mr. L. Ryan, of the Pennsylvania Department of Environmental Protection Bureau, Division of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 13, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of April 2001.

For the Nuclear Regulatory Commission.

**Lawrence J. Burkhart,**

*Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01–9955 Filed 4–20–01; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Cumulative Report on Rescissions and Deferrals

April 1, 2001.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of April 1, 2001, of two deferrals contained in one special message for FY 2001. The message was transmitted to Congress on January 18, 2001.

**Deferrals (Attachments A and B)**

As of April 1, 2001, $1.6 billion in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 2001.

**Information from Special Message**

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:

66 FR 8985, Monday, February 5, 2001

**Mitchell E. Daniels, Jr.,**

*Director.*

ATTACHMENT A—STATUS OF FY 2001 DEFERRALS

[In millions of dollars]

| | Budgetary resources |
|---|---|
| Deferrals proposed by the President | 1,946.7 |
| Routine Executive releases through April 1, 2001 | −343.6 |
| Overturned by the Congress | ..... |
| Currently before the Congress | 1,603.1 |

BILLING CODE 3110–01–U

ATTACHMENT B

Status of FY 2001 Deferrals - As of April 1, 2001

(In thousands of dollars)

| Agency/Bureau/Account | Deferral Number | Amounts Transmitted: Original Request | Amounts Transmitted: Subsequent Change (+) | Date of Special Message | Releases (-): Cumulative OMB/ Agency | Releases (-): Congressionally Required | Congressional Action | Cumulative Adjustments | Amount Deferred as of 4/1/01 |
|---|---|---|---|---|---|---|---|---|---|
| **DEPARTMENT OF STATE** | | | | | | | | | |
| Other | | | | | | | | | |
| United States Emergency Refugee and Migration Assistance Fund | D01-1 | 145,310 | | 1/18/01 | 40,033 | | | | 105,277 |
| **INTERNATIONAL ASSISTANCE PROGRAMS** | | | | | | | | | |
| International Security Assistance Economic Support Fund | D01-2 | 1,801,382 | | 1/18/01 | 303,521 | | | | 1,497,861 |
| **TOTAL, DEFERRALS** | | **1,946,692** | | | **343,554** | | | | **1,603,138** |

[FR Doc. 01–10005 Filed 4–20–01; 8:45 am]

BILLING CODE 3110–01–C

## OFFICE OF MANAGEMENT AND BUDGET

### 2001 List of Designated Federal Entities and Federal Entities

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

**FOR FURTHER INFORMATION CONTACT:** Karen Shaffer or Tawana Webb at 202–395–6911, Office of Federal Financial Management, Office of Management and Budget.

**SUPPLEMENTARY INFORMATION:** This notice provides a copy of the 2001 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the OMB website at *http://www.whitehouse.gov/financial*.

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist have been deleted from the list. Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as ''any Government corporation (within the meaning of section 103 (1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103 (2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency'' other than the Executive Office of the President and agencies with statutory Inspectors General. There is one deletion, one addition, and one retitled entity in the 2001 list of Designated Federal Entities and Federal Entities from the 2000 list published in the June 21, 2000, **Federal Register**. The Tennessee Valley Authority was deleted from the Designated Federal Entities list because legislation in 2000 redesignated it as a Federal Establishment as defined by the IG Act. The Delta Regional Authority was added as a Federal Entity, in accordance with P. L. 106–377. The National Education Goals Panel has been retitled as America's Education Goals Panel.

The 2001 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U.S. General Accounting Office.

**Joseph L. Kull,**

*Deputy Controller, Office of Federal Financial Management.*

Herein follows the text of the 2001 List of Designated Federal Entities and Federal Entities:

### 2001 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as subsequently amended, requires OMB to publish a list of ''Designated Federal Entities'' and ''Federal Entities'' and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

### Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Denali Commission—Chairperson
8. Equal Employment Opportunity Commission—Chairperson
9. Farm Credit Administration—Chairperson
10. Federal Communications Commission—Chairperson
11. Federal Election Commission—Chairperson
12. Federal Housing Finance Board—Chairperson
13. Federal Labor Relations Authority—Chairperson
14. Federal Maritime Commission—Chairperson
15. Federal Trade Commission—Chairperson
16. Legal Services Corporation—Board of Directors
17. National Archives and Records Administration—Archivist of the United States
18. National Credit Union Administration—Chairperson
19. National Endowment for the Arts—Chairperson
20. National Endowment for the Humanities—Chairperson
21. National Labor Relations Board—Chairperson
22. National Science Foundation—National Science Board
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. United States International Trade Commission—Chairperson
28. United States Postal Service—Governors of the Postal Service

### Federal Entities and Entity Heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. America's Education Goals Panel—Federal Co-Chairperson
5. Architectural and Transportation Barriers Compliance Board—Chairperson
6. Armed Forces Retirement Home—Board of Directors
7. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
8. Chemical Safety and Hazard Investigation Board—Chairperson
9. Christopher Columbus Fellowship Foundation—Chairperson
10. Commission for the Preservation of America's Heritage Abroad—Chairperson
11. Commission of Fine Arts—Chairperson
12. Commission on Civil Rights—Chairperson
13. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
14. Court of Appeals for Veterans Claims—Chief Judge
15. Defense Nuclear Facilities Safety Board—Chairperson
16. Delta Regional Authority—Federal Co-Chairperson
17. Export-Import Bank—President and Chairperson
18. Farm Credit System Financial Assistance Corporation—Chairperson
19. Farm Credit System Insurance Corporation—Chairperson
20. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
21. Federal Mediation and Conciliation Service—Director
22. Federal Mine Safety and Health Review Commission—Chairperson

23. Federal Retirement Thrift Investment Board—Executive Director
24. Harry S Truman Scholarship Foundation—Chairperson
25. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
26. Institute of Museum and Library Services—Director
27. Inter-American Foundation—Chairperson
28. James Madison Memorial Fellowship Foundation—Chairperson
29. Japan-U.S. Friendship Commission—Chairperson
30. Marine Mammal Commission—Chairperson
31. Merit Systems Protection Board—Chairperson
32. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
33. National Capital Planning Commission—Chairperson
34. National Commission on Libraries and Information Science—Chairperson
35. National Council on Disability—Chairperson
36. National Mediation Board—Chairperson
37. National Transportation Safety Board—Chairperson
38. Neighborhood Reinvestment Corporation—Chairperson
39. Nuclear Waste Technical Review Board—Chairperson
40. Occupational Safety and Health Review Commission—Chairperson
41. Office of Government Ethics—Director
42. Office of Navajo and Hopi Indian Relocation—Chairperson
43. Office of Special Counsel—Special Counsel
44. Offices of Independent Counsel—Independent Counsels
45. Overseas Private Investment Corporation—Board of Directors
46. Postal Rate Commission—Chairperson
47. Presidio Trust—Chairperson
48. Selective Service System—Director
49. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
50. Smithsonian Institution/National Gallery of Art—President
51. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
52. State Justice Institute—Director
53. Trade and Development Agency—Director
54. U.S. Holocaust Memorial Council—Chairperson
55. U.S. Institute of Peace—Chairperson

[FR Doc. 01–9914 Filed 4–20–01; 8:45 am]

BILLING CODE 3110–01–U

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection: Comment Request for Revision of a Currently Approved Information Collection; SF 87 and 87A

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a)(1)(iv), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for revision of a currently approved information collection for Standard Form 87 and 87A, Fingerprint Charts. Standard Form 87 and 87A, Fingerprint Charts, are completed by applicants for positions throughout the Federal Government. SF–87 is used by OPM and SF 87A is used by agencies having a special agreement with OPM and the FBI. The information is used to conduct the checks of the FBI fingerprint files that are required by Executive Order 10450, Security Requirements for Government Employment, issued April 27, 1953, or required or authorized under other authorities.

Comments are particularly invited on the following:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management and whether it will have practical utility;
—Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and
—Ways in which we can minimize the burden of collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 250,000 SF 87 and SF 87A's are completed annually. We estimate it takes approximately 5 minutes to complete the form. The annual burden is estimated at 20,833 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–2150, FAX 202–418–3251 or email to *mbtoomey@opm.gov.*

**DATES:** Comments on this proposal should be received on or before June 22, 2001.

**ADDRESSES:** Send or deliver written comments to: Richard A. Ferris, Associate Director, Investigations Service, U.S. Office of Personnel Management, 1900 E. Street NW., Room 5416 Washington, DC 20415–4000.

**FOR FURTHER INFORMATION CONTACT:** Rasheedah I. Ahmad, Program Analyst, Investigations Service, (202) 606–7983 or FAX (202) 606–2390.

Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–9967 Filed 4–20–01; 8:45 am]

BILLING CODE 6325–40–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 30–1

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to *mbtoomey@opm.gov.*

**DATES:** Comments on this proposal should be received on or before May 23, 2001.

**ADDRESSES:** Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349A, Washington, DC 20415–3540 and Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

*For Information Regarding Administrative Coordination—Contact:*

Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01–9966 Filed 4–20–01; 8:45 am]

BILLING CODE 6325–50–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection Title:* Employer Reporting.

(2) *Form(s) Submitted:* AA–12, G–88A.1, G–88A.2, BA–6a.

(3) *OMB Number:* 3220–0005.

(4) *Expiration Date of Current OMB Clearance:* 11/30/2003.

(5) *Type of Request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or Households, Business or other for-profit.

(7) *Estimated Annual Number of Respondents:* 4,764.

(8) *Total Annual Responses:* 4,764.

(9) *Total Annual Reporting Hours:* 588.

(10) *Collection Description:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and amount of benefits paid.

**Additional Information or Comments**

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01–9911 Filed 4–20–01; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[66 FR 19591, April 16, 2001]**

### Sunshine Act Meeting; Federal Register Citation of Previous Announcement

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** April 11, 2001.

**CHANGE IN THE MEETING:** Cancellation of Meeting.

The closed meeting scheduled for Wednesday, April 18, 2001 at 11:00 a.m. has been canceled.

Dated: April 18, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–10091 Filed 4–19–01; 12:42 pm]

BILLING CODE 8010–01–M

## 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 meeting during the week of April 23, 2001.

A closed meeting will be held on Wednesday, April 25, 2001, at 11:00 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) (3), (4), (5), (7), (8), (9)(A), 9(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (8), (9)(i), 9(ii), and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting scheduled for Wednesday, April 25, 2001 will be:

institution and settlement of injunctive actions; and

institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: April 18, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01–10092 Filed 4–19–01; 12:42 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44188; File No. 600–32]**

### Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency

April 17, 2001.

**I. Introduction**

On September 21, 2000, the Global Joint Venture Matching Services—US, LLC (''GJVMS'') filed with the Securities and Exchange Commission (''Commission'') and on January 31, February 23, March 16, and March 21, 2001, amended its application[1] for exemption from registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934 (''Exchange Act'')[2] and Rule 17Ab2–1 thereunder.[3] Notice of GJVMS's application was published in the **Federal Register** on November 17, 2000.[4] The Commission received thirty-six comment letters in response to the notice of GJVMS's exemption request.[5]

[1] Copies of GJVMS's Form CA–1 are available for inspection and copying at the Commission's Public Reference Room in File No. 600–32.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1.

[4] Securities Exchange Act Release No. 43540 (November 9, 2000), 65 FR 69582.

[5] Letters from Jerome J. Clair, Chairman, Securities Industry Association Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear, Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); Richard B. Nesson, Managing Director and General Counsel, The Depository Trust & Clearing Corporation (''DTCC'') (November 20, 2000); Burkhard Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, Global Straight Through Processing AG (''GSTP AG'') (December 18, 2000); Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (''TLX'') (December 18, 2000); John P.

This order grants GJVMS an exemption from registration as a clearing agency subject to certain conditions and limitations described below in order that GJVMS may offer an electronic trade confirmation (''ETC'') service and a Central Matching Service.[6]

## II. Description of GJVMS's Services

### *A. Structure of GJVMS*

GJVMS is a limited liability company which prior to the commencement of its operations will become a wholly-owned subsidiary of Omgeo.[7] Omgeo is a proposed joint venture between DTCC,[8] Thomson Financial Inc.,[9] and Interavia, A.G. (''Interavia'') (Joint Venture Agreement).[10] GJVMS is a member managed limited liability company and as such it will be managed by its only member, Omgeo. Omgeo will be a manager managed limited liability company which is managed by its board of managers. The Omgeo board of managers will consist of nine voting managers and one non-voting manager. Five of the voting managers will be industry representatives, three of which will be nominees of DTCC, and two will be nominees of Thomson.[11] Of the remaining four voting managers, two of the voting managers will be DTCC representatives, and two will be representatives of Thomson.[12]

While Omgeo will have several lines of business, it will conduct its U.S. ETC service and Central Matching Service wholly through GJVMS. Omgeo will combine the institutional trade processing services currently offered by DTC with the institutional trade processing services currently offered by Thomson Financial ESG.[13] DTC and Thomson Financial ESG's institutional trade processing services are the two principal systems used by broker-dealers and institutional investors for post-trade, presettlement processing of U.S. trades.

DTC will transfer, as a dividend, its TradeSuite service to DTCC which will transfer it to Omgeo pursuant to the Joint Venture Agreement.[14] TradeSuite consists of the following services:

1. TradeMessage, which provides for the automated exchange of post-trade messages between broker-dealers, custodians, and institutions, including messages such as block-trade notices of execution, allocation instructions, trade confirmations, and affirmations.
2. TradeMatch, which electronically compares institutions' allocations with broker-dealers' trade data.
3. TradeSettle, which supplies allocations, trade confirmations, and settlement messages with account and settlement data from DTC's Standing Instructions Database (''SID'') and routes settlement instructions to custodian banks and brokers-dealers' clearing agents. SID is a database of customer relationship information and settlement data that is shared by institutions, broker-dealers, and custodians.
4. TradeHub, which is a real-time global message translator which routes messages between parties using different communications protocols, message formats, and firm and securities identifiers.

Thomson Financial Services Inc. will transfer the following services of Thomson Financial ESG to Omgeo pursuant to the Joint Venture Agreement:

1. ALERT, which is a database of customer relationship information and settlement data that is shared by institutions, broker-dealers, and custodians.
2. OASYS, which provides for the electronic communication and acceptance or rejection of allocation instructions between institutions and broker-dealers.
3. OASYS Global, which provides for the electronic communication of allocation instructions and confirmations between institutions and broker-dealers.
4. MarketMatch, which streamlines the matching of broker-dealers' trade details with their counterparties around the world.
5. ITM Benchmarks, which is a suite of services that provides operational statistics relating to trade processing.[15]

The automated facilities and systems environment necessary to operate the ETC and Central Matching Services will be provided to Omgeo pursuant to a services agreement between DTCC and

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Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000); J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Nomura Securities Co., Ltd. (December 29, 2000); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Carl H. Urist, Managing Director and Deputy General Counsel DTCC (January 12, 2001); Bradley I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001); Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001); Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001); and Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

Copies of the comment letters and a copy of the Summary of Comments can be obtained through the Commission's Public Reference Room.

[6] ''Central Matching Service,'' as such term is used in this order, means an electronic service to centrally match trade information between a broker-dealer and its institutional customer (so long as one or both of such parties is a U.S. person) relating to transactions in securities issued by a U.S. issuer, regardless of where the transactions are settled.

[7] As originally filed, Omgeo was to be called the Global Joint Venture. Letter amending Form CA–1 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

[8] DTCC was created in 1999 as a holding company for The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation (''NSCC''). DTC and NSCC are registered with the Commission as clearing agencies.

[9] In the notice of application for exemption, Thomson Information Services Inc. was incorrectly identified as Thomson Institutional Services Inc. Since the original filing, Thomson Information Services Inc. has been renamed Thomson Financial Inc. Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (February 23, 2001).

[10] Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

[11] As originally filed, GJVMS's Form CA–1 set forth that the board of managers was to be composed of seven voting managers and one non-voting manager. Three of the voting managers were to be industry board representatives with two nominated by DTCC and one nominated by the Thomson subsidiaries. Letter amending Form CA–1 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

[12] Omgeo's Class A interests will be owned 50.1% by DTCC and 49.9% by Thomson Financial Inc. Originally, Omgeo's Class B interests were to be owned 50% by DTCC, 45% by Thomson Financial Inc, and 5% by Interavia. Pursuant to information from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC, Omgeo's Class B interests will be owned 50% by DTCC, 46% by Thomson Financial Inc, and 4% by Interavia. Omgeo's Class C interests will be owned 50% by DTCC and 50% by Interavia.

Omgeo's Class A interests vote only on Omgeo's U.S. regulated aspects of its businesses. The Class B and C interests vote on all aspects of Omgeo's businesses but for the U.S. regulated aspects. The Class B interests receive all net income and retained earnings from Omgeo's U.S. operations, and the Class C interests receive all net income and retained earnings from Omgeo's operations outside of the U.S.

The Commission notes that any proposed changes to the Omgeo board or ownership structure will require an amendment to GJVMS's Form CA–1.

[13] Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (March 16, 2001).

Omgeo. Also pursuant to the services agreement, DTCC will provide to Omgeo legal and regulatory, audit, accounting, and human resources services. Omgeo will make these services and systems available to GJVMS through a services agreement between Omgeo and GJVMS.

*B. GJVMS's Proposed Service*

GJVMS plans on offering an ETC service and a Central Matching Service. The ETC service would transmit messages (*i.e.,* confirmation and affirmation messages) among broker-dealers, institutional customers, and custodian banks and would ultimately result in the production of an affirmed trade confirmation in accordance with the requirements of various self-regulatory organizations rules.[16] The Central Matching service would compare or match trade information submitted by a broker-dealer (*i.e.,* confirmation information) with the trade information submitted by an institutional customer (*i.e.,* allocation instructions) to produce an affirmed confirmation.[17]

*C. The Need for Matching Services*

According to the Securities Industry Association (''SIA''), as trading volumes have continued their dramatic upward climb over the past decade,[18] the securities industry has been focusing its attention on the transformation the industry must undergo to cope with these volumes and the potential for even greater increases in the years ahead.[19] The industry has concluded that the current post-trade presettlement processing system for institutional trades needs major changes.[20] This will be especially true if a shorter settlement period is to be achieved.[21] Even in T+3 environment, the current system for post-trade presettlement processing of institutional trades, which consists of a series of sequential and repetitive steps using a process developed when the volume of trades was far lower than it is today and when settlement occurred on T+5 is showing signs of inadequacy under the increasing volumes of trades.

Many in the industry believe that Central Trade Matching must be implemented in order to address these concerns. While institutional trade volumes have increased, trade date confirmation input rates have remained fairly consistent. As a result, many more trades are being confirmed and affirmed later in the settlement cycle, which poses an increased risk that trades will fail to settle on T+3.[22]

**III. Comment Letters**

The Commission received thirty-six comment letters in response to the notice of filing of GJVMS's application. Eleven of the comment letters praised GJVM's timing in light of the industry need for straight-through processing and a shortened settlement cycle to reduce settlement risks and stressed that there remain no more meaningful efficiencies to be drawn from the current settlement system.[23] In addition, these letters applauded GJVMS'S intention to interoperate with other competitors and pledged support in furtherance of GJVMS'S progress.

Seventeen comment letters urged the Commission to ensure that no entity improperly gains a monopoly on any aspect of trade processing.[24] Those letters requested that before the Commissioning grants an exemption to GJVMS's, the Commission take steps to safeguard interoperability and competition among service providers.

[16] These rules are National Association of Securities Dealers Rule 11860(a)(5), New York Stock Exchange Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G–15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Stock Exchange Rule 274(b).

[17] GJVMS's Central Matching Service will be used to match trade information where either the broker-dealer or the institutional customer or both is a U.S. entity and where the security is registered in the United States. Therefore, GJVMS is subject to the clearing agency provisions of Section 17A of the Securities Exchange Act of 1934. *See*, Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 (''Matching Release''). The Commission understands that DTCC and Thomson plan to create entities affiliated with Omgeo and GJVMS that will provide ETC and Central Matching Services for non-U.S. registered securities and non-U.S. entities. If these entities were to provide ETC and Central Matching Services for U.S. securities or U.S. entities, an independent assessment must be made as to whether clearing agency registration or an exemption from clearing agency registration would be required.

[18] The SIA has indicated that 250 million institutional trade confirmations were processed in 1999. In 1995, 130 million institutional trade confirmations were processed.

[19] SIA T+1 Business Case Model (July 2000).

[20] The institutional trade process typically starts when an institution or its agent places an order to buy or sell securities with its broker-dealer. After the broker-dealer executes the trade, the broker-dealer will advise the institution of the details of the executed trade. This is generally called a notice of execution. Once received, the institution can use the OASYS system to advise the broker-dealer how the trade should be allocated among its various accounts.

When the broker-dealer completes allocating the shares among the institution's accounts, the broker-dealer submits trade data reflecting its distribution to each of the institution's accounts. DTC's TradeSuite service forwards the trade data in the form of a confirmation for each account to the institution, the broker-dealer, and other interested parties (*e.g.,* correspondent banks or trustees). The institution reviews the confirmation for accuracy (*i.e.,* compares the confirmations to its allocations instructions). For each confirmation, that is accurate, the institution will send an affirmation message to DTC. DTC will generate and send an affirmed confirmation to the broker-dealer and to the institution's settlement agent. At this point, the trade is sent into DTC's settlement system. (DTC's TradeSuite service is not a settlement system in that no money or securities move through it.)

[21] The U.S. securities industry is pursuing a major initiative to reduce the settlement cycle for securities transactions from three business days (T+3) to one business day (T+1). The SIA T+1 Business Case Model report suggests that the securities industry can shorten the settlement cycle from T+3 to T+1 by June 2004.

[22] The average daily U.S. institutional trade volume increased to 432,000 trades in 1999 from 182,000 trades in 1995. However, in 1999, an average of 70,000 institutional trade confirmations with an average value of $15 billion a day were not submitted by broker-dealers into DTC's TradeSuite system on trade date. This doubled the 1995 average of 36,000 valued at $7 billion. DTC has experienced trade date confirmation input rates as low as 76% on certain peak days during the first quarter of 2000 as compared with the fairly steady average rate of 85% over the past several years. In addition, only 12% of trades are currently affirmed on trade date and only 88% of trades are affirmed by noon of T+2, the deadline for automatic submission of the affirmed trade into DTC's settlement system. The remaining 12% are not automatically entered into DTC's settlement system and require further action on the part of the parties to settle.

[23] Jerome J. Clair, Chairman, Securities Industry Association Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear, Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Scheuneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); and John P. Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000).

[24] J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Nomura Securities Co., Ltd. (December 29, 2000); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); Bradely I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); and Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001).

GSTP AG expressed its concern that combining elements of DTC, an industry utility, with a commercial entity, Thomson Financial Inc., could limit access to DTC by competitors and could give GJVMS an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of GJVMS's clients by DTC.[25]

In response to the GSTP AG's comment letters and other comment letters raising similar issues, DTCC stated that (1) DTC, as a registered clearing agency, is prohibited from unfairly discriminating among users, (2) interoperability is a complex issue that must be solved through participation of the SIA, the Commission, and competing providers, (3) access to DTC's settlement system and the prices it charges will not be affected by GJVMS, (4) GJVMS will not use intellectual property concerns to interfere with access to DTC, (5) standardized access to DTC will still be available as it has been for the past twenty-five years, and (6) GJVMS will have its own sales force separate from DTC.[26]

GSTP AG responded to DTCC's letter and stated that DTC must clearly explain which functions will continue to be performed exclusively by DTC and which will be performed by GJVMS.[27] In particular, GSTP AG stated that DTCC's response left unclear whether DTC will consider GJVMS to be a vendor at the same level as GSTP AG or any other central matching service, or whether DTC will accord to GJVMS preferential treatment. Also, GSTP AG stated that DTCC failed to address how communications with settlement agents will occur. GSTP AG said that fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC, not GJVMS, continued to provide this service. Furthermore, GSTP AG expressed its concerns that DTCC did not clarify interoperability and whether DTC's customer service will show preferential treatment to clients of GJVMS.

DTCC responded to GSTP AG's January 3, 2001, letter by stating that the GSTP AG comment letter reflects confusion by GSTP AG about the functions to be performed by GJVMS.[28] In addition, DTCC stated that DTC would limit its activities to following the settlement instructions authorized by its participants whether those instructions were submitted by GJVMS, GSTP, AG, or any other Central Matching Service or vendor. Finally, DTCC stated that its expects that the concerns expressed by GSTP AG about interoperability and the relationship between DTC and GJVMS will be fully addressed in the Commission's approval orders.

A comment by TLX Trading Network expressed concern about the post-merger availability and affordability of TradeMessage, SID, and ALERT to vendors.[29] DTCC stated in response that access to TradeMessage, SID, and ALERT will not be hampered by GJVMS.[30] DTCC asserted that the same procedure for settlement instructions will continue after the formation of GJVMS. Vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of GJVMS. As is done today, DTC will charge fees for such services to the participants on whose behalf the vendors are acting, with no additional charges to the vendors, In addition, DTCC stated in its letter that the same open access by customers' vendors to SID will continue with respect to the unified database after GJVMS commences operations.

Sungard expressed concern that moving TradeSuite and SID to GJVMS will require competitors either to adhere to GJVMS's protocols and presumably higher fees for access or to incur the expense of building redundant databases.[31] DTCC responded that the Sungard letter appears to raise the same issues that were previously addressed in DTCC's January 4, and 12, 2001, letters responding to the TLX and GSTP AG letters.[32]

## IV. Discussion

### *A. Statutory Standards*

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission.[33] On April 6, 1998, the Commission issued the Matching Release in which it concluded that an entity that provides matching services[34] as an intermediary between broker-dealers and institutional customers is a clearing agency[35] and is subject to the registration requirements of section 17A(b)(1).[36]

However, section 17A(b)(1) also states that, upon the Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provisions of section 17A or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[37] As the Matching Release noted, a clearing agency whose clearing agency functions are limited to providing a Central Matching Service generally would be required to register as a clearing agency but could apply for an appropriate exemption.

### *B. Evaluation of GJVMS's Application for Exemption*

In evaluating GJVMS's application for exemption, the Commission is guided by the requirements of section 17A of the Exchange Act. Among other factors, the Commission considered GJVMS's risk management procedures, operational capacity and safeguards,

[25] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (Janaury 3, 2001).

[26] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 12, 2001).

[27] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001).

[28] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[29] Letter from Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (''TLX'') (December 18, 2000).

[30] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001).

[31] Letter from Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001).

[32] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[33] 15 U.S.C. 78q–1(b)(1).

[34] Matching is the term used to describe the process whereby an intermediary independently determines whether trade data submitted by a broker-dealer (*i.e.,* confirmation information) matches the trade data submitted by the broker-dealer's institutional customer (*i.e.,* allocation information). If the information matches, the intermediary generates an affirmed confirmation to the broker-dealer and the institution.

[35] Section 3(a)(23) of the Exchange Act, 15 U.S.C. 78c(a)(23), defines the term clearing agency as, among other things:

[A]ny person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.

[36] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943. Specifically, the Matching Release concluded that matching constitutes ''comparison of data respecting the terms of settlement of securities transactions.''

[37] The Commission granted Thomson Financial Technology Services, Inc., a wholly owned subsidiary of then Thomson Information Services Inc., an exemption to provide a matching service. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. The Commission also approved a proposed rule change filed by DTC, a registered clearing agency, that allows DTC to provide a matching service. Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18062 [File No. SR–DTC–95–23].

organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of section 17A (*i.e.,* the safety and soundness of the national clearance and settlement system).

As discussed below, the Commission has carefully considered the impact of GJVMS's proposed operation of a Central Matching Service on the national system for clearance and settlement and the potential impact on competition. Because the Central Matching Service will be the only clearing agency function that GJVMS will perform, the Commission believes that an exemption from full registration as a clearing agency is appropriate.[38] The Commission has also carefully considered the comment letters received in response to GJVMS's application and the fact that GJVMS will combine the two principal systems used by broker-dealers and institutional investors for post-trade, presettlement processing of U.S. trades. The Commission concludes that the conditions set forth in the exemption order appropriately address the issues raised by the comments.[39]

The Commission also finds that the conditions imposed upon GJVMS respecting other Central Matching Services will promote transparency, consistency, and interoperability in central trade matching and will assure that other Central Matching Services receive equal treatment. Consequently, the Commission believes these conditions are consistent with the public interest, the protection of investors, and the purposes of section 17A. Because these conditions are designed to promote interoperability, the Commission intends to require substantially the same conditions of other Central Matching Services that obtain an exemption from registration as a clearing agency.

*C. Terms of GJVMS's Exemption* [40]

1. Scope of Exemption

This order grants GJVMS an exemption from registration as a clearing agency under section 17A of the Exchange Act to provide a Central Matching Service and an ETC service where it will act as an intermediary in the confirmation/affirmation process to compare a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation.[41] The exemption is granted subject to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of the section 17A objective of promoting a safe and efficient national clearance and settlement system and in light of GJVMS's structure and proposed operation. This exemptive order and the conditions an limitations contained in it are consistent with the Commission's statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulations.[42]

2. Conditions of Exemption

The Commission is including specific conditions to this exemption. As noted above, these conditions are designed to promote a safe and efficient national clearance and settlement system and to enable the Commission to monitor the operation of GJVMS's Central Matching Service.

a. *Operational Conditions.* (1) Before beginning the commercial operation of its central matching service, GJVMS shall provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies (ARPs).[43] In order to verify that GJVMS is so organized and has the capacity to be able to facilitate prompt and accurate matching services, the exemption contained in this order will take effect thirty days after our staff has received an acceptable audit report.

(2) GJVMS shall provide the Commission (beginning in its first year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs. GJVMS shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

(3) GJVMS shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, GJVMS shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes, GJVMS shall report the systems outage within a reasonable time after the outage has been resolved.

(4) GJVMS shall provide the Commission with twenty business days' advance notice of any material changes that GJVMS makes to its Central Matching Service or ETC service. These changes will not require the Commission's approval before they are implemented.

(5) GJVMS shall respond and require its service providers (including DTCC and Omgeo) to respond to requests from the Commission for additional information relating to its Central Matching Service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the Central Matching Service and ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the Central Matching Service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions of this exemptive order.

(6) GJVMS shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its Central Matching Service and ETC service.[44]

(7) GJVMS shall preserve a copy or record of all trade details, allocation

[38] GJVMS specifically represented that it will not perform other functions of a clearing agency such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

[39] The Commission also notes that another order it is issuing today addresses commenters' concerns about possible preferential treatment for GJVMS by DTC. The order specifically highlights the existing statutory requirement that DTC provide equitable allocation of dues, fees, and other charges among its participants and refrain from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of section 17A of the Exchange Act. Securities Exchange Act Release No. 44189 (April 17, 2001) [File No. DTC–00–10] (order approving proposed rule change by DTC to transfer its TradeSuite service to DTCC).

[40] The United States Department of Justice provided advice to the Commission in formulating certain conditions of this order.

[41] Because the Commission is granting GJVMS an exemption from clearing agency registration, GJVMS will not be a self-regulatory organization and therefore will not be required to file rule changes in accordance with section 19(b) of the Exchange Act, 15 U.S.C. 78s(b). Furthermore, the Commission is not requiring GJVMS to comply with the rule change filing requirements of section 19(b) as a condition of its exemption.

[42] *See also* Thomson Financial Technology Services, Inc., Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31] (order granting application for exemption from clearing agency registration).

[43] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703; and 29185 (May 9, 1991), 56 FR 22490.

[44] DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule for GJVMS.

instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its Central Matching Service and ETC service. GJVMS shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) GJVMS shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted by this exemption.

(9) Before beginning the commercial operation of its Central Matching Service, GJVMS shall provide the Commission with copies of the service agreements between DTCC and Omgeo, between Thomson Financial Inc. and Omgeo, and between Omgeo and GJVMS. GJVMS shall notify the Commission of any material changes to these service agreements.

b. *Interoperability Conditions.* (1) GJVMS shall develop, in a timely and efficient manner, fair and reasonable linkages between GJVMS's Central Matching Service and Other Central Matching Services [45] that, at a minimum, allow parties to trades that are processed through one or more Central Matching Services to communicate through one or more appropriate effective interfaces with Other Central Matching Services.

(2) GJVMS shall devise and develop interfaces with Other Central Matching Services that enable end-user clients or any service that represents end-user clients to GJVMS (''End-User Representative'') to gain a single point of access to GJVMS and Other Central Matching Services. Such interfaces must link with each Central Matching Service so that an end-user client of one Central Matching Service can communicate with all end-user clients of all Central Matching Services, regardless of which Central Matching Service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to GJVMS is necessary to develop, build, and operate links or interfaces to GJVMS's Central Matching Service, as specified in this order, GJVMS shall license such intellectual property to Other Central Matching Services seeking linkage to GJVMS on fair and reasonable terms for use in such links or interfaces.

(4) GJVMS shall waive any right to assert any patent claims to prevent any Other Central Matching Service from operating a Central Matching Service that it has developed independently from GJVMS's Central Matching Service. Such waiver shall be self-executing and to the benefit of all Other Central Matching Services.

(5) GJVMS shall support industry standards in each of the following categories: Communication protocols (*e.g.,* TCP/IP, SNA); message and file transfer protocols and software (*e.g.,* FIX, MQSeries, SWIFT); message format standards (*e.g.,* FIX, ISITC); and message languages and metadata (*e.g.,* XML). However, GJVMS need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, GJVMS shall make publicly known those standards supported by GJVMS's Central Matching Service. To the extent that GJVMS decides to support other industry standards, including new and modified standards, GJVMS shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with GJVMS's system shall be performed by GJVMS without any significant delay or service degradation of the linked parties' services.

(6) GJVMS shall make all reasonable efforts to link with each Other Central Matching Service in a timely and efficient manner, as specified below. Upon written request (the ''Written Request''), GJVMS shall negotiate with each Other Central Matching Service to develop and build an interface that allows the two to link central matching services (''Interface''). GJVMS shall involve neutral industry participants (*e.g.,* qualified SIA representative(s) not serving on the Board or Executive Committee of any Other Central Matching Service or otherwise affiliated or associated with any Other Central Matching Service) in all negotiations to build or develop Interfaces and, to the extent feasible, incorporate input from such participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,[46] GJVMS and the requesting Other Central Matching Service shall conclude negotiations and reach a binding agreement to develop and build an Interface within 120 calendar days of GJVMS's receipt of the Written Request. This 120-day period may be extended upon the written agreement of both GJVMS and the Other Central Matching Service engaged in negotiations. For each Other Central Matching Service with whom GJVMS reaches a binding agreement to develop and build an Interface, GJVMS shall begin operating such Interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both GJVMS and the Other Central Matching Service. For each Interface and within the same time GJVMS must negotiate and begin operating each Interface, GJVMS and the Other Central Matching Service shall agree to ''Commercial Rules'' for coordinating in the provision of Central Matching Services through their respective Interface, including commercial rules: (A) Allocating responsibility for performing Central Matching Services; and (B) allocating liability for service failures. GJVMS shall also involve neutral industry participants in negotiating applicable Commercial Rules and, to the extent feasible, take input from such participants into account in agreeing to Commercial Rules. At a minimum, each Interface shall enable GJVMS and the Other Central Matching Service to transfer between them all trade and account information necessary to fulfill their respective central matching responsibilities as set forth in their Commercial Rules (''Trade and Account Information''). Absent an adequate business or technological justification, GJVMS shall develop and operate each Interface without imposing conditions that negatively impact the Other Central Matching Service's ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the Other Central Matching Service's ability to compete effectively against GJVMS.

(7) In order to facilitate fair and reasonable linkages between GJVMS and Other Central Matching Services, GJVMS shall publish or make available to any Other Central Matching Service the specifications for any Interface and its corresponding Commercial Rules that are in operation within twenty days of receiving a request for such specifications and Commercial Rules.

[45] ''Other Central Matching Services'' means each Central Matching Service that is registered with the Commission or that receives an exemption from clearing agency registration from the Commission.

[46] The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this Paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this Paragraph.

Such specifications shall contain all the information necessary to enable any Other Central Matching Services not already linked to GJVMS through an Interface to establish a linkage with GJVMS through an Interface or a substantially similar interface. GJVMS shall link to any Other Central Matching Service, if the Other Central Matching Service so opts, through an interface substantially similar to any Interface and its corresponding Commercial Rules that GJVMS is currently operating. GJVMS shall begin operating such substantially similar interface and Commercial Rules with the Other Central Matching Service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both GJVMS and the Other Central Matching Service that plans to use that link.

(8) GJVMS and respective Other Central Matching Services shall bear their own costs of building and maintaining an Interface, unless otherwise negotiated by the parties.

(9) If a dispute arises relating to the negotiation for the building, development, or initial operation of an Interface, or Commercial Rules relating to that Interface, that cannot be resolved within the time frames set forth above, GJVMS or the Other Central Matching Service may submit the dispute to the Commission for review and request Commission assistance in its timely resolution.

(10) GJVMS shall provide to all Other Central Matching Services and End-User Representatives that maintain linkages with GJVMS sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to GJVMS through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

*Price for Interfaces*

(11) GJVMS and each Other Central Matching Service shall negotiate fair and reasonable charges and terms of payment for the use of their Interface with respect to the sharing of Trade and Account Information (''Interface Charges''). In any fee schedule adopted under Paragraphs 11, 12, or 13 of this Order, GJVMS's Interface Charges shall be equal to the Interface Charges of the respective Other Central Matching Service.

(12) If GJVMS and the Other Central Matching Service cannot reach agreement on fair and reasonable Interface Charges within 60 days of receipt of the Written Request, GJVMS and the Other Central Matching Service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel's establishment of a fee schedule shall be binding on GJVMS and the Other Central Matching Service unless and until the fee schedule is subsequently modified or abrogated by the Commission or GJVMS and the Other Central Matching Service mutually agree to renegotiate.[47]

(13) (A) The following parameters shall be considered in determining fair and reasonable Interface Charges: (i) The variable cost incurred for forwarding Trade and Account Information to Other Central Matching Services; (ii) the average cost associated with the development of links to end-users and End-User Representatives; and (iii) GJVMS's Interface Charges to Other Central Matching Services. (B) The following factors shall not be considered in determining fair and reasonable Interface Charges: (i) The respective cost incurred by GJVMS or the Other Central Matching Service in creating and maintaining Interfaces; (ii) the value that GJVMS or the Other Central Matching Service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to GJVMS that may result from competition from Other Central Matching Services; (iv) the cost of building, maintaining, or upgrading GJVMS's central matching service; or (v) the cost of building, maintaining, or upgrading value added services to GJVMS's central matching service. (C) In any event, the Interface Charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with GJVMS by Other Central Matching Services.

*Prices for Customers*

(14) GJVMS shall not charge its customers more for use of its Central Matching Service when one or more counter-parties are customers of Other Central Matching Services than GJVMS charges its customers for use of its Central Matching Service when all counter-parties are customers of GJVMS. GJVMS shall not charge customers any additional amount for forwarding to or receiving Trade and Account Information from Other Central Matching Services called for under applicable Commercial Rules.

(15) GJVMS shall maintain its quality, capacity and service levels in the interfaces with Other Central Matching Services (''matching services linkages'') without bias in performance relative to similar transactions processed completely within GJVMS. GJVMS shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade by trade basis for: (A) Completing its Central Matching Service when all counter-parties are customers of GJVMS; (B) completing its Central Matching Service when one or more counter-parties are customers of Other Central Matching Services; or (C) forwarding trade information to Other Central Matching Services called for under applicable Commercial Rules. GJVMS shall retain the data and records for a period not less than six years. Sufficient information shall be maintained to demonstrate that the requirements of Paragraph 16 below are being met. GJVMS and its service providers shall provide the Commission with reports regarding the time it takes GJVMS to process trades and forward information under various circumstances within thirty days of the Commission's request for such reports. However, GJVMS shall not be responsible for identifying the specific cause of any delay in performing its Central Matching Service where the fault for such delay is not attributable to GJVMS.

(16) GJVMS shall process trades or facilitate the processing of trades by Other Central Matching Services on a first-in-time priority basis. For example, if GJVMS receives Trade and Account Information that GJVMS is required to forward to Other Central Matching Services under applicable Commercial Rules (''pass through information'') prior to receiving Trade and Account Information from GJVMS's customers necessary to provide Central Matching Services for a trade in which all parties are customers of GJVMS (''intra-hub information''), GJVMS shall forward the pass through information to the designated Other Central Matching Service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, GJVMS shall process the intra-hub information before forwarding the pass-through information.

(17) GJVMS shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or

[47] The Commission is reserving its jurisdiction to, in its sole discretion, review de novo the fee schedule resulting from negotiation or arbitration. *See* section 17A(b)(3)(I), 15 U.S.C. 78q–1(b)(3)(I).

transmitting Trade and Account Information to and receiving authorization responses from settlement agents on fair and reasonable terms to Other Central Matching Services and End-User Representatives. Such access shall permit Other Central Matching Services and End-User Representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting Trade and Account Information to and receiving authorization responses from settlement agents for use in their own Central Matching Services or End-User Representatives' services. The links necessary for Other Central Matching Services and End-User Representatives to access GJVMS's databases, systems or methodologies for transmitting settlement instructions and/or transmitting Trade and Account Information to and receiving authorization responses from settlement agents must comply with the conditions set forth in Paragraphs 3, 5, 10, 15 and 16 of this order.

(18) For the first five years from the date of this order, GJVMS shall provide the Commission with reports every six months sufficient to document GJVMS's adherence to the obligations relating to interfaces set forth in Paragraphs 6 through 14 and Paragraph 17 above. GJVMS shall incorporate into such reports information including but not limited to: (A) all Other Central Matching Services linked to GJVMS; (B) the time, effort, and cost required to establish each link between GJVMS and Other Central Matching Services; (C) any proposed links between GJVMS and Other Central Matching Services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for Interface Charges; (E) any written complaint received from Other Central Matching Services relating to its established or proposed links with GJVMS; and (F) if GJVMS failed to adhere to any of the obligations relating to interfaces set forth in Paragraphs 6 through 14 and Paragraph 17 above, its explanation for such failure. The Commission shall treat information submitted in accordance with this Paragraph as confidential, non-public information. If any Other Central Matching Service seeks to link with GJVMS more than five years after issuance of this order, GJVMS shall notify the Commission of the Other Central Matching Service's request to link with GJVMS within ten days of receiving such request. In addition, GJVMS shall provide reports to the Commission in accordance with this Paragraph commencing six months after the initial request for linkage is made until one year after GJVMS and the Other Central Matching Service begin operating their interface. The Commission reserves the right to request reports from GJVMS at any time. GJVMS shall provide the Commission with such updated reports within thirty days of the Commission's request.

(19) GJVMS shall also publish or make available upon request to any End-User Representative the necessary specifications, protocols, and architecture of any interface created by GJVMS for any End-User Representative.

3. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of GJVMS's exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[48] Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that GJVMS has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

## V. Conclusion

In light of the conditions prescribed above, the Commission believes that GJVMS will have sufficient operational and processing capability to facilitate prompt and accurate matching services. Moreover, the Commission notes that GJVMS's exemption will be subject to conditions that are designed to enable the Commission to monitor GJVMS's risk management procedures, operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the fundamental goals of section 17A. Therefore, the Commission finds that GJVMS's application for exemption from registration as a clearing agency is consistent with the public interest, the protection of investors, and the purposes of section 17A.

*It Is Therefore Ordered,* pursuant to section 17A(b)(1) of the Exchange Act, that the request for exemption from registration as a clearing agency filed by Global Joint Venture Matching Services—US, LLC (File No. 600–32) be, and hereby is, granted subject to the conditions contained in this order.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[48] GJVMS must amend its Form CA–1 with respect to any changes to the information reported at items 1, 2, and 3 of its Form CA–1 to the extent that such changes are not reported in the disclosure documents. In addition, GJVMS is required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any material change affecting its matching service or ETC service as summarized in this order, in its Form CA–1 dated September 19, 2000, or in any subsequently filed amendments to its Form CA–1, which would make the information in this order or in its Form CA–1 incomplete or inaccurate.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44180; File No. SR–CHX–2001–06]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Amending Its SuperMAX 2000 Price Improvement Algorithm To Permit Application of the Algorithm to Odd Lot Orders

April 16, 2001.

## I. Introduction

On March 19, 2001, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change that would amend CHX Article XX, Rule 37(h) to permit application of the Exchange's SuperMAX 2000 price improvement algorithm to odd lot orders. Notice of the proposed rule change was published for comment in the **Federal Register** on March 28, 2001.[3] This order approved the proposed rule change on an accelerated basis.

## II. Description of the Proposal

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for automated price improvement.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44090 (March 21, 2001), 66 FR 16962. In the notice, the Commission stated it would consider granting accelerated approval of the proposed rule change after a 15-day comment period.

On December 19, 2000, the Commission approved SR–CHX–00–37,[4] implementing SuperMax 2000, the CHX's new price improvement program, which will govern price improvement of all orders for issues quoting in decimal price increments. SuperMAX 2000 was designed to afford specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than alternatives that existed previously at the CHX. SuperMAX 2000 originally did not by its terms permit price improvement of odd lot orders.

To remain competitive, the CHX proposes that its specialists be permitted (but not obligated) to offer price improvement to odd lot orders. The proposal would permit odd lot dealers to provide price improvement of $.01 or better, in the case of odd lot orders received when the national best bid and offer spread is $.05 or larger.

## III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change may increase the opportunities for price improvement by allowing the Exchange's odd lot dealers to offer price improvement of odd lot orders, resulting in a benefit to investors. Additionally, the Commission believes the proposal is reasonable because it contemplates equality among order-sending firms and their customers by mandating that price improvement be provided by CHX odd lot dealers on an issue-by-issue basis, rather than allowing odd lot dealers to distinguish among order-sending firms when designating price improvement levels.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,[7] the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, given the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

## IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)[8] in particular.

*In is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–2001–06), be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–9963 Filed 4–20–01; 8:45 am]

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[4] Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000).

[5] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* footnote 3, *supra.*

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44189; File No. SR–DTC–00–10]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to the Combination of The Depository Trust Company's TradeSuite Institutional Trade Processing Services with Thomson Financial ESG's Institutional Trade Processing Services

April 17, 2001.

On August 22, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on January 31, 2001, February 20, 2001, February 23, 2001, and March 16, 2001, amended[1] a proposed rule change (File No. SR–DTC–00–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on November 17, 2000.[3] The Commission received thirty-six comment letters in response to the proposed rule change.[4] For the reasons

[1] The amendments clarify the proposed rule change and notice is not necessary.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 43541 (November 9, 2000), 65 FR 69591.

[4] Letters from Jerome J. Clair, Chairman, Securities Industry Association ("SIA") Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear, Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); Richard B. Nesson, Managing Director and General Counsel, The Depository Trust & Clearing Corporation ("DTCC") (November 20, 2000); Burkhard Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, Global Straight Through Processing AG ("GSTP AG") (December 18, 2000); Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network ("TLX") (December 18, 2000); and John P. Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000); J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Nomura Securities Co., Ltd. (December 29, 2000); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 12, 2001); Bradley I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001); Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001); Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001); and Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

Copies of the comment letters and a copy of the Summary of Comments can be obtained through the Commission's Public Reference Room (File No. DTC–00–10).

discussed below, the Commission is approving the proposed rule change.

## I. Description of DTC's Proposed Rule Change

The proposed rule change seeks Commission approval of DTC's proposal to combine its TradeSuite family of institutional trade processing services (''TradeSuite Business'') with the institutional trade processing services offered by Thomson Financial ESG (''ESG Business'')[5] in a proposed joint venture, Omgeo,[6] between DTCC,[7] Thomson Financial Inc.,[8] and Interavia, A.G. (''Interavia'').[9] The proposal is as follows:

- After receipt of all necessary regulatory approvals, DTC will transfer existing assets of the TradeSuite Business, Thomson Financial Inc. will transfer existing U.S. assets of the ESG Business, and Interavia will transfer existing non-U.S. assets of the ESG Business to Omgeo.
- Certain support functions and other services will be provided to Omgeo by DTCC, DTC, and Thomson Financial Inc. Pursuant to service contracts.
- Omgeo will provide through its wholly owned subsidiary, Global Joint Venture Matching services-US, LLC (''GJVMS''),[10] which has applied for an exemption from registration as a clearing agency,[11] post-trade, presettlement related services, including execution notification, allocation, electronic trade confirmation (''ETC''), Central Matching Service,[12] operational and standing databases (*i.e.,* trade enrichment), and communications between trading parties and their settlement agents.
- Omgeo's governance arrangements will be designed to assure that the ''U.S. regulated aspects'' of Omgeo's activities,[13] including the pricing structure for the fees to be charged to users of such services, will be subject to the control of users.
- Omgeo will be operated on a for-profit basis. Fifty percent of any profits not retained by Omgeo will be distributed to DTCC.[14]

As trading volumes have continued their dramatic upward climb over the past decade, it has become clear that the current system for post-trade presettlement processing institutional trades needs major changes. Operations professionals in both domestic and foreign securities markets have concluded that the current sequential and fragmented electronic trade confirmation/affirmation model must be made more efficient and that connectivity to electronic systems by a much broader spectrum of industry participants must be encouraged so that institutional trades can be processed efficiently and settled on time.

According to DTC, the combination of the TradeSuite Business[15] and ESG Business[16] and the linking of their customers could produce immediate benefits. For example, DTC estimates that 12% of institutional trades processed in TradeSuite are affirmed on trade date and that only 87% are affirmed by noon of T+2. By using allocations processed on the ESG Business' OASYS system in the TradeSuite Business' TradeMatch, a much larger percentage of trades could be affirmed earlier in the settlement cycle. Earlier affirmation would allow broker-dealers and their institutional customers to identify and resolve the exceptions and potential fails much earlier in the settlement cycle.

In addition, the DTC resources to be transferred to Omgeo or provided to Omgeo pursuant to a services contract are for the most part resources that are already fully dedicated to the TradeSuite Business. Therefore, implementation of the subject proposal will not deprive DTC of resources needed for it to provide its other services in a safe and sound manner. Furthermore, all existing services of the TradeSuite and ESG Businesses will continue uninterrupted during and after the transfer to Omgeo.

## II. Comment Letters

The Commission received thirty-six comment letters in response to the notice of filing of GJVMS's application.[17] Eleven of the comment letters praised GJVMS's timing in light of the industry need for straight-through processing and a shortened settlement cycle to reduce settlement risks and stressed that there remain no more meaningful efficiencies to be drawn

[5] Thomson Financial ESG is a division of Thomson Financial, a Thomson Corporation subsidiary. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (March 16, 2001).

[6] As originally filed, Omgeo was to be called the Global Joint Venture. Letter amending DTC–00–10 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

Omgeo will be a manager managed limited liability company which is managed by its board of managers. The Omgeo board of managers will consist of nine voting managers and one non-voting manager. Five of the voting managers will be industry representatives, three of which will be nominees of DTCC, and two will be nominees of Thomson. Of the remaining four voting managers, two of the voting managers will be DTCC representatives, and two will be representatives of Thomson.

As originally filed, DTC–00–10 set forth that the board of managers was to be composed of seven voting managers and one non-voting manager. Three of the voting managers were to be industry board representatives with two nominated by DTCC and one nominated by Thomson. Letter amending DTC–00–10 from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 31, 2001).

[7] DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation (''NSCC'').

[8] Thomson Information Services Inc. has been renamed Thomson Financial Inc. Thomson Financial Inc. is a wholly owned indirect subsidiary of Thomson Corporation. Thomson Corporation is a global electronic information company. Letter amending Form CA–1 from Jeffrey T. Waddle, Vice President and Senior Counsel, DTCC (February 23, 2001).

[9] Interavia is a Swiss corporate affiliate of Thomson Financial Inc.

[10] GJVMS is a member managed limited liability company and as such it will be managed by its only member, Omgeo.

[11] The Commission has stated that matching is a clearing agency function that requires an entity that performs matching to register as a clearing agency or obtain an exemption from registration as a clearing agency. However, an entity that only provides a matching services does not have to be subject to the full range of clearing agency regulation. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. In 1999, the Commission granted Thomson an exemption from clearing agency registration to provide matching services. Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948 [File No. 600–31]. Concurrent with this order, the Commission is issuing an order granting GJVMS an exemption from registration as a clearing agency so that it can provide a Central Matching Service. Securities Exchange Act Release Nos. 44188 (April 17, 2001) [File No. 600–32] (order granting GJVMS an exemption from registration as a clearing agency) and 43540 (November 9, 2000), 65 FR 69582 [File No. 600–32] (notice of filing of application for exemption from clearing agency registration).

[12] ''Central Matching Service,'' as such term is used in this order, means an electronic service to centrally match trade information between a broker-dealer and its institutional customer (so long as one or both of such parties is a U.S. person) relating to transactions in securities issued by a U.S. issuer, regardless of where the transactions are settled.

[13] The term ''U.S. regulated aspects'' of Omgeo's activities refers to any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a ''qualified vendor'' as defined in New York Stock Exchange Rule 387(a)(5), in National Association of Securities Dealers Rule 11860(a)(5), and in similar rules of other self-regulatory organizations. Such activities, therefore, would include the Omgeo's proposed ETC and centralized matching services for institutional transactions (so long as one or both of such parties is a U.S. person) in securities issued by a U.S. issuer, regardless of where the transactions are settled.

[14] Profits distributed to DTCC that are not retained by DTCC will be available, if so determined by DTCC's Board of Directors, for rebate to the participants of DTCC's wholly-owned subsidiaries, DTC and NSCC.

[15] Generally, the TradeSuite Business consists of the following products: TradeMessage, TradeMatch, TradeSettle, and TradeHub.

[16] Generally, the ESG Business consists of the following products: ALERT, OASYS, OASYS Global, MarketMatch, and ITM Benchmarks.

[17] Most comment letters were commenting on this proposed rule change and GJVMS's application for exemption from clearing agency registration.

from the current settlement system.[18] In addition, these letters applauded GJVMS's intention to interoperate with other competitors and pledged support in furtherance of GJVMS's progress.

Seventeen comment letters urged the Commission to ensure that no entity improperly gains a monopoly on any aspect of trade processing.[19] Those letters requested that before the Commission grants an exemption to GJVMS, the Commission take steps to safeguard interoperability and competition among service providers.

GSTP AG expressed its concern that combining elements of DTC, an industry utility, with a commercial entity, Thomson Financial Inc., could limit access to DTC by competitors and could give GJVMS an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of GJVMS's clients by DTC.[20]

In a response to the GSTP AG's comment letters and other comment letters raising similar issues, DTCC stated that (1) DTC, as a registered clearing agency, is prohibited from unfairly discriminating among users, (2) interoperability is a complex issue that must be solved through participation of the SIA, the Commission, and competing providers, (3) access to DTC's settlement system and the prices it charges will not be affected by GJVMS, (4) GJVMS will not use intellectual property concerns to interfere with access to DTC, (5) standardized access to DTC will still be available as it has been for the past twenty-five years, and (6) GJVMS will have its own sales force separate from DTC.[21]

GSTP AG responded to DTCC's letter and stated that DTC must clearly explain which functions will continue to be performed exclusively by DTC and which will be performed by GJVMS.[22] In particular, GSTP AG stated that DTCC's response left unclear whether DTC will consider GJVMS to be a vendor at the same level as GSTP AG or any other central matching service, or whether DTC will accord to GJVMS preferential treatment. Also, GSTP AG stated that DTCC failed to address how communications with settlement agents will occur. GSTP AG said that fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC, not GJVMS, continue to provide this service. Furthermore, GSTP AG expressed its concern that DTCC did not clarify interoperability and whether DTC's customer service will show preferential treatment to clients of GJVMS.

DTCC responded to GSTP AG's January 3, 2001, letter by stating that the GSTP AG comment letter reflects confusion by GSTP AG about the functions to be performed by GJVMS.[23] In addition, DTCC stated that DTC would limit its activities to following the settlement instructions authorized by its participants whether those instructions were submitted by GJVMS, GSTP AG, or any other Central Matching Service or vendor. Finally, DTCC stated that it expects that the concerns expressed by GSTP AG about interoperability and the relationship between DTC and GJVMS will be fully addressed in the Commission's approval orders.

A comment by TLX Trading Network expressed concern about the post-merger availability and affordability of TradeMessage, SID, and ALERT to vendors.[24] DTCC stated in response that access to TradeMessage, SID, and ALERT will not be hampered by GJVMS.[25] DTCC asserted that the same procedure for settlement instructions will continue after the formation of GJVMS. Vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of GJVMS. As is done today, DTC will charge fees for such services to the participants on whose behalf the vendors are acting, with no additional charges to the vendors. In addition, DTCC stated in its letter that the same open access by customers' vendors to SID will continue with respect to the unified database after GJVMS commences operations.

Sungard expressed concern that moving TradeSuite and SID to GJVMS will require competitors either to adhere to GJVMS's protocols and presumably higher fees for access or to incur the expense of building redundant databases.[26] DTCC responded that the Sungard letter appears to raise the same issues that were previously addressed in DTCC's January 4 and 12, 2001, letters responding to the TLX and GSTP AG letters.[27]

## III. Discussion

In Section 17A, Congress made several findings with respect to the national system for the clearance and settlement of securities transactions.[28] Among these, Congress found that: the prompt and accurate clearance and settlement of securities transactions is necessary for the protection of investors and persons facilitating transactions by an acting on behalf of investors; inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors; and new data processing and communications techniques create the opportunity for more efficient, effective,

[18] Jerome J. Clair, Chairman, Securities Industry Association Operations Committee (June 9, 2000); Peter Johnston, Chairman, SIA Institutional Transaction Processing Committee (June 28, 2000); Daniel M. Rosenthal, President and CEO, Instinet Clearing Services, Inc. (August 21, 2000); Jeffrey C. Bernstein, Bear Stearns Securities Corp. (August 28, 2000); Thomas J. Perna, Senior Executive Vice President, The Bank of New York (August 29, 2000); James D. Hintz, Chairman, Great Lakes Investment Managers Operations Group (September 5, 2000); Diane L. Schueneman, First Vice President, Merrill Lynch Investment Managers (September 12, 2000); Judith Donahue, Chairperson, and Kenneth Juster, Director, The Asset Managers Forum (September 12, 2000); Melvin B. Taub, Salomon Smith Barney (September 14, 2000); Ronald J. Kessler, Corporate Vice President and Director of Operations, A.G. Edwards & Sons, Inc. (October 5, 2000); and John P. Davidson, Managing Director, Morgan Stanley Dean Witter (December 21, 2000).

[19] J. Ann Bonathan, Director, Schroders (December 28, 2000); Kamezo Nakai, Managing Director, Normura Securities Co., Ltd. (December 29, 2000); Gary Bullock, Global Head of Operations, UBS Warburg (January 3, 2001); Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001); R.J.M. van der Horst, Managing Director, ABN AMRO Bank (January 4, 2001); James M. Brown, Senior Vice President and Treasurer, The Capital Group Companies, Inc. (January 4, 2001); James J. Mitchell, President, Northern Trust Corporation (January 4, 2001); Arthur Barton, Chief Administrative Officer, Clay Finley Inc. (January 4, 2001); Robert K. DiFazio, Salomon Smith Barney (January 4, 2001); E. Blake Moore, Jr., General Counsel, Nicholas-Applegate (January 5, 2001); Mitchel Lenson, Managing Director-Global Head of Operations and Technology, Deutsche Bank Group (January 5, 2001); Albert E. Petersen, Executive Vice President, State Street (January 5, 2001); David J. Brooks, Vice President, Merrill Lynch (January 5, 2001); Neil Henderson, Senior Vice President, The Chase Manhattan Bank (January 5, 2001); Michael Wyne, Chairman, and Gary Koenig, Vice Chairman, The Asset Managers Forum (January 5, 2001); Bradley I. Abelow, Managing Director, Goldman, Sachs & Co. (January 22, 2001); and Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 30, 2001).

[20] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief Executive Officer, GSTP AG (January 3, 2001).

[21] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 12, 2001).

[22] Letter from Burkhard H. Gutzeit, Chairman, and C. Steven Crosby, Acting Chief, Executive Officer, GSTP AG (January 30, 2001).

[23] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[24] Letter from Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (''TLX'') (December 18, 2000).

[25] Letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (January 4, 2001).

[26] Letter from Lawrence A. Gross, Vice President and General Counsel, Sungard (February 9, 2001).

[27] Letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (March 9, 2001).

[28] 15 U.S.C. 78q–1(a)1).

and safe procedures for clearance and settlement.

The Commission finds that the approval of DTC's rule change for the transfer and combining of its TradeSuite Business with Thomson's ESG Business is consistent with these findings. As set forth above, the current processing system for the confirmation/affirmation of institutional securities transactions is showing signs of inadequacy as trading volumes continue to increase and needs to undergo major changes. By combining DTC's TradeSuite Business with Thomson ESG Business, a major step will be taken with respect to a more efficient and effective post-trade presettlement procession of institutional trades. Among other benefits, the combination should provide a means whereby a larger percentage of trades will be affirmed earlier in the settlement cycle which should allow broker-dealers and their institutional customers to identify and resolve exceptions and potential fails earlier. In addition, the combination of TradeSuite's and ESG's systems development expertise and other resources should facilitate the move to straight-through processing, a shorter settlement cycle, and improved management of rising trading volume.

The Commission also finds that the competition concerns raised by some commenters about the services of TradeSuite being provided through GJVMS are adequately addressed in the terms of the Commission's order granting GJVMS an exemption from clearing agency registration. Furthermore, DTC has represented that it shall not favor any single provider of Central Matching Services, including GJVMS, over any other Central Matching Services in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders.[29]

## IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of 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–00–10) be and hereby is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[30]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[29] Letter amending DTC–00–10 from Richard B. Nesson, Managing Director and General Counsel, DTCC (February 20, 2001).

[30] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44181; File No. SR–MSRB–2001–01]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Providing Guidance on Specific Electronic Primary Offering and Trading Systems and Electronic Recordkeeping

April 16, 2001.

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 March 27, 2001, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by MSRB. The SEC is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of interpretations on the application of (i) rules G–32 and G–36 to new issues offerings through auction procedures; (ii) G–8, G–12 and G–14 to specific electronic trading systems; and (iii) rules G–8 and G–9 to electronic recordkeeping. The text of the proposed rule change is set forth below in *italics.*

*Interpretation on the Application of Rules G–32 and G–36 to New Issue Offerings Through Auction Procedures*

*Traditionally, brokers, dealers and municipal securities dealers (''dealers'') have underwritten new issue municipal securities through syndicates in which one dealer serves as the managing underwriter. In some cases, a single dealer may serve as the sole underwriter for a new issue. Typically, these underwritings are effected on an ''all-or none'' basis, meaning that the underwriters bid on the entire new issue. In addition, new issues are occasionally sold to two or more underwriters that have not formed a syndicate but instead each underwriter has purchased a separate portion of the new issue (in effect, each underwriter serving as the sole underwriter for its respective portion of the new issue).*

*In the primary market in recent years, some issuers have issued their new offerings through an electronic ''auction'' process that permits the taking of bids from both dealers and investors directly. In some cases, these bids may be taken on other than an all-or-none basis, with bidders making separate bids on each maturity of a new issue. The issuer may engage a dealer as an auction agent to conduct the auction process on its behalf. In addition, to effectuate the transfer of the securities from the issuer to the winning bidders and for certain other purposes connected with the auction process, the issuer may engage a dealer to serve in the role of settlement agent or in some other intermediary role.*

*Although the Municipal Securities Rulemaking Board (the ''MSRB'') has not examined all forms that these auction agent, settlement agent or other intermediary roles (collectively referred to as ''dealer-intermediaries'') may take, it believes that in most cases such dealer-intermediary is effecting a transaction between the issuer and each of the winning bidders. The MSRB also believes that in many cases such dealer-intermediary may be acting as an underwriter, as such term is defined in Rule 15c2–12(f)(8) under the Securities Exchange Act of 1934, as amended (the ''Exchange Act'').[3] A dealer-intermediary that is effecting transactions in connection with such an auction process has certain obligations under rule G–32. If it is also an underwriter with respect to an offering, it has certain additional obligations under rules G–32 and G–36.*

*Application of Rule G–32, on Disclosures in Connection With New Issues*

*Rule G–32(a) generally requires that any dealer (i.e., not just the underwriter) selling municipal securities to a customer during the issue's underwriting period must deliver the*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *Questions regarding whether an entity acting in an intermediary role is effecting a transaction or whether a dealer acting in such an intermediary role for a particular primary offering of municipal securities would constitute an underwriter should be addressed to staff of the Securities and Exchange Commission.*

*official statement in final form, if any, to the customer by settlement of the transaction. Any dealer selling a new issue municipal security to another dealer is obligated under rule G–32(b) to send such official statement to the purchasing dealer within one business day of request. In addition, under rule G–32(c), the managing or sole underwriter for new issue municipal securities is obligated to send to any dealer purchasing such securities (regardless of whether the securities were purchased from such managing or sole underwriter or from another dealer), within one business day of request, one official statement plus one additional copy per $100,000 par value of the new issue municipal securities sold by such dealer to customers. Where multiple underwriters underwrite a new issue without forming an underwriting syndicate, each underwriter is considered a sole underwriter for purposes of rule G–32 and therefore each must undertake the official statement delivery obligation described in the preceding sentence.*

*If a dealer-intermediary is involved in an auction or similar process of primary offering of municipal securities in which all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G–32(a) to deliver an official statement to such investors by settlement of their purchases. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary is obligated under rule G–32(b) to send an official statement to such purchasing dealers within one business day of a request. Further, to the extent that the dealer-intermediary is an underwriter, such dealer-intermediary typically would have the obligations of a sole underwriter under rule G–32(c) to distribute the official statement to any other dealer that subsequently purchases the securities during the underwriting period and requests a copy. Any dealer that has placed a winning bid in a new issue auction would have the same distribution responsibility under rule G–32(c), to the extent that it is acting as an underwriter.*

*The MSRB views rule G–32 as permitting one or more dealer-intermediaries involved in an auction process to enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (i.e., a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G–32. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for distribution of official statements to the marketplace typically undertaken by a managing or sole underwriter under rule G–32(c).[4] Such an agreement may be entered into by less than all dealers that have purchased securities through the auction process. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.*

*Application of Rule G–36, on Delivery of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to the MSRB*

*Rule G–36 requires that the managing or sole underwriter for most primary offerings send the official statement and Form G–36(OS) to the MSRB within certain time frames set forth in the rule. In addition, if the new issue is an advance refunding and an advance refunding document has been prepared, the advance refunding document and Form G–36(ARD) also must be sent to the MSRB by the managing or sole underwriter. Where multiple underwriters underwrite an offering without forming an underwriting syndicate, the MSRB has stated that each underwriter would have the role of sole underwriter for purposes of rule G–36 and therefore each would have a separate obligation to send official statements, advance refunding documents and Forms G–36(OS) and G–36(ARD) to the MSRB.[5]*

*To the extent that the dealer-intermediary in an auction or similar process of primary offering of municipal securities is an underwriter for purposes of the Exchange Act, such dealer-intermediary would have obligations under rule G–36. If all or a portion of the securities are sold directly to investors that have placed winning bids with the issuer, the dealer-intermediary would be obligated to send the official statement and Form G–36(OS) (as well as any applicable advance refunding document and Form G–36(ARD)) to the MSRB with respect to the issue or portion thereof purchased by investors. If all or a portion of the securities are sold to other dealers that have placed winning bids with the issuer, the dealer-intermediary and each of the purchasing dealers (to the extent that they are underwriters for purposes of the Exchange Act) also typically would be separately obligated to send such documents to the MSRB with respect to the issue or portion thereof purchased by dealers.*

*To avoid duplicative filings under rule G–36, the MSRB believes that one or more dealer-intermediaries involved in an auction process may enter into an agreement with one or more other dealers that have purchased securities through a winning bid in which the parties agree that one such dealer (i.e., a dealer-intermediary or one of the winning bidders) will serve in the role of managing underwriter for purposes of rule G–36. In such a case, such single dealer (rather than all dealers individually) would have the responsibility for sending the official statement, advance refunding document and Forms G–36(OS) and G–36(ARD) to the MSRB.[6] Such an agreement may be entered into by less than all dealers that have purchased securities. All dealers that agree to delegate this duty to a single dealer may rely on such delegation to the same extent as if they had in fact formed an underwriting syndicate.*

* * * * *

*Interpretation on the Application of Rules G–8, G–12, and G–14 to Specific Electronic Trading Systems*

*The Municipal Securities Rulemaking Board (the ''MSRB'') understands that, over time, the advent of new trading systems will present novel situations in applying MSRB uniform practice rules. The MSRB is prepared to provide interpretative guidance in these situations as they arise, and, if necessary, implement formal rule interpretations or rule changes to provide clarity or prevent unintended results in novel situations. The MSRB has been asked to provide guidance on the application of certain of its rules to*

[4] *Each dealer that is party to this agreement would be required to inform any dealer seeking copies of the official statement from such dealer under rule G–32(c) of the identity of the dealer that has by agreement undertaken this obligation or, in the alternative, may fulfill the request for official statements. In either case, the dealer would be required to act promptly so as either to permit the dealer undertaking the distribution obligation to fulfill its duty in a timely manner or to provide the official statement itself in the time required by the rule. Such agreement would not affect the obligated of a dealer that sells new issue securities to another dealer to provide a copy of the official statement to such dealer upon request as required under rule G–32(b), nor would it affect the obligation to deliver official statements to customers as required under rule G–32(a).*

[5] *See Rule G–36 Interpretive Letter—Multiple underwriters, MSRB interpretation of January 30, 1998, MSRB Rule Book (January 1, 2001) at 189.*

[6] *The dealer designated to act as managing underwriter for purposes of rule G–36 would be billed the full amount of any applicable underwriting assessment due under rule A–13, on underwriting and transaction assessments. Such dealer would be permitted, in turn, to bill each other dealer that is party to the agreement for its share of the assessment.*

*transactions effected on a proposed electronic trading system with features similar to those described below.*

*Description of System*

*The system is an electronic trading system offering a variety of trading services and operated by an entity registered as a dealer under the Securities Exchange Act of 1934. The system is qualified as an alternative trading system under Regulation ATS. Trading in the system is limited to brokers, dealers and municipal securities dealers (''dealers''). Purchase and sale contracts are created in the system through various types of electronic communications via the system, including acceptance of priced offers, a bid-wanted process, and through negotiation by system participants with each other. System rules govern how the bid/offer process is conducted and otherwise govern how contracts are formed between buyers and sellers.*

*Participants are, or may be, anonymous during the bid/offer/negotiation process. After a sales contract is formed, the system immediately sends an electronic communication to the buyer and seller, noting the transaction details as well as the identity of the contra-party. The transaction is then sent by the buyer and seller to a registered securities clearing agency for comparison and is settled without involvement of the system operator.*

*The system operator does not take a position in the securities traded on the system, even for clearance purposes. Dealers trading on the system are required by system rules to clear and settle transactions directly with each other even though the parties do not know each other at the time the sale contract is formed. If a dealer using the system does not wish to do business with another specific contra-party using the system, it may direct the system operator to adjust the system so that contracts with that contra-party cannot be formed through the system.*

*Application of Certain Uniform Practice Rules to System*

*It appears to the MSRB that the dealer operating the system is effecting agency transactions for dealer clients.[7] The system operator does not have a role in clearing the transactions and is not taking principal positions in the securities being traded. However, the system operator is participating in the transactions at key points by providing anonymity to buyers and sellers during the formation of contracts and by setting system rules for the formation of contracts. Consequently, all MSRB rules generally applicable to inter-dealer transactions would apply except to the extent that such rules explicitly, or by context, are limited to principal transactions.*

*Automated Comparison*

*One issue raised by the description of the system above is the planned method of clearance and settlement. Rule G–12(f)(i) requires that inter-dealer transactions be compared in an automated comparison system operated by a clearing corporation registered with the Securities and Exchange Commission. The purpose of rule G–12(f)(i) is to facilitate clearance and settlement of inter-dealer transactions. In this case, the system operator: (i) Electronically communicates the transaction details to the buyer and seller; (ii) requires the buyer and seller to compare the transaction directly with each other in a registered securities clearing corporation; and (iii) is not otherwise involved in clearing or settling the transaction. The MSRB believes that under these circumstances, it is unnecessary for the system operator to obtain a separate comparison of its agency transactions with the buyer and seller.*

*Although automated comparison is not required between the system operator and the buyer and seller, the transaction details sent to each party by the system must conform to the information requirements for inter-dealer confirmations contained in rule G–12(c). Since system participants implicitly agree to receive this information in electronic form by participating in the system, a paper confirmation is not necessary. Also, the system operator may have an agreement with its participants that participants are not required to confirm the transactions back to the system operator, which normally would be required by rule G–12(c).*

*The system operator, which is subject to Regulation ATS, will be governed by the recordkeeping requirements of Regulation ATS for purposes of transaction records, including municipal securities transactions. However, the system operator also must comply with any applicable recordkeeping requirements in rule G–8(f), which relate to records specific to effecting municipal securities transactions. With respect to recordkeeping by dealers using the system, the specific procedures associated with this system require that transactions be recorded as principal transactions directly between buyer and seller, with notations of the fact that the transactions were effected through the system.*

*Transaction Reporting*

*Rule G–14 requires inter-dealer transactions to be reported to the MSRB for the purposes of price transparency, market surveillance and fee assessment. The mechanism for reporting inter-dealer transactions is through National Securities Clearing Corporation (''NSCC''). In the system described above, the buyer and seller clear and settle transactions directly as principals with each other, and without the involvement of the dealer operating the system. The buyer and seller therefore will report transactions directly to NSCC. No transaction or pricing information will be lost if the system operator does not report the transaction. Consequently, it is not necessary for the system operator separately to report the transactions tothe MSRB.*

* * * * *

*Interpretation on the Application of Rules G–8 and G–9 to Electronic Recordkeeping*

*The Municipal Securities Rulemaking Board (the ''MSRB'') has received requests for interpretive guidance regarding the maintenance in electronic form of records under rule G–8, on books and records, and rule G–9, on preservation of records. As the MSRB has previously noted, rules G–8 and G–9 provide flexibility to brokers, dealers and municipal securities dealers (''delears'') concerning the manner in which their records are to be maintained, recognizing that various recordkeeping systems could provide a complete and accurate record of a dealer's municipal securities activities.[8] Part of the reason for providing this flexibility was that a variety of enforcement agencies, including the Securities and Exchange Commission,*

[7] *This situation can be contrasted with the typical broker's broker operation in which the broker's broker effects riskless principal transactions for dealer clients. The nature of the transactions as either agency or principal is governed for purposes of MSRB rules by whether a principal position is taken with respect to the security. ''Riskless principal'' transactions in this context are considered to be principal transactions in which a dealer has a firm order on one side at the time it executes a matching transaction on the contra-side. For purposes of the uniform practice rules, the MSRB considers broker's broker transactions to be riskless principal transactions even though the broker's broker may be acting for one party and may have agency or fiduciary obligations toward that party.*

[8] *See Rule G–8 Interpretation—Interpretive Notice on Recordkeeping, July 29, 1977, reprinted in MSRB Rule Book (January 1, 2001) at 42.*

*NASD Regulation, Inc. and the banking regulatory agencies, all may inspect dealer records.*

*Rule G–8(b) does not specify that a dealer is required to maintain its books and records in a specific manner so long as the information required to be shown by the rule is clearly and accurately reflected and provides an adequate basis for the audit of such information. Further, rule G–9(e) allows records to be retained electronically provided that the dealer has adequate facilities for ready retrieval and inspection of any such record and for production of easily readable facsimile copies.*

*The MSRB previously has recognized that efficiencies would be obtained by the replacement of paper files with electronic data bases and filing systems and stated that it generally allows records to be retained in that form.*[9] *In noting that increased automation would likely lead to elimination of most physical records, the MSRB has stated that electronic trading tickets and automated customer account information satisfy the recordkeeping requirements of rule G–8 so long as such information is maintained in compliance with rule G–9(e). The MSRB believes that this position also applies with respect to the other recordkeeping requirements of rule G–8 so long as such information is maintained in compliance with rule G–9(e) and the appropriate enforcement agency is satisfied that such manner of record creation and retention provides an adequate basis for the audit of the information to be maintained. In particular, the MSRB believes that a dealer that meets the requirements of Rule 17a–4(f) under the Securities Exchange Act of 1934 with respect to maintenance and preservation of required books and records in the formats described therein would presumptively meet the requirements of rule G–9(e).*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In May 2000, the MSRB hosted a roundtable to begin a discussion about the use of electronic trading systems in municipal securities and the application of the MSRB's rules to existing and proposed electronic trading systems. During that roundtable, as well as during subsequent conservations with industry members, it appeared that there was significant confusion about the applicability of MSRB rules to brokers, dealers and municipal securities dealers (''dealers'') who operate such systems. In addition, questions were raised regarding the applicability of MSRB rules in the context of electronic auction procedures in the new issue market and the ability of dealers to make and maintain books and records in an electronic format. As an outgrowth of the roundtable and these industry inquiries, the MSRB determined to provide interpretive guidance relating to the application of (i) rules G–32 and G–36 to new issue offerings through auction procedures, (ii) rules G–8, G–12 and G–14 to specific electronic trading systems, and (iii) rules G–8 and G–9 to electronic recordkeeping.

In the interpretive guidance relating to the application of rules G–32 and G–36 to new issue offerings through auction procedures, the MSRB proposes to clarify that dealers serving as auction agent, settlement agent or other intermediary role in such auction sales of new issues by issuers have the same responsibilities relating to distribution of official statements and other documents as do dealers selling new issue municipal securities under rule G–32 and, in some circumstances, as underwriters under rules G–32 and G–36. The MSRB proposes to provide guidance on determining where the responsibilities would lie when multiple dealers participate in a primary offering without forming a syndicate.

In the interpretive guidance relating to the application of rules G–8, G–12 and G–14 to specific electronic trading systems, the MSRB proposes to provide guidance on the application of these rules to transactions effected on a proposed electronic trading system. The MSRB summarizes the relevant features of the proposed system and proposes guidance in connection with clearance and settlement under rule G–12, transaction reporting under rule G–14 and certain recordkeeping obligations under rule G–8.

In the interpretive guidance relating to the application of rules G–8 and G–9 to electronic recordkeeping, the MSRB proposes to provide guidance as to the creation and maintenance of books and records required under such rules in electronic format.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[10] which requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it provides guidance to dealers in complying with existing MSRB rules.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all dealers.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

On September 28, 2000, the MSRB published a notice seeking comment on a draft interpretive guidance on dealer responsibilities in connection with both electronic and traditional municipal securities transactions (the ''Draft Guidance'').[11] The Draft Guidance presented the MSRB's views regarding certain compliance issues arising under rules G–8, G–9, G–12, G–14, G–32 and G–36.[12] The MSRB received seven

[9] *See Rule G–8 Interpretive Letters—Use of electronic signatures, MSRB interpretation of February 27, 1989, reprinted in MSRB Rule Book (January 1, 2001) at 47.*

[10] 15 U.S.C. 78o–4(b)(2)(C).

[11] ''Notice and Draft Interpretive Guidance on Dealer Responsibilities in Connection with Both Electronic and Traditional Municipal Securities Transactions,'' *MSRB Reports,* Vol. 20, No. 2 (November 2000) at 3. *See also* the clarification to the Draft Guidance published on November 17, 2000 at the MSRB's web site (*http://206.233.231.2/msrb/archive/etrading.htm*).

[12] The Draft Guidance also presented, in draft form, the MSRB's views regarding certain

letters commenting on the discussion of these rules set forth in the Draft Guidance.[13] After reviewing these comments, the MSRB approved the proposed rule change for filing with the SEC.[14]

As described above, the MSRB published draft interpretive guidance regarding the application of rules G–32 and G–36 to new issue offerings through auction procedures. Two commentators supported the MSRB's guidance on rules G–32 and G–36.[15] As a result, the MSRB has determined to file the proposed interpretative guidance with the SEC.

One commentator, however, mistakenly believed that the guidance provided for the delegation to the managing underwriter of the task of distributing official statements to customers, to which it is opposed.[16] The guidance does not provide for such delegation. This commentator suggested that the MSRB and rule G–32 to permit delivery to the customer of a preliminary official statement by settlement, with a final official statement to be sent as soon as possible thereafter. The MSRB has repeatedly emphasized the importance of ensuring that the customer receives the final official statement by settlement.[17] At the same time, the MSRB recognizes some of the inherent difficulties in meeting this obligation and has begun exploring possible approaches to ensuring more efficient and effective delivery of material information in the primary market in a timely manner.[18]

In addition, two commentators suggested that the MSRB endorse and support the use of electronic documents, including official statements.[19] One commentator noted that the MSRB has sought to encourage such use through its proposal on electronic filings under rule G–36.[20] In addition to this proposal, the MSRB has made clear that official statements may be delivered in electronic format for purposes of rule G–32 so long as certain requirements are met.[21] Further, as noted above, the MSRB has begun exploring possible approaches to improving the process of disseminating disclosure materials, including by means of electronic document delivery.

2. Comments on Application of Rules G–8, G–12 and G–14 to Specific Electronic Trading Systems

As discussed above, the MSRB published draft interpretive guidance regarding the application of rules G–8, G–12 and G–14 to a specific electronic trading system. One commentator stated that the MSRB's allocation of responsibilities set forth in the guidance relating to rules G–8, G–12 and G–14 as applied to such dealer-to-dealer electronic trading system is appropriate.[22] As a result, the MSRB has determined to file the proposed interpretative guidance with the SEC.

3. Comments on Application of Rules G–8 and G–9 to Electronic Recordkeeping

The MSRB did not seek comment on the creation and maintenance of dealer books and records in electronic format. However, three commentators suggested that the MSRB affirmatively state that electronic storage of required records satisfies the recordkeeping requirements of rules G–8 and G–9 and that dealers may contract with third parties to retain electronic records under rule G–9.[23] As a result, the MSRB has determined to file proposed interpretative guidance with the SEC regarding electronic recordkeeping under rules G–8 and G–9.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing MSRB rule and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act,[24] and subparagraph (f) of Rule 19b–4 thereunder.[25] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the SEC, and all written communications relating to the proposed rule change between the SEC and any person, other than those that may be withheld from the public in accordance with the provisions of 5

compliance issues arising under rules G–13, G–17, G–18 and G–19. The MSRB's draft guidance relating to these rules is not included in this proposed rule change.

[13] Letters to Carolyn Walsh, Assistant General Counsel, MSRB, from Ida W. Draim, Dickstein Shapiro Morin & Oshinsky LLP, dated October 25, 2000 (''Dickstein Shapiro Letter''); William L. Nichols, Chief Operating Officer, ValuBond Securities, Inc., dated November 30, 2000 (''ValuBond Letter''); and Bradley W. Wendt, President and Chief Operating Officer, and David L. Becker, General Counsel, MuniGroup.com LLC, dated December 1, 2000 (''MuniGroup Letter''); and letters to Ernesto A. Lanza, Associate General Counsel, MSRB, from Michael J. Marz, Vice Chairman, First Southwest Company, dated November 28, 2000 (''First Southwest Letter''); W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., dated November 30, 2000 (''Charles Schwab Letter''); Roger G. Hayes, Chair, and Aimee S. Brown, Vice Chair, The Bond Market Association Municipal E-Commerce Task Force, dated December 1, 2000 (''TBMA I Letter''); and LYnette Kelly Hotchkiss, Vice President and Associate General Counsel, The Bond Market Association, dated January 4, 2001 (''TBMA II Letter''). These letters also discussed, and MSRB received additional letters commenting on, other portions of the Draft Guidance.

[14] Comments received by the MSRB with respect to rules G–13, G–17, G–18 and G–19 will be addressed at a future date.

[15] *See* MuniGroup and TBMA I Letters. One commentator sought guidance as to the status of a specific website operator as an underwriter for purposes of rules G–32 and G–36. *See* Dickstein Shapiro Letter. As the MSRB noted in the Draft Guidance, a determination of whether a dealer would constitute an underwriter is based on an analysis of relevant Act provisions and such questions should be addressed to SEC staff. *See also* note 3 *supra*.

[16] *See* Charles Schwab Letter.

[17] *See, e.g.,* ''Official Statement Deliveries Under Rules G–32 and G–36 and Exchange Act Rule 15c2–12,'' *MSRB Reports,* Vol. 19, No. 3 (September 1999) at 29; Rule G–32 Interpretation—Notice Regarding the Disclosure Obligations of Brokers, Dealers and Municipal Securities Dealers in Connection with New Issue Municipal Securities Under Rule G–32, November 19, 1998, reprinted in *MSRB Rule Book* (January 1, 2001) at 160.

[18] *See* ''MSRB Discussion Paper on Disclosure in the Municipal Securities Market'' published on December 21, 2000 at the MSRB's web site (http://www.msrb.org/msrb1/whatsnew/DiscussionPaper.htm).

[19] *See* MuniGroup and ValuBond Letters.

[20] *See* TBMA II Letter, referring to ''Electronic Submission of Official Statements, Advance Refunding Documents and Forms G–36(OS) and G–36(ARD) to the MSRB,'' *MSRB Reports,* Vol. 20, No. 2 (November 2000) at 17.

[21] *See* Rule G–32 Interpretation—Notice Regarding Electronic Delivery and Receipt of Information by Brokers, Dealers and Municipal Securities Dealers, November 20, 1998, reprinted in *MSRB Rule Book* (January 1, 2001) at 163.

[22] *See* MuniGroup Letter. Another commentator requested interpretive guidance on the application of MSRB rules to a different proposed electronic system, noting difficulties that such system would have in complying with certain provisions of rules G–12 and G–14. *See* Dickstein Shapiro Letter. The MSRB does not have sufficient information regarding this system to provide guidance at this time and will undertake further discussions of the relevant factors with this commentator.

[23] *See* First Southwest, MuniGroup and TBMA I Letters.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f).

U.S.C. 552, will be available for inspection and copying in the SEC's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2001–01 and should be submitted by May 1, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01–9960 Filed 4–20–01; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44179; File No. SR–NYSE–2001–05]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Expansion of the Maximum Share Size Parameter for Single Orders Entered Into the SuperDot System

April 13, 2001.

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 March 2, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 30, 2001, the Exchange amended its proposal (''Amendment No. 1'') to provide a revised Exhibit 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change consists of a further expansion of the maximum share size parameter for single orders entered into the SuperDot System (''SuperDot System'' or ''SuperDot'') originally proposed by the Exchange.[4]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 and is set forth in Sections A, B, and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's SuperDot System provides automated order routing and reporting services to facilitate the timely and effective transmission, execution, and reporting of market and limit orders on the Exchange. Pursuant to paragraph (a) of NYSE Rule 123B, ''Exchange Automated Order Routing Systems,'' members and member organizations may utilize the SuperDot System to transmit orders of such size as the Exchange may specify from time to time.

In the January Proposal, the Exchange amended the maximum share size parameters for single market and limit orders entered into the SuperDot System from 30,099 shares (for single market orders) and 99,999 shares (for single limit orders) to 500,000 shares initially, to be followed by an increase six months later to 1,000,000 shares.[5]

The purpose of this filing is to further amend the maximum share size parameter for single market and limit orders entered into the SuperDot System. The Exchange proposes to increase the maximum order size for both market and limit orders to 3,000,000 shares. The increase would become effective six months after the increase to 1,000,000 shares.

The Exchange believes that the proposed increase would provide many benefits to those that use the SuperDot System. The proposed amendment would facilitate openings and closings by increasing the number of shares that can be accommodated, especially in initial public offering situations. The proposed amendment would also eliminate the need for firms and institutions to break up large orders in order to make them SuperDot eligible, streamline the cancel and replace process, and reduce some of the paper from the floor, in support of the Exchange's goal of having a ''paperless'' floor. Further, the Exchange believes that the proposed increase would be compatible with the maximum share size capabilities of the Broker Booth Support System.[6] Moreover, this proposed rule change would help facilitate the electronic capture of orders required by NYSE Rule 123, ''Record of Orders.''[7]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) of the Act[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change, not necessary or appropriate in furtherance of the purposes of the Act.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The revised Exhibit 1 indicates that the proposal is pursuant to Section 19(b)(2) of the Act rather than section 19(b)(3)(A) of the Act, as was indicated in the original Exhibit 1.

[4] In January 2001, a NYSE proposal to increase the maximum SuperDot share size parameter to 1,000,000 shares became effective. *See* Securities Exchange Act Release No. 43880 (January 23, 2001), 65 FR 8828 (February 2, 2001) (SR–NYSE–00–63) (''January Proposal''). In the January Proposal, the NYSE proposed to increase the maximum SuperDot share size parameter in two stages, with an initial increase to 500,000 shares, followed in six months by an increase to 1,000,000 shares.

[5] *See* January Proposal, *supra* note 4.

[6] The Broker Booth Support System is an order management system designed exclusively for NYSE members. The maximum share size capability for the Broker Booth Support System is 3,000,000 shares. Telephone conversation between John Lomnicky, Senior Project Specialist, Market Surveillance, NYSE, and Lisa Jones, Attorney, Division of Market Regulation, Commission (April 12, 2001).

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (order approving File No. SR–NYSE–99–25).

[8] 15 U.S.C. 78f(b)(5).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–NYSE–2001–05 and should be submitted by May 14, 2001.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[9] 17 CFR 200.30–2(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–44185; File No. SR-Phlx-2001–20]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Extend a Pilot Program Relating to Price Protection in a Decimals Environment

April 16, 2001.

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 March 1, 2001, the Philadelphia Stock Exchange Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 13, 2001, the Exchange amended the proposal.[3] The Exchange filed this proposal under section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through August 31, 2001 the operation of the pilot program that amended Phlx Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE) (''Pilot''),[6] as part of implementing industry-wide decimalization and securities pricing in fractions and decimals.[7] The text of the proposed rule change is available at the Phlx and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Phlx proposes to extend, through August 31, 2001, the effectiveness of the Pilot that amends Phlx Rule 229 and institutes, for equities priced in decimals, among other things, decimal-based requirements relating to mandatory double-up/double-down price protection and automatic price improvement, as indicated below.

Supplementary Material .05 to Rule 229 establishes that if the PACE Quote[8] at the time of order entry into the system reflects a ⅛ point spread or less (the difference between the best bid and offer) for equities trading in fractions, or $.05 or less for equities trading in decimals, that order will be executed immediately.

Supplementary Material .07(c) to Rule 229 establishes that automatic price improvement and mandatory manual double-up/double-down price protection applies to both fractional and decimal priced equities. The Pilot provides that specialists may choose to provide automatic price improvement of $.01 to all customers and all eligible market orders in an equity trading in decimals (where the PACE Quote is either $.05 or greater or $.03 or greater), or 1/16 to equities trading in fractions (where the PACE Quote is 3/16 or greater or ⅛ or greater).[9] And specialists that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* April 23, 2001 letter from Jurij Trypupenko, Esquire, Phlx to Alton S. Harvey, Division of Market Regulation, SEC and attachments (''Amendment No. 1''). In Amendment No. 1, the Phlx converted the proposed rule change to a non-controversial proposal pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6). In addition, the Phlx changed the number of the proposed rule change from SR-Phlx-01–20 to SR-Phlx-2001–20, and made other technical, non-substantive changes to the proposal.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] PACE provides a system of automatic delivery and execution of orders on the Phlx equity floor under predetermined conditions.

[7] The Pilot was established in SR-Phlx–00–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2001). The Commission notes that full implementation of decimal pricing in equities and options was completed on April 9, 2001. While the rules governing the Pilot make reference to fractional pricing, the Commission did not require the Phlx to amend its rules at this time to reflect full implementation of decimal pricing. The Phlx should, at some point in the future, file a proposed rule change to remove references to fractional pricing from its rules.

[8] The PACE Quote is the National Best Bid/Offer.

[9] The Exchange previously established a six-month pilot program relating to price improvement based on a percentage of the spread between the bid

Continued

do not agree to provide price improvement in a security have to provide manual double-up/double-down price protection in any instance where the bid/ask of the PACE Quote is ⅛ or greater for equities trading in fractions, or $.05 or greater for equities trading in decimals.[10]

The Exchange believes that extension of the Pilot through August 31, 2001 would be conducive to the proper implementation of decimal pricing, and should facilitate the transition to decimal pricing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [11] in general, and in particular, with Section 6(b)(5),[12] in that it promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and national market system, and, in general, protects investors and the public interest. The Phlx also believes the proposal will facilitate the orderly transition to decimal pricing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. The Commission believes that the proposal should be effective and operative immediately upon filing to ensure there is no lapse in the Pilot's effectiveness. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[16]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2001–20, and should be submitted by May 14, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

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and offer. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001) (SR-Phlx 01–12).

[10] Double-up/double-down is defined in Supplementary Material .07(c)(ii) to Phlx Rule 229 as a trade that would be at least ¼ (up or down) for equities trading in fractions or $.10 (up or down) for equities trading in decimals from the last regular way sale on the primary market, or, ¼ for equities trading in fractions or $.10 for equities trading in decimals from the regular way sale that was the previous intra-day change on the primary market.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commended on April 13, 2001, the date of the Phlx filed Amendment No. 1.

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission accepted the Phlx's initial filing on March 1, 2001, as satisfying the five-day pre-filing notice requirement under Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[17] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice No. 3607]**

### Secretary of State's Advisory Committee on Private International Law: Study Group on Enforcement of Foreign Judgments: Meeting Notice

There will be a public meeting of a study group of the Secretary of State's Advisory Committee on Private International Law on Wednesday, May 16, 2001, to consider the draft Hague Convention on Jurisdiction and the Enforcement of Foreign Judgments. The meeting will be held from 9:30 am to 5:00 pm in room 332 of the Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington DC.

The purpose of the Study Group meeting is to assist the Department of State prepare the U.S. negotiating position for the first diplomatic session of the Hague Conference June 6–20, 2001 in the Hague, the Netherlands.

The last formal negotiating session on the project was in October 1999, which produced a preliminary draft convention text. Due to opposition by the United States and some other delegations to this text, the Hague Conference decided to postpone the final negotiating session from October 2000, and to hold it in two parts. The first part will be in June, and the second part has not yet been scheduled. The Conference decided that the June session would operate on a consensus basis, with the ordinary voting rules suspended. For the last several months, the Hague countries have been engaged in frequent informal meetings to attempt to narrow their differences and prepare the June diplomatic negotiating session.

A copy of the preliminary draft convention is available on the website of the Hague Conference, along with a detailed explanatory report by Peter Nygh and Fausto Pocar. These documents, together with other background documents on the negotiations may be found at

*www.hcch.net/e/workprog/jdgm.html*>. Persons interested in the work of the study group or in attending the May 16 study group meeting may also request copies from Ms. Rosie Gonzales by fax at 202–776–8482, by telephone at 202–776–8420 (you may leave your request, name, telephone number, email, or mailing address on the answering machine), or by email at <gonzaler@ms.state.gov>. Email is the quickest and most efficient way to transmit the documents.

The study group meeting is open to the public up to the capacity of the meeting room. Persons wishing to attend should contact Ms. Gonzales by telephone, fax, or email, providing their name, affiliation, telephone and fax numbers, and email address. Any person who is unable to attend, but wishes to have his or her views considered, may send comments to Ms. Gonzales at the above fax number or email address, or may address them to Jeffrey D. Kovar, Assistant Legal Adviser for Private International Law (L/PIL), Suite 203, South Building, 2430 E Street, NW., Washington, DC 20037–2851.

**Jeffrey D. Kovar,**

*Assistant Legal Adviser for Private International Law, Department of State.*

[FR Doc. 01–10006 Filed 4–20–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Applications of Brendan Air, LLC d/b/a Brendan Airways d/b/a USA 3000 for New Certificate Authority

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2001–4–22). Dockets OST–00–8029 and OST–00–8030.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Brendan Air, LLC d/b/a Brendan Airways and d/b/a USA 3000 fit, willing, and able, and (2) awarding it certificates of public convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than May 2, 2001.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets OST–00–8029 and OST–00–8030 and addressed to the Department of Transportation Dockets (SVC–124, Room PL–401), US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: April 17, 2001.

**Susan McDermott,**

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 01–9996 Filed 4–20–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2001–9188]**

### Proposed Decommissioning and/or Excessing of the Remaining 180-foot Seagoing Buoy Tender Class, and the Proposed Excessing of the Vessel, FIR (WLM 212)

**AGENCY:** U.S. Coast Guard, DOT.

**ACTION:** Notice of availability and request for public comments.

**SUMMARY:** The U.S. Coast Guard announces the availability of a draft Programmatic Environmental Assessment on its proposal to decommission and/or declare excess the remaining vessels in the 180-foot seagoing buoy tender fleet and the proposed excessing of the former United States Coast Guard Cutter, FIR (WLM–212). Comments on the Assessment are encouraged.

**DATES:** Comments and related material must reach the Docket Management Facility on or before June 7, 2001.

**ADDRESSES:** To make sure your comments and related material are not entered more than once in the docket, please submit by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2001–9188), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the draft Programmatic Environmental Assessment (PEA), will become part of this docket and will be available for inspection or copying in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the PEA, on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, the proposed project, or the associated assessment, call David Reese, U.S. Coast Guard, telephone 202–267–1942. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

Comments and related material on the draft PEA are encouraged. Please provide the name and address of the comment originator, identify the docket number for this notice (USCG–2001–9188), and provide background support for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. When submitting by mail or hand delivery, submit your comments or material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if the comments or material has reached the Facility, please enclose a stamped, self addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

#### Proposed Action

The U.S. Coast Guard (USCG) proposes to decommission and/or declare excess the remaining vessels in its aging fleet of 180-foot seagoing buoy tenders and declare the former United States Coast Guard Cutter, FIR (WLM–212) excess to its needs. The USCG has determined that the entire class of 180-foot vessels is eligible for listing in the National Register of Historic Places

(NRHP). Additionally, FIR (WLM–212) is a National Historic Landmark listed on the NRHP. The USCG intends to replace the 180-foot WLBs with 175-foot Coastal Buoy Tenders (WLMs) and 225-foot Coastal Buoy Tenders (WLBs). These new vessels will support the same mission requirements as the 180-foot WLBs, with state-of-the-art technology.

While the 180-foot WLBs have contributed to nearly every USCG mission area, their primary contribution has been servicing the Short Range Aids to Navigation System. All 180-foot WLBs are over 50 years of age and further renovation is impractical. Excessive maintenance problems stemming from the age of these vessels are also being experienced with resultant reduced reliability and increased operating costs. The Federal Property Administrative Services Act (FPASA) (40 U.S.C. Chapter 10) requires that excess property be identified and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost-effectively rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. Consequently, the USCG is proposing to decommission (remove the vessels from active use) and declare the current WLB fleet excess to its needs. In order to declare a vessel excess, the USCG must complete a report of survey that states that the vessel is excess to its needs. The USCG provides the General Services Administration (GSA) with a Standard Form 120 for the excess material. Following submittal to GSA, the standard mandated GSA process for disposing of Federally owned materials ensues. Built in 1939, FIR (WLM 212) is classified as a National Historic Landmark and as such is listed on the NRHP. Homeported for 50 years in Washington State, FIR served buoys, lighthouses, and other navigation aids in the Pacific Northwest. FIR is the last surviving unaltered American lighthouse tender, and was the last working member of the U.S. Lighthouse Service fleet.

The FIR has reached the end of its service life. The vessel is over 50 years of age. Excessive maintenance problems stemming from the age of FIR were experienced with resultant reduced reliability and increased operating costs. As a result of its age and condition, the USCG decommissioned FIR in 1996. At present, the USCG is incurring costs to store the vessel in Suisun Bay, California. As previously stated, it is a requirement of the FPASA that excess property be identified by the USCG and declared as such. Therefore, the USCG has an operational, economic, and legal need to cost effectively rid itself of the obsolete and inefficient FIR.

**Draft Programmatic Environmental Assessment**

The Coast Guard has prepared a draft Programmatic Environmental Assessment (PEA). The draft PEA identifies and examines the reasonable alternatives to our proposed action and assesses potential environmental impacts. The alternatives analyzed in this PEA were chosen because they fulfilled the need for the USCG to cost effectively and legally rid itself of obsolete and inefficient vessels that can no longer effectively carry out the USCG missions they were designed for. However, the choice of alternatives is limited due to legal mandates requiring a specific excessing and disposal process to be used by the USCG. Certain legal mandates require a specific prioritized process for vessel (personal property) disposal, the majority of which is not controlled by the USCG. In analyzing these alternatives for environmental impact, the PEA looks at the impacts of decommissioning and excessing which we control, and then, generally, at the possible environmental impacts resulting from each component of the mandated disposal process—the connected actions to the decommissioning and/or excessing of our remaining 180-foot vessels and FIR.

This is a programmatic document and cannot foresee all possible site specific and cumulative impacts from the connected actions (largely not under USCG control) to our proposed decommissioning and excessing.

Comments on environmental concerns related to the PEA are encouraged. All comments will be considered in preparing the final PEA.

Dated: April 13, 2001.

**Terry M. Cross,**

*Assistant Commandant for Operations.*

[FR Doc. 01–9993 Filed 4–20–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2001–32]**

### Petitions for Exemption; Summary of Dispositions of Petitions Issued

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

**ACTION:** Notice of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Forest Rawls (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91.

Issued in Washington, D.C., on April 18, 2001.

**Gary A. Michel,**

*Acting Assistant Chief Counsel for Regulations.*

**Dispositions of Petitions**

*Docket No.:* FAA–2000–8391.

*Petitioner:* Ed's Flying Service, Inc.

*Section of the 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/Disposition:* To permit EFS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/11/2001, Exemption No. 7494.*

*Docket No.:* FAA–2000–8271.

*Petitioner:* East Air, Inc.

*Section of the 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/Disposition:* To permit East Air, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/10/2001, Exemption No. 7493.*

*Docket No.:* FAA–2000–8486.

*Petitioner:* Hyannis Air Service, Inc. dba Cape Air/Nantucket Airlines.

*Section of the 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/Disposition:* To permit HAS to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/10/2001, Exemption No. 7492.*

*Docket No.:* FAA–2000–8527.

*Petitioner:* Pan Am International Flight Academy, Inc.

*Section of the 14 CFR Affected:* 14 CFR 91.9(a) and 91.531(a)(1) and (2).

*Description of Relief Sought/ Disposition:* To permit Pan Am and operators of Cessna Citation Model 550, S550, 552, or 560 airplanes to operate those airplanes without a pilot who is designated as second in command. *Grant, 04/06/2001, Exemption No. 7487.*

*Docket No.:* FAA–2001–8744 (formerly Docket No. 28858).

*Petitioner:* Evergreen Air Venture Museum.

*Section of the 14 CFR Affected:* 14 CFR 91.315, 119.5(g), and 119.21(a).

*Description of Relief Sought/ Disposition:* To permit EAVM to operate its former military Boeing B–17G aircraft, which has a limited category airworthiness certificate, for the purpose of carrying passengers on local flights in return for donations. *Grant, 04/10/2001, Exemption No. 6632B.*

*Docket No.:* FAA–2000–8154.

*Petitioner:* Grand Holdings, Inc. dba Champion Air.

*Section of the 14 CFR Affected:* 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).

*Description of Relief Sought/ Disposition:* To permit Champion Air to conduct its supplemental operations within the 48 contiguous United States and the District of Columbia using the flight regulations for alternate airports as required by § 121.619 and fuel reserve requirements as required by § 121.639 that are applicable to domestic operations. *Grant, 04/10/2001, Exemption No. 7490.*

*Docket No.:* FAA–2000–7991.

*Petitioner:* American Trans Air, Inc.

*Section of the 14 CFR Affected:* 14 CFR 121.434(c)(1)(ii).

*Description of Relief Sought/ Disposition:* To allow ATA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant, 04/10/ 2001, Exemption No. 7491.*

*Docket No.:* FAA–2000–8151 (formerly Docket No. 28649).

*Petitioner:* Rolls-Royce Brasil, Ltda.

*Section of the 14 CFR Affected:* 14 CFR 145.47(b).

*Description of Relief Sought/ Disposition:* To allow Rolls-Royce to use Institute National de Metrology, Normalizão e Qualidade Industrial, Brazil's national standards organization, rather than the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection and test equipment. *Grant, 04/06/2001, Exemption No. 7483.*

*Docket No.:* FAA–2000–8426 (formerly Docket No. 25988).

*Petitioner:* Soloy Corporation.

*Section of the 14 CFR Affected:* 14 CFR 21.19(b)(1).

*Description of Relief Sought/ Disposition:* To permit Soloy to apply for a supplemental type certificate (STC) for a design change that would convert the Cessna Caravan from a one-engine aircraft to a two-engine aircraft using the STC process. *Grant, 04/06/2001, Exemption No. 6888A.*

*Docket No.:* FAA–2001–9141.

*Petitioner:* Business Aviation Courier.

*Section of the 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit BAV to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft. *Grant, 04/09/ 2001, Exemption No. 7488.*

*Docket No.:* FAA–2000–8062.

*Petitioner:* The Boeing Company.

*Section of the 14 CFR Affected:* 14 CFR 25.961(a)(5).

*Description of Relief Sought/ Disposition:* To permit Boeing to use a maximum temperature limitation of 80°F for JP–4 and Jet B fuels on the Boeing Model 747–400/–400F/RB11–524G–T/H–T airplane. *Grant, 04/12/ 2001, Exemption No. 7496.*

[FR Doc. 01–10001 Filed 4–20–01; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pago Pago International Airport, Pago Pago, American Samoa

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pago Pago International 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 May 23, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3024, Lawndale, CA 90261, or Honolulu Airports District Office, Federal Building, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI, 96813. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Abe Malae, Director, Department of Port Administration, American Samoa Government, at the following address: P.O. Box 639, Pago Pago, American Samoa, 96799. Air carriers and foreign air carriers may submit copies of written comments previously provided to the Department of Port Administration, American Samoa Government under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Wong, Project Engineer, Honolulu Airports District Office, 300 Ala Moana Blvd., Room 7–128, Honolulu, HI, 96813, Telephone: (808) 541–1225. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pago Pago International 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).

On March 28, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the American Samoa Government 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 June 28, 2001.

The following is a brief overview of the impose and use application number 01–02–C–00–PPG:

*Level of proposed PFC:* $4.50.

*Charge effective date:* September 1, 2001.

*Proposed charge expiration date:* June 1, 2003.

*Total estimated PFC revenue:* $765,000.

*Brief description of the proposed project:* Terminal Improvements.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None.

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 Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Department of Port Administration in American Samoa.

Issued in Hawthorne, California, on March 29, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 01–9885 Filed 4–20–01; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International 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 May 23, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd. Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, Ca 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, City of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112–4538. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of part 159.

**FOR FURTHER INFORMATION CONTACT:** Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone (650) 876–2806. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International 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).

On March 29, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of San Jose 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 June 29, 2001.

The following is a brief overview of the application No. 01–11–C–00–SJC: Level of proposed PFC: $4.50.

*Charge effective date:* April 1, 2001.

*Proposes charge expiration date:* January 1, 2007.

*Total estimated PFC revenue:* $44,407,000.

*Brief description of the proposed projects:* Runway 12R/30L reconstruction (use project); Runway 12R/30L extension (impose and use project).

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on March 29, 2001.

**Herman C. Bliss,**

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 01–9884 Filed 4–20–01; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Dubuque County, Iowa

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the U.S. 20 Capacity Improvement Study in Dubuque County, Iowa.

**FOR FURTHER INFORMATION CONTACT:** Manu M. Chacko, Transportation Engineer, FHWA, 105 6th Street, Ames, IA 50010–6337, (515) 233–7307. James P. Rost, Director, Office of Environmental Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, IA 50010, (515) 239–1798.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

#### Background

The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environment impact statement (EIS) for a capacity improvement study for U.S. 20 between the Peosta Interchange and Devon Drive in the City of Dubuque in Dubuque County, Iowa.

The capacity improvement study is to consider reconstruction of U.S. 20 to provide a free flow facility. The U.S. 20 Capacity Improvement Study will identify and evaluate potential long-range improvements for the U.S. 20 corridor. Improvements that will be considered include the addition of interchanges, modifications to adjacent existing intersections and frontage roads, and conversion of two-way frontage roads to one-way. The two main goals of the study are to (1) identify feasible concepts to provide free flow traffic on U.S. 20 and (2) to determine a preferred concept.

Letters describing the proposed action and soliciting comments have been sent to appropriate federal, state, and local agencies, and to private organizations

and citizens who have previously expressed interest in or3 are known to be interested in this proposal.

A series of public meetings will be held in Dubuque, Iowa, during 2001 and 2002. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

A scoping meeting for identifying significant issues to be addressed in the environmental impact statement was held on March 21, 2001. The scoping record will be held open for 30 days from the publication of this Notice in the Federal Register.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Iowa Department of Transportation or FHWA at the address provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 315; 49 CFR 1.48).

Dated: April 10, 2001.

**Susan E. Klekar,**

*Assistant Division Administrator.*

[FR Doc. 01–9784 Filed 4–20–01; 8:45 am]

**BILLING CODE 4910–22–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Transportation Equity Act for the 21st Century; Critical Intelligent Transportation System Standards

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21) requires the Secretary of Transportation to identify Intelligent Transportation System (ITS) standards considered critical to achieving national interoperability. With a consensus from ITS America, the Secretary has identified eighteen such standards. To ensure that the critical standards are implemented in a timely fashion, the TEA–21 requires the Secretary to establish provisional standards for those standards not adopted and published by January 1, 2001. All but two of the eighteen critical standards have been adopted and published. The TEA–21 also provides that the Secretary may waive the requirement to establish provisional standards if he determines that additional time would be productive or that establishing a provisional standard would be counterproductive. The Secretary has decided that more time would be productive to complete the standard would be counterproductive in both cases since many of the same individuals would be asked to assist in creating the provisional standards, thus further delaying the completion of these critical standards. Therefore, the Secretary decided to waive the requirement to develop provisional standards for the two critical ITS standards not adopted and published by January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** For the ITS standards program: Mr. Mike Schagrin, ITS Joint Program Office, HOIT, (202) 366–2180, e-mail address *mike.schagrin@fhwa.dot.gov.* For legal issues: Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32) (202) 366–0780, e-mail address *wilbert.baccus@fhwa.dot.gov,* Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register's** home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web site at *http://www.access.gpo.gov/nara.*

### Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 stat.107, states that the specific purpose of the ITS Standards Program is ''to promote and ensure interoperability in the implementation of intelligent transportation system technologies.'' The U.S. DOT has established cooperative agreements with five standards development organizations (SDOs) to accelerate the development of ITS standards that would promote national interoperability in ITS. These SDOs include: American Association of State Highway and Transportation Officials (AASHTO); American Society for Testing & Materials (ASTM); Institute of Electrical and Electronics Engineers (IEEE); Institute of Transportation Engineers (ITE); and Society of Automotive Engineers (SAE). Standards developed under this program are consensus standards and will remain the property of the SDO under which they were developed. Some ITS standards may be adopted by the Government as part of a rulemaking process, but that decision will not be made until the standard is complete and the need for rulemaking has been established.

Further, the TEA–21 requires the Secretary of Transportation to identify the standards that are considered to be critical to achieving national interoperability. To ensure that the critical standards are implemented in a timely fashion, the Secretary shall establish provisional standards for those critical standards that are not adopted and published by January 1, 2001.

The TEA–21 provides that if the Secretary determines that establishing a provisisonal standard is not necessary, then the Secretary may waive the requirement to establish a provisional standard if Secretary determines that additional time would be productive or that establishment of a provisional standard would be counterproductive.

After a consensus-building process led by ITS America, the Secretary developed and submitted a report to the Congress. The report describes and explains the criteria for selecting which standards are critical and identifies seventeen standards that meet the criteria. One of the critical standards identified in the report [1] (''High Speed FM Subcarrier Waveform Standard''), was subsequently divided into two separate standards (''Data Radio Channel (DARC) System'' and ''Subcarrier Traffic Information Channel (STIC) System''), thus yielding a total of eighteen critical standards, as follows:

[1] ''Intelligent Transportation Systems: Critical Standards,'' U.S. Department of Transportation, June 1999.

| Lead SDO | Document No. | Title | Status |
|---|---|---|---|
| ANSI | TS286 | Commercial Vehicle Credentials | Published. |
| ANSI | TS285 | Commercial Vehicle Safety and Credentials Information Exchange | Published. |
| ANSI | TS284 | Commercial Vehicle Safety Reports | Published. |
| SAE | J2353 | Data Dictionary for Advanced Traveler Information System (ATIS) | Published. |
| EIA/CEA | EIA–794 | Data Radio Channel (DARC) System | Published. |
| SAE | J1746 | ISP-Vehicle Location Referencing Std. | Published. |
| SAE | J2354 | Message Set for Advanced Traveler Information System (ATIS) | Published. |
| SAE | J2313 | On-Board Land Vehicle Mayday Reporting Interface | Published. |
| ASTM | PS 105–99 | Specification for Dedicated Short Range Comm. (DSRC) Data Link Layer: Medium Access and Logical Link Control. | Published. |
| ASTM | PS 111–98 | Specification for Dedicated Short Range Comm. (DSRC) Physical Layer using Microwave in the 902–928 MHz Band. | Published. |
| SAE | J2369 | Standard for ATIS Message Sets Delivered Over Bandwidth Restricted Media | Published. |
| IEEE | Std 1512–2000 | Standard for Common Incident Management 2000 Message Sets (IMMS) for use by EMCs. | Published. |
| IEEE | Std 1489–1999 | Standard for Data Dictionaries for Intelligent Transportation Systems | Published. |
| ITE | TM 1.03 | Standard for Functional Level Traffic Management Data Dictionary (TMDD) | Under Development. |
| IEEE | Std 1455–1999 | Standard for Message Sets for Vehicle/Roadside Communications | Published. |
| ASTM | TBD | Standard Specification on Dedicated Short Range Communications (DSRC) at 5.89 GHz Physical Layer. | Under Development. |
| EIA/CEA | EIA–795 | Subcarrier Traffic Information Channel (STIC) System | Published. |
| IEEE | Std 1488–2000 | Trial-Use Standard for Message Set Template for Intelligent Transportation Systems. | Published. |

Copies of the final report regarding Critical Standards submitted to Congress in June 1999, can be obtained by contacting the Federal Highway Administration, ITS Joint Program Office, Room 3401, HOIT, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, it may be obtained in electronic format by logging on to the U.S. DOT's ITS Standards home page *http://www.its-standards.net.*

As of this date, sixteen of the eighteen standards identified as critical have been adopted and published by one or more of the SDOs. Two remaining standards are still under development and did not meet the January 1, 2001, deadline for completion. These standards are: Standard for Functional Level Traffic Management Data Dictionary (TMDD) and the Standard Specification on Dedicated Short Range Communications (DSRC) at 5.89 GHz (this standard development effort may ultimately result in more than one standard).

The Standard for Functional Level Traffic Management Data Dictionary [TMDD] establishes data elements for roadway links and traffic-disruptive roadway incidents and events. It includes data elements for traffic control, ramp metering, traffic modeling, video camera control, traffic and parking management, weather forecasting, detectors, actuated signal controllers, vehicle probes, and dynamic message signs.

Although the TMDD will most likely not be adopted by the SDOs that are developing it until sometime after June 2001, portions of it are already being used by the ITS community. Since it is the intent of the TEA–21 that standards ''promote the widespread use and evaluation of intelligent transportation system technology as a component of the surface transportation systems of the United States,'' it is reasonable to conclude that TMDD is already achieving this goal. Since the standard is already being used prior to adoption and publication, issuing a provisional standard would be counterproductive. In addition, due to the nature of the ITS standards development process, there are a limited number of individuals who have the ability to create such a standard. If the Government created a provisional standard, many of the same individuals would be asked to assist in its creation, thus further delaying the ultimate completion of the work. The establishment of a provisional standard in this case would also negate the consensus standards process that is vital to the creation of robust, useful standards in the area of intelligent transportation. Thus, the Secretary of Transportation hereby waives the establishment of a provisional standard for the TMDD.

The Standard Specification on Dedicated Short Range Communications (DSRC) at 5.89 GHz will establish the specification for the radio frequency characteristics (physical layer) for DSRC operating in the range of 5.89 GHz. In addition, it will specify the protocol (data link) communications at this frequency. The DSRC standard remains under development by a standards committee and was not completed by January 1, 2001. It is likely that adoption and publication of one or more standards for DSRC at 5.89 GHz will not occur until at least early 2002.

The Federal Communications Commission only recently approved the 5.89 GHz band for dedicated short-range communications in December 1999, which is a contributing factor in not having the standard completed and published by the January 2001 deadlines. Standards for this type of communication will greatly expand opportunities for integrating a variety of vehicle-to-roadside services and payment systems.

The manufacturers of DSRC devices joined in ''pre-standards'' activities to define the requirements for devices operating at 5.9 GHz. However, the manufacturers face a technological challenge: existing silicon-based technology cannot economically operate at the higher frequencies, requiring devices based on gallium arsenide technology. In many regards this may be a benefit because all of the equipment manufacturers will be starting development anew, thereby ''leveling the field'' and circumventing the situation in the 915 MHz band where incompatible technologies predated the standards efforts.

Since DSRC manufacturers are working with potential users and standards writers to develop interoperable 5.9 GHz DSRC standards and equipment, it would be impractical to establish a separate project to write a provisional standard. During the time required to develop and draft a provisional standard, these standards would be completed. As noted above in the case of the TMDD standard, since the interested stakeholders are already

involved in the effort, few, if any, suitable experts would be available to the U.S. DOT to work on a provisional standard.

Thus, considering the mitigating factors noted above, and supporting the ongoing standard development efforts for the DSRC at 5.9 GHz standard the Secretary of Transportation hereby waives the establishment of a provisional standard. Additionally, by allowing the consensus standards development process to proceed normally, the standards developers will produce more robust standards in the long run. It will give them time to work out practical details and to verify that the standards will lead to economical development of devices that work effectively.

The Secretary will continue to monitor progress on the development of these two critical standards. If, within a six-month period after this waiver, satisfactory progress has not been made on the development of the two standards in question, the Secretary reserves the right to reevaluate the situation and decide whether establishing provisional standards would be beneficial to the goals of the ITS Program and the legislative intent of the TEA–21.

(**Authority:** 23 U.S.C. 315; sec. 5206, Pub. L. 105–178, 112 Stat. 107, 456 (1998); 49 CFR 1.48)

Issued on: April 17, 2001.

**Vincent F. Schimmoller,**

*Deputy Executive Director, Federal Highway Administration.*

[FR Doc. 01–9998 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–01–9402]**

### Reports, Forms, and Record Keeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for extension of a currently approved collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before June 22, 2001.

**ADDRESSES:** Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. P. L. Moore, NHTSA 400 Seventh Street, SW., room #5320–C, NPS–32,Washington, DC 20590. Mr. Moore's telephone number is (202) 366–5222. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* 49 CFR 575–104.

*OMB Control Number:* 2127–0519.

*Affected Public:* All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

*Form Number:* This collection of information uses no standard form.

*Abstract:* Part 575 requires tire manufacturers and tire brand owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information is used by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grades: (1) The grades are molded into the sidewall of the tire so that they can be reviewed on both the new tires and the old tires that are to be replaced; (2) a paper label is affixed to the tread face of the new tires that provides the grades of that particular tireline along with an explanation of the grading system; (3) tire manufacturers provide dealers with brochures for public distribution listing the grades of all of the tirelines they offer for sale; and (4) NHTSA compiles the grading information of all manufacturers' tirelines into a booklet that is available to the public both in printed form and on the website.

*Estimated Annual Burden to the Manufacturer:* NHTSA estimates that a total of 72,450 man-hours are required to write the brochures, engrave the new passenger car tire molds, and affix the paper labels to the tires. Based on an average hourly rate of $18.00 per hour for rubber workers in the United States, the total cost to the manufacturers is $1,304,100.00 to perform those items listed above. The largest portion of the cost burden imposed by the UTQGS program arises from the testing necessary to determine the grades that should be assigned to the tires. An average of 125 convoys, consisting of four vehicles each, are run each year for treadwear testing. NHTSA estimates it cost $0.46 per vehicle mile including salaries, overhead, and reports. This brings the annual treadwear testing cost to $1,656,000.00. For traction testing, it is estimated that 1,500 tires are tested annually with an estimated cost of $33,000 for use of the government test facility. Using a factor of 3.5 times the $33,000 to cover salary and overhead of

test contractors, the estimated cost of traction testing is $115,500. The temperature grade test for tires is an extension of the high speed performance test of 49 CFR 571.109 that is required for safety certification. The additional cost for UTQGS temperature grading is minimal. Thus, the total estimated cost for testing is $1,771,500. The cost of printing the tread labels and brochures is estimated at $900,000. This yields a total annual financial burden of $3,975,600 (approximately $4 million) on the tire manufacturers.

*Estimated Annual Burden to the Government:* The annual estimated cost of reviewing, storing and displaying the information submissions is 250 man-hours at $10.00 per hour, for a cost of $2,500 per year. Printing and distributing the Consumer Guide to Uniform Tire Quality Grading costs about $5,000 per year. The total cost to the Government runs about $7,500 per year.

*Number of Respondents:* 130. The actual number of respondents is much less than the 130 individual tire brands. In light of company acquisitions, company mergers, and the actual manufacturers reporting for the various individual brand names that they produce tires for, the actual number of respondents is about 83 individual responses.

Issued on April 17, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01–9995 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 01–9362; Notice 1]**

### Saleen, Inc.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Saleen, Inc., of Irvine, California, has applied for a temporary exemption of two years from the automatic restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the request is that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith. 49 U.S.C. 30113(b)(3)(B)(i).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Saleen refers to itself as a ''small volume US manufacturer which currently produces the Saleen S281 and the XP8 Explorer.'' Saleen receives completed and certified Mustangs and Explorers from Ford Motor Company drop shipped at the direction of the dealers who own them. Saleen adds a supercharger, makes ''other minor engine modifications, front and rear bumper outer skin designs, the seat trim, [upgrades] the tires, wheels/suspension/brakes, and [adds] appliques to the exterior and interior of the vehicle. Saleen does not make any structural changes to the Mustang or the Explorer.'' Under NHTSA regulations, Saleen is considered an alterer, rather than a manufacturer, since it modifies previously certified vehicles. (See 49 CFR 567.7). Although it may have altered several hundred Ford vehicles in the year preceding the filing of its application, we do not regard Saleen as a ''manufacturer.''

The company now wishes to become a manufacturer of a motor vehicle of its own design. As the vehicle has not entered production, Saleen has manufactured no motor vehicles in the year preceding the filing of its application. The vehicle is called the S7 and is a ''two seat, coupe, sportscar.'' The S7 has been shown in prototype form at automobile shows around the country. The prototype does not fully comply with the lighting requirements of Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* but Saleen assures us that the next prototype and the production models to follow will meet Standard No. 108 and all other standards as well, with the exception of the automatic restraint requirements of Standard No. 208, paragraph S4.1.5.3.

Saleen has asked for a three-year exemption for the S7 and anticipates that it will sell a total of 112 of them by the end of 2003. According to the petition, preliminary compliance-related development of the S7 was started in July 2000. By the time it filed its petition in December 2000, the company had ''spent an estimated total of 180 man-hours and $18,000 relating to the installation of a driver and passenger side airbag system on the S7.'' The monies spent thus far ''have been in the areas of exterior and interior design necessary for the installation of airbags.'' It has been advised that the airbag development process would cost approximately $1,000,000 not including the cost of test prototype vehicles and airbags, and tooling. This process cannot be completed by the time the company expects to launch the S7, in the summer of 2001. Indeed, the company estimates that it will take up to 20 months to fully develop a system and that the total costs will approach $3,000,000.

Saleen has cumulative net losses before taxes for the past three fiscal years of $9,716,334. It states that it ''simply cannot afford to develop the air bags in either the first (2001)or second (2002) year'' because of these losses. The company ''has exhausted all of its borrowing capacity and must sell and ship S7 vehicles (as well as its other products) to generate cash flow sufficient to defray airbag development costs as well as other S7 development costs.'' Although ''funding for the S7 was secured through a private investor,'' it states that ''all further funding for airbags must come from our ordinary income.'' Even with an exemption, Saleen projects net losses continuing through the end of the period though earnings before interest, taxes, depreciation and amortization would be positive. It plans to spread out air bag development costs over the next three years to achieve compliance by the end of the exemption period. If the petition is denied, the company believes that it would lose credibility with dealers and negatively impact the demand for altered Saleen vehicles.

The company argues that a temporary exemption is in the public interest because the S7 ''is a unique super car designed and produced in the US utilizing many US sourced components.'' An exemption would also allow it to maintain its payroll of 122 full time employees and to continue its purchase of US sourced components for the Mustangs and Explorers that it modifies. Its business with US suppliers ''indirectly provides employment for several hundred other Americans.'' An exemption is consistent with vehicle safety objectives because the S7 otherwise will conform to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent

possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* May 23, 2001.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on April 18, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01–9999 Filed 4–20–01; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 12, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 23, 2001 to be assured of consideration.

**Departmental Offices/Office of Financial Institutions Policy**

*OMB Number:* 1505–0174.

*Form Number:* None.

*Type of Review:* Reinstatement.

*Title:* Financial Subsidiaries.

*Description:* Section 121 of the Gramm-Leach-Bliley authorizes the Secretary of the Treasury to determine that an activity is financial in nature and therefore an activity in which a financial subsidiary of a national bank may engage. The regulation explains how a party may request that the Secretary make such a determination.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 20.

*Estimated Burden Hours Per Respondent:* 20 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 400 hours.

*Clearance Officer:* Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 01–9969 Filed 4–20–01; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB review; comment request

April 16, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 23, 2001 to be assured of consideration.

**Bureau of the Public Debt (PD)**

*OMB Number:* 1535–0094.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities.

*Description:* The information is needed in order to make payments to investors in United States Securities by the Automated Clearing House (ACH) method.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local, or Tribal Government.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 1 hour.

*OMB Number:* 1535–0095.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Regulations Governing United States Savings Bonds Series E/EE and H/HH.

*Description:* The regulations mandate the payment of H/HH interest by Direct Deposit (ACH method).

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local, or Tribal Government.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 1 hour.

*OMB Number:* 1535–0121.

*Form Number:* PD F 5376 and PD F 5377.

*Type of Review:* Extension.

*Title:* U.S. Treasury Securities State and Local Government Series Change Request (5376); and U.S. Treasury Securities State and Local Government Series Early Redemption Request (5377).

*Description:* These forms are used for accounts maintenance changes and early redemption of State and Local Government Series Securities.

*Respondents:* State, Local, or Tribal Government.

*Estimated Number of Respondents:* 3,350.

*Estimated Burden Hours Per Respondent:* 30 minutes (for each form).

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 1,675 hours.

*OMB Number:* 1535–0129.

*Form Number:* PD F 5391.

*Type of Review:* Extension.

*Title:* U.S. Savings Bonds EasySaver Plan Enrollment Form.

*Description:* This form is used to request purchase of savings bonds through debit of the purchaser's account at a financial institution.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 15,000.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden Hours:* 2,550 hours.

*OMB Number:* 1535–0130.

*Form Number:* PD F 5387.

*Type of Review:* Extension.

*Title:* Request for Reissue of Series I United States Savings Bonds.

*Description:* This form is used to request reissue to add coowner or beneficiary, correct error, or show change of name.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 3,000.

*Estimated Burden Hours Per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 1,500 hours.

*OMB Number:* 1535–0131.
*Form Number:* PD F 5394.
*Type of Review:* Extension.
*Title:* Application for Disposition of Series I Savings Bonds After the Death of the Registered Owner(s).
*Description:* This form is used to distribute Series I savings bonds after the death of the registered owner(s).
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Respondent:* 45 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 750 hours.

*OMB Number:* 1535–0132.
*Form Number:* PD F 5386.
*Type of Review:* Extension.
*Title:* Request for Reissue of Series I Savings Bonds by the Representative of the Estate of an Incompetent or Minor.
*Description:* This form is used by court-appointed or other authorized individual to request reissue on behalf of an incompetent, minor, or other person under a legal disability.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Respondent:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 330 hours.

*OMB Number:* 1535–0133.
*Form Number:* PD F 5385.
*Type of Review:* Extension.
*Title:* Certificate of Appointment and Request for Payment.
*Description:* This form is used by court-appointed or other authorized individual to request reissue on behalf of an incompetent, minor, or other person under a legal disability.
*Respondents:* Individuals or households.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Respondent:* 20 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden Hours:* 330 hours.
*Clearance Officer:* Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*
[FR Doc. 01–9970 Filed 4–20–01; 8:45 am]
**BILLING CODE 4810–40–P**

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 10, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 23, 2001 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1070.
*Treasury Decision (TD) Number:* TD 8223 Temporary; TD 8432 Final and Temporary; and TD 8657 Final and Temporary.
*Type of Review:* Extension.
*Title:* Branch Tax (TD 8223); Branch Profits Tax (TD 8432); and Regulations on Effectively Connected Income and the Branch Profits Tax (TD 8657).
*Description:* The regulations explain how to comply with section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed fro the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation to tax.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents/Recordkeeper:* 28,500.
*Estimated Burden Hours Per Respondent/Recordkeeper:* 27 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 12,694 hours.

*OMB Number:* 1545–1563.
*Revenue Ruling Number:* Revenue Ruling 98–1.
*Type of Review:* Extension.
*Title:* Limitations on Benefits and Contributions Under Qualified Plans.
*Description:* This revenue ruling provides guidance on the limitations on benefits and contributions under section 415 of the Code as amended by section 1449 of the Small Business Job Protection Act of 1996, including various options an employer may elect when implementing the amendments.
*Respondents:* Business or other for-profit, Not-for-profit institutions.
*Estimated Number of Respondents:* 70,000.
*Estimated Burden Hours Per Respondent:* 30 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 35,000 hours.

*OMB Number:* 1545–1580.
*Notice Number:* Notice 98–8.
*Type of Review:* Extension.
*Title:* Eligible Deferred Compensation Plans under Section 457.
*Description:* Notice 98–8 provides guidance regarding the trust requirements for certain eligible deferred compensation plans enacted in the Small Business Job Protection Act of 1996.
*Respondents:* State, Local or Tribal Government.
*Estimated Number of Respondents/Recordkeeper:* 10,260.
*Estimated Burden Hours Per Respondent/Recordkeeper:* 1 hour, 2 minutes.
*Frequency of Response:* Other (one-time).
*Estimated Total Reporting/Recordkeeping Burden:* 10,600 hours.

*OMB Number:* 1545–1599.
*Regulation Project Number:* REG–208299–90 NPRM.
*Type of Review:* Extension.
*Title:* Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operations.
*Description:* The information requested in sections 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service to determine whether the taxpayer has entered into controlled transactions at an arm's length price.
*Respondents:* Business or other for-profit.
*Estimated Number of Recordkeepers:* 500.
*Estimated Burden Hours Per Recordkeepers:* 40 hours.
*Estimated Total Recordkeeping Burden:* 20,000 hours.

*OMB Number:* 1545–1603.
*Regulation Project Number:* REG–104691–97 Final.
*Type of Review:* Extension.
*Title:* Electronic Tip Reports.
*Description:* The regulations provide rules authorizing employers to establish electronic systems for use by their

tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to withhold from the tipped employee's wages.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeeper:* 300,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 2 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 600,000 hours.

*OMB Number:* 1545–1735.

*Revenue Procedure Number:* Revenue Procedure 2001–24.

*Type of Review:* Extension.

*Title:* Advanced Insurance Commissions.

*Description:* Insurance companies that want to obtain automatic consent to chance their method of accounting for cash advances that qualify as loans to their agents mut attach a statement to their federal income tax return.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 5,270.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* Other (once).

*Estimated Total Reporting Burden:* 1,318 hours.

*OMB Number:* 1545–1736.

*Revenue Procedure Number:* Revenue Procedure 2001–20.

*Type of Review:* Extension.

*Title:* Voluntary Compliance on Alien Withholding Program (''VCAP'').

*Description:* The revenue procedure will improve voluntary compliance of colleges and universities in connection with their obligations to report, withhold and pay taxes due on compensation paid to foreign students and scholars (nonresident aliens). The revenue procedure provides an optional opportunity for colleges and universities which have not fully complied with their tax obligations concerning nonresident aliens to self-audit and come into compliance with applicable reporting and payment requirements.

*Respondents:* Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Number of Respondents/ Recordkeeper:* 495.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 700 hours.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 346,500 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 01–9971 Filed 4–20–01; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 16, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before May 23, 2001 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0137.

*Form Number:* IRS Form 2032.

*Type of Review:* Extension.

*Title:* Contract Coverage Under Title II of the Social Security Act.

*Description:* American employers can enter into an agreement to extend social security coverage to U.S. citizens and resident aliens employed abroad by foreign affiliates.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/ Recordkeeper:* 160.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 2 hr., 9 min. |
| Learning about the law or the form. | 35 min. |
| Preparing and sending the form to the IRS. | 39 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 546 hours.

*OMB Number:* 1545–0170.

*Form Number:* IRS Form 4466.

*Type of Review:* Extension.

*Title:* Corporation Application for Quick Refund of Overpayment of Estimated Tax.

*Description:* Form 4466 is used by a corporation to file for an adjustment (quick refund) of overpayment of estimated income tax for the tax year. This information is used to process the claim, so the refund can be issued.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeeper:* 16,125.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 4 hr., 4 min. |
| Learning about the law or the form. | 18 min. |
| Preparing and sending the form to the IRS. | 22 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 76,433 hours.

*OMB Number:* 1545–0197.

*Form Number:* IRS Form 5300 and Schedules Q (Form 5300).

*Type of Review:* Extension.

*Title:* Application for Determination for Employee Benefit Plan (5300); and Nondiscrimination Requirements (Schedule Q).

*Description:* IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a). Schedule Q provides information related to the manner in which a plan satisfies certain qualification requirements relating to minimum participation, coverage, and nondiscrimination.

*Respondents:* Business or other for-profit, individuals or households.

*Estimated Number of Respondents/ Recordkeeper:* 500,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| Forms/Schedules | Recordkeeping | Learning about the law or the form | Preparing the form | Copying, assembling, and sending the form to the IRS |
|---|---|---|---|---|
| 5300 | 11 hr., 0 min. | 5 hr., 0 min. | 7 hr., 16 min. | 32 min. |
| Schedules Q | 23 hr., 45 min. | 19 hr., 24 min. | 21 hr., 17 min. | |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 10,453,000 hours.

*OMB Number:* 1545–0213.

*Form Number:* IRS Form 5578.

*Type of Review:* Extension.

*Title:* Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

*Description:* Form 5578 is used by private schools that do not file Schedule A (Form 990) to certify that they have a racially nondiscriminatory policy toward students as outlined Revenue Procedure 75–50. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeeper:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 2 hr., 52 min. |
| Learning about the law or the form. | 1 hr., 5 min. |
| Preparing and sending the form to the IRS. | 1 hr., 5 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 5,150 hours.

*OMB Number:* 1545–0229.

*Form Number:* IRS Form 6406.

*Type of Review:* Extension.

*Title:* Short Form Application for Determination of Minor Amendment of Employee Benefit Plan.

*Description:* This form is used by certain employee plans who want a determination letter or an amendment to the plan. The information gathered will be used to decide whether the plan is qualified under section 401(a).

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeeper:* 16,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 6 hr., 56 min. |
| Learning about the law or the form. | 1 hr., 44 min. |
| Preparing the form | 3 hr., 37 min. |
| Copying, assembling, and sending the form to the IRS. | 32 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 207,680 hours.

*OMB Number:* 1545–0242.

*Form Number:* IRS Form 6197.

*Type of Review:* Extension.

*Title:* Gas Guzzler Tax.

*Description:* Form 6197 is used to compute gas guzzler tax on automobiles whose fuel economy does not meet certain standards for fuel economy. The tax is reported quarterly on Form 720. Form 6197 is filed each quarter with Form 720 for manufacturers. Individuals can make a one-time filing if they import a gas guzzler auto for personal use. The IRS uses the information to verify computation of the tax and compliance with the law.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 605.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 4 hr., 18 min. |
| Learning about the law or the form. | 12 min. |
| Preparing and sending the form to the IRS. | 16 min. |

*Frequency of Response:* Quarterly.

*Estimated Total Reporting/Recordkeeping Burden:* 2,892 hours.

*OMB Number:* 1545–0534.

*Form Number:* IRS Form 5303.

*Type of Review:* Extension.

*Title:* Application for Determination for Collectively Bargained Plan.

*Description:* IRS uses Form 5303 to get information needed about the finances and operation of employee benefit plans set up by employers under a collective bargaining agreement. The information obtained on Form 5303 is used to make a determination on whether the plan meets the requirements to qualify under section 401(a) and whether the related trust qualifies for exemption under section 501(a) of the Code.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeeper:* 2,500.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 22 hr., 14 min. |
| Learning about the law or the form. | 3 hr., 51 min. |
| Preparing the form | 5 hr., 0 min. |
| Copying, assembling, and sending the form to the IRS. | 1 hr., 4 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 88,200 hours.

*OMB Number:* 1545–1117.

*Notice Number:* Notice 89–61.

*Type of Review:* Extension.

*Title:* Imported Substances; Rules for Filing a Petition.

*Description:* The notice sets forth procedures to be followed in petitioning the Secretary to modify the list of taxable substances in section 4672(a)(3).

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 100.

*Estimated Burden Hours Per Respondents:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 100 hours.

*OMB Number:* 1545–1296.

*Regulation Project Number:* PS–27–91 (TD 8442) Final.

*Type of Review:* Extension.

*Title:* Procedural Rules for Excise Taxes Currently Reportable on Form 720.

*Description:* Section 6302(c) authorizes the use of Government depositories. These regulations provide reporting and recordkeeping rules relating to the use of Government depositories for taxes imposed by chapter 33 of the Code.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeeper:* 9,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 27 hours.

*Frequency of Response:* On occasion, Quarterly.

*Estimated Total Reporting/Recordkeeping Burden:* 241,850 hours.

*OMB Number:* 1545–1589.

*Revenue Procedure Number:* Revenue Procedure 98–19.

*Type of Review:* Extension.

*Title:* Exceptions to the Notice and Reporting Requirements of Section 6033(e)(1) and the Tax Imposed by section 6033(e)(2).

*Description:* Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 5012(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

*Respondents:* Not-for-profit institutions, Individuals or households, Farms.

*Estimated Number of Respondents/Recordkeeper:* 15,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 10 hours.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 150,000 hours.

*OMB Number:* 1545–1592.

*Revenue Procedure Number:* Revenue Procedure 98–20.

*Type of Review:* Extension.

*Title:* Certification for No Information Reporting on the Sale of a Principal Residence.

*Description:* The revenue procedure applies only to the sale of a principal residence for $250,000 or less ($500,000 or less if the seller is married). The revenue procedure provides the written assurances that are acceptable to the IRS for exempting a real estate reporting person from information reporting requirements for the sale of a principal residence.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/Recordkeeper:* 2,390,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | |
|---|---|
| Recordkeeping | 25 minutes |
| Reporting | 10 minutes |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 420,500 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 01–9972 Filed 4–20–01; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

## Customs Service

**[T.D. 01–32]**

## Customs Accreditation of Markan Laboratories as a Commercial Laboratory

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of Accreditation of Markan Laboratories of New York, New York, as a Commercial Laboratory.

**SUMMARY:** Markan Laboratories of New York, New York has applied to U.S. Customs under Part 151.12 of the Customs Regulations for accreditation as a commercial laboratory to analyze sugar, sugar syrups and confectionery products under Chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, Markan Laboratories has been granted accreditation to perform the following tests methods only: (1) Polarization of Raw Sugar, ICUMSA GS 1/2/3–1; (2) Polarization of White Sugar, ICUMSA GS 2/3–1; (3) Sugar Moisture by Loss on Drying, ICUMSA GS 2/1/3–15; (4) The Determination of the Polarization of Raw Sugar Without Wet Lead Clarification, ICUMSA GS 1/2/3–2. Therefore, in accordance with Part 151.12 of the Customs Regulations, Markan Laboratories of New York, New York is hereby accredited to analyze the products named above.

*Location:* Markan Laboratories accredited site is located at: 5 Hanover Square, 12th Floor, New York, New York, 10004–2614.

**EFFECTIVE DATE:** April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael Parker, National Quality Manager, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Suite 1500 North, Washington, DC 20229.

Dated: April 18, 2001.

**Ira S. Reese,**

*Executive Director, Laboratories and Scientific Services.*

[FR Doc. 01–9941 Filed 4–20–01; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## Advisory Committee for Electronic Tax Administration

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

**ACTION:** Request for nominations.

**SUMMARY:** The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director Electronic Tax Administration will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of the Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

**DATES:** Written nominations must be received on or before may 23, 2001.

**ADDRESSES:** Nominations should be sent to Robin Marusin, W:E, Room 7331 IR, 1111 Constitution Ave., NW., Washington, DC 20224. Application forms can be obtained from Robin

Marusin, who can be reached on (202) 622–8184.

**FOR FURTHER INFORMATION CONTACT:** Robin Marusin, 202–622–8184.

**SUPPLEMENTARY INFORMATION:** The ETAAC will provide continued input into the development and implementation of the IRS' strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements. This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administrations issues and will provide input into the development and implementation of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices 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 will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

**Terence H. Lutes,**

*Director, Electronic Tax Administration.*

[FR Doc. 01–9868 Filed 4–20–01; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–4: OTS Nos. H–3725 and 14544]**

### BancAffiliated, Inc., Bedford, Texas; Approval of Conversion Application

Notice is hereby given that on April 12, 2001, the Director, Examination Policy, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Affiliated Bank, F.S.B., Bedford, Texas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: April 17, 2001.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 01–9890 Filed 4–20–01; 8:45 am]

BILLING CODE 6720–01–M

# Corrections

Federal Register

Vol. 66, No. 78

Monday, April, 23, 2001

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.

## FEDERAL TRADE COMMISSION

### 16 CFR Parts 2, 3 and 4

### Rules of Practice

*Correction*

In rule document 01–8045, beginning on page 17622, in the issue of Tuesday, April 3, 2001, make the following corrections:

1. On page 17622, in the third column, in the first full paragraph, in the 14th line, ''Regulation'' should read ''Regulations''.

2. On page 17623, in the second column, in the third full paragraph, in the seventh line, ''§3.36(b)(2) to'' should read ''§3.36(b)(2) is evidently a typographical error, and should refer''.

3. On page 17624, in the first column, in the second full paragraph, in the 16th line, ''from'' should read ''form''.

4. On page 17625, in the first column, in the third full paragraph, '' program'' should read ''problem''.

5. On page 17627, in the third column, under the List of Subjects Part 2, in the first line, ''Administration'' should read '' Administrative''.

6. On the same page, in the same column, under the List of Subjects Part 3, in the first line, ''Administration'' should read '' Administrative''.

7. On page 17628, in the first column, under the List of Subjects Part 4, in the first line, ''Administration'' should read '' Administrative''.

#### §3.12 [Corrected]

8. On page 17628, in the first column, in §3.12(a)(1), in the third line, ''order or'' should read ''order of''.

#### § 3.31 [Corrected]

9. On page 17628, in the third column, in §3.31(b)(3), in the 11th line, ''to a witness who is retained or specially employed to provide to a witness who is retained or specially employed to provide'' should read ''to a witness who is retained or specially employed to provide expert testimony in the''.

#### § 3.36 [Corrected]

10, On page 17629, in the second column, in §3.36 (a), in the first line, ''Forms. an'' should read ''*Form.* An''.

#### §3.39 [Corrected]

11. On page 17629, in the third column, in §3.39(a), in the third line, ''dependent'' should read '' deponent''.

#### § 3.43 [Corrected]

12. On page 17629, in the third column, the section number is corrected to read as set forth above.

13. On the same page, in the same column, in §3.43 (b), in the 14th line, ''presentations'' should read ''presentation''.

14. On page 17630, in the first column, in §3.43 (b)(2), in the 10th line, ''(1968.'' should read ''(1968)''.

#### § 3.45 [Corrected]

15. On page 17630, in the second column, in §3.45 (b)(2), in the second line, ''*in camera* in treatment'' should read '' *in camera* treatment ''.

16. On the same page, in the same column, in §3.45 (d), in the 11th line, ''finds'' should read ''findings''.

#### § 3.52 [Corrected]

17. On page 17631, in the second column, in §3.52(b), in the first line, ''*Appeal brief.* '' should read ''*Appeal brief.* (1)''.

18. On page 17632, in the first column, in §3.52(e), in the seventh line, ''that'' should read ''the''.

19. On the same page, in the same column, in the same section, in paragraph (f)(2), in the fifth line, ''brief'' should read '' belief''.

20. On the same page, in the same column, in the same section, in the same paragraph, in the 10th line, ''with'' should read '' all''.

21. On the same page, in the same column, in the same section, in the same paragraph, in the 12th line, ''and'' should read '' the''.

22. On the same page, in the second column, in the same section, in paragraph (j), in the 12th line, ''field'' should read '' filed''.

#### § 4.2 [Corrected]

23. On page 17632, in the third column, in §4.2(c), in the eighth line, ''filed the '' should read '' filed with ''.

24. On the same page, in the same column, in the same section, in paragraph (c)(2), in the 14th line ''of'' should read ''of the''.

25. On page 17633, in the first column, in §4.2(c), in the eighth line, ''proceedings '' should read '' proceeding''.

26. On the same page, in the same column, in the same section, in paragraph (f), in the third line, ''or'' should read ''for''.

27. On the same page, in the second column, in §4.2(f)(2), in the seventh line, ''this'' should read ''his''.

28. On the same page, in the same column, in the same paragraph, in the same section, in the 11th line, ''purposed'' should read ''purpose''.

29. On the same page, in the same column, in the same section, in paragraph (g), in the fourth line, ''with'' should read ''with the''.

#### § 4.4 [Corrected]

30. On page 17633, in the second column, in §4.4(a)(3),in the third line ''Commissions' '' should read '' Commission's ''.

31. On the same page, in the same column, in the same section, in the same paragraph, in the ninth line, ''of the'' should read ''of ''

32. On the same page, in the third column, in §4.4(b), in the second line, ''that'' should read ''the''.

33. On the same page, in the same column, in the same section, in the same paragraph, in the second line, '' that Assistant'' should read ''the Assistant''.

34. On the same page, in the same column, in the same section, in the same paragraph, in the sixth line, '' compliant'' should read ''complaint''.

[FR Doc. C1–8045 Filed 4–20–01; 8:45 am]

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Federal Register

Monday,
April 23, 2001

# Part II

# Small Business Administration

## 13 CFR Part 108

## New Markets Venture Capital Program; Final Rule and Proposed Rule

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 108

**RIN 3245–AE40**

### New Markets Venture Capital Program

**AGENCY:** Small Business Administration.

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

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001, this action delays for an additional 60 days the effective date of the rule entitled New Markets Venture Capital Program published in the **Federal Register** on January 22, 2001, 66 FR 7218. The effective date of the final rule was delayed once before, from February 21, 2001 to April 23, 2001, 66 FR 10811 (February 20, 2001). In order to give the Administration further opportunity to consider new regulations and to conduct a rulemaking, this additional delay is necessary.

The New Markets Venture Capital Program final rule adds a new Part 108 to implement the New Markets Venture Capital Program Act of 2000 (''the Act''). The Act authorizes SBA to issue regulations necessary to implement the program. The regulations set forth the requirements for newly-formed venture capital companies to: qualify to become New Markets Venture Capital (''NMVC'') companies; to make developmental venture capital investments in smaller enterprises located in low-income geographic areas; provide operational assistance to enterprises receiving such investments; and allow existing Specialized Small Business Investment Companies to qualify for grants to provide operational assistance to smaller enterprises located in low-income geographic areas.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Agency's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The 60-day delay in effective date is necessary to give Agency officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

**DATES:** The effective date of the New Markets Venture Capital Program rule published in the **Federal Register** on January 22, 2001, at 66 FR 7218, is delayed for another 60 days, from April 23, 2001, to a new effective date of June 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Austin Belton, Director, Office of New Markets Venture Capital, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, (202) 205–7027.

Dated: April 13, 2001.

**John D. Whitmore,**

*Acting Administrator.*

[FR Doc. 01–9838 Filed 4–20–01; 8:45 am]

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 108**

**RIN 3245–AE40**

## New Markets Venture Capital Program

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

**ACTION:** Proposed rule; Proposed withdrawal of interim final rule.

**SUMMARY:** The U.S. Small Business Administration (''SBA'') is proposing to add a new Part 108 to implement the New Markets Venture Capital Program Act of 2000 (''the Act''). The Act authorizes SBA to issue regulations necessary to implement the program. The regulations set forth the requirements for: newly-formed venture capital companies to qualify to become New Markets Venture Capital (''NMVC'') companies to make developmental venture capital investments in smaller enterprises located in low-income geographic areas and provide operational assistance to such enterprises receiving such investments; and (2) existing Specialized Small Business Investment Companies (''SSBICs'') to qualify for grants to provide operational assistance to smaller enterprises located in low-income geographic areas and which such SSBICs have financed or expect to finance.

In today's **Federal Register**, SBA publishes an extension of the effective date of the interim final rule SBA published in the **Federal Register** on January 22, 2001, 66 FR 7218, to June 22, 2001. SBA proposes to withdraw that interim final rule before it becomes effective. SBA further proposes to implement the NMVC program instead with this proposed rule. SBA intends to complete its rulemaking and publish a final rule based on this proposed rule, before the extended effective date of the interim final rule and with sufficient time to implement the NMVC program during fiscal year 2001.

The proposed regulations in this proposed rule are based in large part on the regulations previously published in the interim final rule, with several technical and substantive changes. The **SUPPLEMENTARY INFORMATION** section of this proposed rule includes a discussion of these technical and substantive changes as well as of the comments SBA received on the interim final rule.

**DATES:** Submit comments on or before May 4, 2001.

**ADDRESSES:** Written comments should be sent to Austin Belton, Investment Division, Office of New Markets Venture Capital, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Austin Belton, Director, Office of New Markets Venture Capital, 202–205–7027.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The New Markets Venture Capital Program Act of 2000 (''the Act'') was created by the Consolidated Appropriations Act of 2001, Public Law 106–554, enacted December 21, 2000. Congress recognized that despite the nation's overall economic prosperity, many underserved areas in America have not experienced such prosperity and millions of Americans living in these areas do not have access to jobs or entrepreneurial opportunities. It enacted the New Markets Venture Capital (''NMVC'') Program to help create an economic infrastructure in such underserved areas by encouraging business growth through program-supported investment. This type of investing is known in the community development venture capital industry as ''double bottomline'' investing, because the investments have both an anticipated financial and social return. Social returns include creating sustainable jobs at businesses receiving investments from NMVC companies, and encouraging such businesses to provide much-needed new products and services within underserved areas.

Congress noted that between 1997 and 1998, the median income for the nation's households rose 3.5 percent in real terms, yet 12.7 percent of Americans (34.5 million people) still live below the poverty line. Many of these Americans live in inner city and rural areas, where job opportunities are scarce and there is little to attract small business investors. In rural and urban communities, poverty remains a persistent problem. Job growth is well below the national average, with unemployment at or above 14 percent. Unemployment is 7.5 percent in the African American urban community, and is 6.4 percent in the Hispanic urban population; both are nearly double the national average. Despite these statistics, Congress found that it is not enough to create jobs in these pockets of poverty, rather these communities need a new economic infrastructure to enable them to develop their full potential and participate fully in the economic mainstream. The NMVC program will encourage the growth of such an infrastructure by supporting new equity capital investments by NMVC companies and SSBICs and by providing operational assistance to smaller enterprises located in low-income geographic areas whose growth will foster the creation of wealth and job opportunities in such areas.

SBA will enter into participation agreements with NMVC companies to fulfill these statutory purposes. The Act authorizes SBA to guarantee debentures of NMVC companies. Such debentures leverage the private capital that NMVC companies must raise and enable them to make the equity investments in low-income geographic areas contemplated by the Act. The Act also authorizes SBA to provide grants to NMVC companies to provide operational assistance to smaller enterprises in which they invest. In addition, the Act enhances the ability of existing SSBICs to invest in smaller enterprises in low-income areas by giving them grants to provide operational assistance to such enterprises in connection with such investments.

SBA intends to enter into participation agreements with NMVC companies that have a solid business plan for making investments in the low-income geographic areas targeted by the Act, and that have the most likelihood of expanding economic opportunities in such areas.

### II. Proposal to Withdraw Interim Final Rule

SBA published an interim final rule in the **Federal Register** on January 22, 2001, 66 FR 7218, with an effective date of February 21, 2001. SBA subsequently published in the **Federal Register** on February 20, 2001, 66 FR 10811, a delay of the effective date of the final rule until April 23, 2001. The delay was for the purpose of giving Administration officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President and Chief of Staff memorandum entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001. In today's **Federal Register**, SBA publishes a notice of a further extension of the effective date of the interim final rule, to June 22, 2001. The purpose of this additional extension is to give Administration officials additional time for further review and consideration of new regulations, consistent with that ''Regulatory Review Plan,'' before the interim final rule becomes effective.

SBA now proposes to withdraw that interim final rule before it becomes effective and to implement the NMVC program instead with this proposed rule. SBA seeks comments from interested members of the public on this proposed rulemaking action.

This proposed rule incorporates substantive changes resulting from the Administration's review of the interim final rule. SBA intends to complete its rulemaking and publish a final rule based on this proposed rule, before the extended effective date of the interim final rule.

SBA has published an extension of the application filing deadline, from April 19, 2001 to May 21, 2001, 66 FR 18993 (April 12, 2001). SBA hopes to be able to complete its rulemaking on this proposed rule and publish a final rule with an effective date sufficiently in advance of that date to allow potential applicants to consider the final rule and its applicability to their applications before they submit them to SBA. If SBA is unable to complete its rulemaking within that time frame, SBA may make a further extension of the application filing date so as to allow at least one week between the effective date of the final rule and the application filing deadline.

**III. Discussion of Comments on Interim Final Rule**

SBA received three comment letters on the interim final rule published in the **Federal Register** on January 22, 2001, 66 FR 7218. This proposed rule reflects several technical changes that are based on SBA's consideration of specific comments in those comment letters. SBA discusses those particular changes in Part B of Section III, ''Section by Section Analysis.'' In this section, SBA will discuss other significant comments recommending changes that SBA considered but chose not to include in this proposed rule.

One commenter recommended that SBA include in the definition of ''Lending Institution'' in § 108.50 any entity certified by the U.S. Department of Treasury to be a Community Development Financial Institution (''CDFI''). SBA proposes not to implement this suggestion. Many CDFIs already may qualify as ''Lending Institutions'' within the existing definition and, therefore, would not need this change to the regulation. SBA's definition of ''Lending Institution'' includes entities that are subject to regulatory oversight by third parties or other objective means of oversight, which reduces the potential for conflicts of interest with associated entities, including NMVC companies. Entities that are CDFIs can include venture capital funds and non-profit certified development companies, which may not be subject to objective oversight. Those entities associated with a NMVC company that qualify as CDFIs but not ''Lending Institutions'' within SBA's definition, may present potential conflicts of interest between those associates and the NMVC company, which justifies the requirement in proposed § 108.730(d) for prior approval by SBA of a financing with such associates.

One commenter recommended that SBA change one aspect of its management and ownership diversity regulation, § 108.150(b), to allow for a more than 70% drop-down NMVC company subject to SBA prior approval. SBA proposes not to change the 70% limitation because SBA believes that a 70% limitation on ownership of a NMVC company by one person or affiliated group of persons is reasonable, regardless of the identity or motivations of such person or persons. In addition, SBA proposes to delete language that would have allowed SBA to approve an exception to this requirement.

One commenter suggested that SBA expand the scope of the requirement for a market analysis that applicants for NMVC company designation must include in their comprehensive business plans, § 108.320(c). Specifically, the commenter requested that SBA add to the end of the first sentence in that subsection the phrase '' * * * and the low-income individuals living in those areas.'' SBA proposes not to implement this suggestion, for two reasons.

First, this would add a requirement on applicants that goes beyond the scope of the Act. ''Low-income individual'' is a defined term in section 351(2) of the Small Business Investment Act (''SBI Act''), as amended by the Act. The Act uses that defined term only in the context of the Administrator's discretionary ability to designate additional areas as LI areas (see section 351(3)(A)(iii) of the SBI Act as amended by the Act). Section 352(1) of the SBI Act, as amended by the Act, describes one of the purposes of the NMVC program as promoting economic development in LI areas and ''among individuals living in such areas.'' Congress could have used the defined term ''low-income individuals'' here, if it had so intended, but chose not to. Therefore, SBA believes it would be going beyond the statutory language and purpose to impose a requirement on NMVC company applicants to demonstrate how its activities will have a positive economic impact on the ''low-income individuals living in'' LI areas.

Second, the market analysis requirement in this section already requires applicants to analyze how its activities will have a positive economic impact on the LI areas in which it intends to focus its activities. SBA intends that applicants include in this analysis a discussion of all relevant aspects of economic impact on the LI areas, which reasonably would include impact on residents of the areas.

One commenter stated that it believes SBA did not include in § 108.360, which addresses criteria for conditional approval, certain elements the commenter believes the Act requires SBA to consider in selecting NMVC company applicants for conditional approval.

Section 354(c)(2) of the SBI Act, as amended by the Act, sets forth the criteria SBA must consider in selecting NMVC company applicants for conditional approval. Section 354(c)(2)(E) requires SBA to consider the likelihood that an applicant will be able to satisfy the conditions set forth in section 354(d) of the SBI Act, as amended by the Act. Sections 354(d)(1) and (2) set forth the minimum amounts of capital and grant matching resources a conditionally approved NMVC company must raise in order to be considered for final approval. Proposed § 108.360 sets forth the evaluation criteria SBA proposes to consider in selecting applicants for participation in the NMVC program. One of those criteria, proposed § 108.360(h), is the likelihood and the time frame within which the applicant will be able to raise the minimum amounts of capital and grant matching resources the company must raise in order to be considered for final approval.

SBA believes that this adequately implements the statutory requirement in section 354(c)(2)(E) that SBA consider the likelihood that an applicant will be able to raise the resources required under section 354(d) within the required time period. In addition, in the competitive selection process for participation in the NMVC program, SBA intends to evaluate each applicant's plan for raising required resources and the likelihood that the applicant can implement its plan.

One commenter suggested that SBA revise § 108.380(a)(1)(i)(B) to limit the amount of grant matching resources a conditionally approved NMVC company must raise in order to receive final approval. The commenter suggested this limit should be an amount not more than the amount of operational assistance grant that SBA has ''conditionally designated for that NMVC company.'' SBA proposes not to implement this suggestion for several reasons.

First, SBA will not ''conditionally designate'' or otherwise commit or obligate its appropriated funds for operational assistance grants to conditionally approved NMVC

companies and SSBIC grant applicants. SBA will obligate its appropriated funds only to finally approved NMVC companies and SSBICs that raise the required amounts of capital and grant matching resources by the applicable deadlines.

Second, the statutory scheme created by the Act provides that conditionally approved NMVC companies must raise at least a specified minimum of capital and grant matching resources by a deadline established by SBA. There is no prohibition on a conditionally approved NMVC company raising more capital than it proposed to raise in the plan it submitted to SBA and upon which SBA gave conditional approval. If a conditionally approved NMVC company did so, however, pursuant to the Act it also must raise additional grant matching resources in an amount not less than 30 percent of the capital it actually raised. In addition, there also is no statutory prohibition on a NMVC company raising the minimum of $5 million in capital but raising more than the minimum amount for grant matching resources of 30% of capital. If one or more conditionally approved NMVC companies raised more grant matching resources than anticipated at the time of selections for conditional approval, that could result in SBA not having sufficient appropriated funds to make grants equal to the full amount of each NMVC company's grant matching resources. In that event, SBA would have to use the pro rata reduction provision in proposed § 108.2020(c).

One commenter believes that the regulations do not, but should, require a NMVC company to provide reports to SBA concerning small businesses that receive operational assistance but not financing from the NMVC company or small businesses in which the NMVC company invests (''portfolio concerns'') that are located outside LI areas. Specifically, the commenter states that section 361(2) of the SBI Act, as amended by the Act, requires a NMVC company to report the number and percentage of employees of such businesses that reside in LI areas. Another commenter suggested that SBA expand the scope of the reporting requirements set forth in § 108.630(e) to include required reporting on the full-time equivalent jobs created and the percentage of these jobs filled by people who were low-income individuals immediately prior to employment in such jobs. SBA proposes not to implement this second suggestion because SBA believes this goes beyond the scope and purpose of the Act. See discussion, above, concerning ''low-income individual.''

Proposed § 108.630(e) already addresses the first suggestion, because it would require a NMVC company to report to SBA certain social, economic, or community development impact information concerning every financing the NMVC company makes. SBA has developed a reporting form specifically for this purpose (SBA Form 468, Schedule 9). This reporting requirement applies to both low-income investments and to any other financing the NMVC company makes (including financings the NMVC company makes in businesses located outside LI areas). NMVC companies must provide information concerning each of its portfolio concerns, on the number of the concern's full-time employees that reside both inside and outside the LI areas and the quality of those jobs (for example, whether health insurance and pension plan benefits are provided). With respect to a small business to which the NMVC company provides operational assistance but not also a financing, SBA proposes to implement the other part of the first suggestion, by requiring a NMVC company to report on the numbers of that small business' employees that reside inside and outside of a LI area. This reporting requirement will be contained within the grant award agreement between SBA and finally approved NMVC companies.

One commenter recommended that SBA reduce or eliminate the examination fee set forth in § 108.692. SBA considered the suggestion but proposes not to implement it. The examination fee for NMVC companies is comparable to or lower than the examination fee for a similarly-sized SBIC. SBA expects the examination of NMVC companies to be significantly more complex than the examination required for SBICs. For example, SBA will be required to audit a NMVC company's reporting on the economic, social, and community impact of its financings, and its use of operational assistance funds.

One commenter suggested that SBA ease the requirement in § 108.710 that 80 percent of the businesses receiving financing from a NMVC company must be low-income enterprises (defined in proposed § 108.50 as smaller enterprises located in LI areas at the time the financing is made) and must receive equity capital investments, in order to give NMVC companies more investing flexibility. The commenter recommends a revision that would allow the 80 percent of businesses that must be low-income enterprises to not necessarily be the same 80 percent of businesses that receive equity capital investments.

SBA proposes not to implement this suggestion. SBA believes the clear statutory purpose behind the NMVC program, as set forth in sections 352(1) and (2) of the SBI Act, as amended by the Act, is specifically to address the unmet equity needs of smaller enterprises located in LI areas, not generally the unmet credit needs of such businesses. By requiring the same 80% of smaller enterprises located in LI areas also to receive equity capital investments, this statutory purpose is better served.

One commenter suggested that it might be impossible for a NMVC company to comply with the requirements of § 108.710(a) if, at the end of the NMVC company's fiscal year, it has invested most or all of its capital and is unable to draw leverage in order to make additional investments to bring itself into compliance. This comment anticipates that a NMVC company will use all of its private capital first, before drawing any leverage. SBA does not anticipate this problem will arise for a NMVC company that is properly using both its regulatory capital and leverage to make investments. SBA expects NMVC companies to utilize the debenture leverage available under the NMVC program as they make investments.

One commenter suggested that SBA eliminate the prohibition in § 108.800(b) that a NMVC company may not provide a credit guarantee for an unincorporated portfolio company. SBA proposes not to implement this suggestion. This is a long-standing policy in the SBIC program and SBA believes it also should be applicable to NMVC companies.

## IV. Section by Section Analysis

This section by section analysis is divided into two parts. Part A includes a description of each proposed regulation. Part B describes each regulation for which SBA proposes a significantly changed version from the version of that regulation that was published in the interim final rule, and the basis for the change. These changes include technical and substantive changes.

### *A. Section by Section Analysis of Regulations*

The following is a section by section analysis of SBA's proposed rule to add a new part 108 to title 13 of the Code of Federal Regulations to implement the Act.

#### 1. General Information About the Regulations

As you read through the section by section analysis of particular

regulations, you will see that we propose to model many of these regulations on similar regulations governing SBA's Small Business Investment Company (''SBIC'') program, found in part 107 of this title. In addressing the challenge of implementing the NMVC program, SBA is able to draw upon the experience that it has gained over the last 43 years in administering the SBIC program.

The SBIC program was created by the Small Business Investment Act of 1958 in response to a Federal Reserve study finding that small businesses in general were unable to obtain the long-term debt and equity funds that they needed for success. The basic objective of the program is to attract and supplement private capital, managed by private investment managers, to meet that need. SBA licenses such companies as SBICs, regulates their activities to ensure that they are financially sound and serve the program's public policy objectives, and supplements their private capital by guaranteeing debentures or other securities that they issue.

The SBIC program has been extraordinarily successful in recent years and today represents a major factor in small business financing. It is estimated that 34 percent of all companies receiving institutional venture capital in 1999 obtained it from an SBIC. In fiscal year 2000, SBICs invested a record $5.5 billion in more than 3,000 small growth companies. This was accomplished with a budget appropriation of just $24.3 million.

A key strength of the SBIC program lies in the fact that all investment decisions are made by private individuals with their own money at first risk. However, this also represents a limitation in that such investment activities are profit driven and generally are not targeted to small businesses located in low-income areas. Low-income investments typically are smaller and more costly to make, and they require significantly more assistance over the investment period than most SBIC investments. At the same time, they generally offer a more limited profit potential to the investor. The NMVC program addresses these factors by adding to the SBIC structure an operational assistance grant subsidy and by recruiting managers and investors that have an economic development objective in addition to their financial one.

Because of these many similarities between SBICs and NMVC companies and between these two venture capital programs, SBA proposes to incorporate into the NMVC program many of the SBIC regulations that SBA believes are fundamental to the safety and soundness of the SBIC program.

2. Section by Section Analysis

Proposed §§ 108.10 through 108.50 briefly describe the NMVC program, state the legal basis for the program, definitions, and provide guidance on how to read part 108. Most of the definitions come directly from part 107 of this title, which governs the SBIC program. Most of the newly defined terms come directly from the Act, and SBA proposes not to supplement or modify them. SBA also proposes several new definitions, including terms ''Low-Income Enterprise'' and ''Low-Income Investment'' as a shorter way to describe equity capital investments in a smaller enterprise that, at the time of the initial financing, has its principal office located in a low-income geographic area.

Proposed §§ 108.100 through 108.160 describe the qualifications for the NMVC program. Under the Act, NMVC companies must be newly-formed, for-profit entities. SBA proposes to require that NMVC companies be organized under state law and be either corporations, limited liability companies, or limited partnerships. SBA proposes to require that they have qualified management, have economic development as their primary mission, and identify particular low-income geographic areas in which they propose to focus their investment activities. SBA models these regulations on the SBIC program, including the requirements that NMVC companies must have management and ownership diversity and that SBA will require pre-approval of all management expenses of a NMVC company (see §§ 107.100 through 107.160 of this title).

Proposed §§ 108.200 through 108.240 address capitalization of a NMVC company, including minimum capital requirements, permitted sources of capital, and limitations on non-cash contributions to capital. These regulations also are modeled on similar regulations in the SBIC program (see §§ 107.200 through 107.250 of this title).

Proposed §§ 108.300 through 108.330 set forth policies and procedures for application for designation as a NMVC company. SBA proposes to allow submission of applications for participation in the NMVC program only during a specific application period, to be set forth in a Notice of Funds Availability subsequently published in the **Federal Register**, as opposed to a rolling admissions process. SBA proposes to use this method of selecting applicants for three reasons. One reason is that SBA believes this method will enable SBA to achieve the statutory directive of ensuring, to the extent possible and given the applications received, nationwide availability of developmental venture capital. SBA proposes to compare applications both for quality and other criteria described in the regulations, and for the geographic areas they intend to cover so as to choose the best applications for each geographic area and avoid duplication within specific geographic areas. Another reason is that SBA has received one-year appropriated funds for operational assistance grants, and the statute requires SBA to distribute available appropriated funds pro rata among NMVC companies and SSBICs that apply for such grants. (See discussion of §§ 108.2000 through 108.2040 for more information about how SBA proposes to administer the operational assistance grant program.) Submission of all applications for these grant funds at the same time will allow SBA to distribute these funds among all eligible and qualified recipients. Third, SBA believes this procedure will allow SBA to orderly administer appropriated funds it may receive in subsequent fiscal years, by allowing SBA to open up the NMVC program to new rounds of applicants.

SBA proposes to require applicants for participation in the NMVC program to submit an application, similar to the application for the SBIC program but which also includes the requirement for a comprehensive business plan. Many of the topics SBA proposes to require applicants to include in their business plans are outlined in section 354(b) of the SBI Act, as amended by the Act, regarding application for the NMVC program. In addition, SBA proposes to use the following additional topics: market analysis of the specific low-income areas towards which the applicant proposes to target its investments and other activities, operational capacity and investment strategies, plans for raising capital and matching funds for operational assistance grants, and projected amount of investment in low-income areas as opposed to outside those areas. Based in part on the experience of other Federal agencies with similar economic development programs, SBA believes these additional topics will allow SBA to ensure that applicants understand the objectives of the NMVC program and have a good plan for accomplishing those objectives and for creating and maintaining a viable investment fund.

SBA also proposes to assess a fee for receiving a grant under the NMVC program to ensure that applicants are

professional venture capital firms committed to participate in the program.

Proposed §§ 108.340 through 108.395 describe SBA's evaluation criteria and selection process for participation in the NMVC program. SBA proposes to consider ten criteria in its evaluation and selection of applicants for participation in the NVMC program. Most of the specified criteria are set forth in the Act. SBA proposes to use the following additional selection criteria not specifically described in the Act: the quality of the applicant's business plan in terms of meeting the objectives of the program; the strength and likelihood for success of the applicant's operations and investment strategies; the need for developmental venture capital investments in the geographic areas in which the applicant proposes to concentrate its activities; and the extent of the applicant's understanding of the markets in such geographic areas. Based in part on the experience of other Federal agencies with similar economic development programs, SBA believes these additional evaluation criteria are effective indicators of whether the objectives of the NMVC program will be met.

The Act provides for SBA to conditionally approve companies for participation in the NMVC program, based on SBA's evaluation of their applications. Conditionally approved companies must raise the required amounts of capital and of matching funds for the operational assistance grant award from SBA within a time period specified by SBA. As provided in the Act, SBA will finally approve as NMVC companies all conditionally approved NMVC companies that raise the required amount of capital within the time period specified by SBA and sign a participation agreement with SBA. Proposed § 108.380(b) also sets forth procedures under which SBA may grant to conditionally approved companies, as provided in the Act, an exception to the requirement to raise all of their required matching funds for their operational assistance grants before SBA designates them as finally approved NMVC companies.

Proposed §§ 108.400 through 108.470 describe SBA's requirements for changes in ownership, control, or structure of a NMVC company. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.400 through 107.475 of this title).

Proposed §§ 108.500 through 108.585 describe SBA's requirements for managing the operations of a NMVC company. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.500 through 107.590 of this title).

Proposed §§ 108.600 through 108.680 describe SBA's record keeping, record retention, and reporting requirements for NMVC companies. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.600 through 107.680 of this title). SBA also proposes to require each NMVC company to provide reports concerning the community development impact of each investment it makes, as well as reports on its administration and use of grant funds as required by Circular A–110 of the Office of Management and Budget, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' SBA anticipates that to the extent not inconsistent with SBA's regulations for the NMVC program, NMVC companies' administration and use of grant funds will be subject to OMB Circular A–110 and to Part 31 of the Federal Acquisition Regulations, 48 CFR 31.000 *et seq.*, ''Contract Cost Principles and Procedures.'' OMB Circular A–110 is optional for use in connection with grants to commercial organizations. SBA proposes to apply it to NMVC companies in order to take advantage of existing and well-known grant administrative procedures and policies to facilitate SBA's orderly administration of grants to NMVC companies. (See the discussion of §§ 108.2000 through 108.2040 concerning applicability of these same procedures and policies to grants to SSBICs.)

Proposed §§ 108.690 through 108.692 describe SBA's requirements for SBA's examinations of NMVC companies. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.690 through 107.692 of this title).

Proposed §§ 108.700 through 108.885 describe SBA's requirements for determining the eligibility of financings of small businesses by NMVC companies, and regarding types of allowable financings. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.700 through 107.885 of this title).

Proposed § 108.710 sets forth the requirement that at the close of each year, 80 percent of the concerns that NMVC companies have financed must be smaller enterprises that, as of the time of the initial financing, had their principal office in a low-income geographic area and in which the NMVC companies have made equity capital investments as defined in the regulations (see proposed § 108.50). This regulation implements the requirement outlined in the definition of ''participation agreement'' in section 351(6)(B) of the SBI Act. SBA interprets this statutory section to refer to 80 percent of the businesses in which a NMVC company invests.

Proposed §§ 108.1100 through 108.1720 describe SBA's requirements and procedures for NMVC companies to obtain leverage from SBA and the procedures governing how SBA will fund leverage. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1100 through 107.1720 of this title).

Proposed §§ 108.1810 through 108.1840 describe defaults by NMVC companies on the terms and conditions governing their participation in the NMVC program, and SBA's remedies upon such defaults. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1810 through 107.1840 of this title).

Proposed § 108.1900 concerns termination by a NMVC company of its participation in the NMVC program. This regulation is modeled after a similar regulation for the SBIC program (see § 107.1900 of this title).

Proposed §§ 108.1910 through 108.1930 address miscellaneous issues, including application for an exemption from regulatory requirements and the effect of regulation changes on transactions previously consummated. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1910 through 107.1930 of this title).

Proposed § 108.1940 sets forth procedures under which SBA may designate additional census tracts or equivalent county divisions as low-income geographic areas. This regulation implements the authority given to SBA's Administrator in section 351(3)(A)(iii) of the SBI Act, as amended by the SBI Act. SBA has designed these procedures to allow for maximum opportunity by interested members of the public to ask SBA to designate specific census tracts or equivalent county divisions as additional low-income geographic areas.

Proposed §§ 108.2000 through 108.2040 set forth requirements and procedures for operational assistance grants to both NMVC companies and to SSBICs. SBA proposes to award such grants only after receiving and evaluating applications in response to a Notice of Funds Availability published in the **Federal Register**. SBA proposes to award grants to SSBICs and to NMVC companies in such a way as to promote developmental venture capital

investments nationwide and in both urban and rural areas.

SBA also proposes to require SSBICs to provide reports on its administration and use of grant funds as required by Circular A–110 of the Office of Management and Budget, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' SBA anticipates that to the extent not inconsistent with these regulations, SSBICs' administration and use of grant funds will be subject to OMB Circular A–110 and to part 31 of the Federal Acquisition Regulations, 48 CFR 31.000 *et seq.*, ''Contract Cost Principles and Procedures.'' OMB Circular A–110 is optional for use in connection with grants to commercial organizations. SBA proposes to apply it to SSBICs in order to take advantage of existing and well-known grant administrative procedures and policies to facilitate SBA's orderly administration of grants to SSBICs.

*B. Discussion of Changes to Regulations as Published in Interim Final Rule*

SBA wishes to help members of the public who already are familiar with the version of the regulations published as an interim final rule to focus only on those changes SBA makes in this proposed rule to that original version of the regulations. Accordingly, in this Part B SBA describes only those regulations to which SBA made significant changes and the basis for the changes.

In § 108.50, SBA proposes to change the previously published version of the definitions of Equity Capital Investment, Financing or Financed, and Trust Certificate Rate to make technical corrections. SBA proposes to change the previously published version of the definition of Relevant Venture Capital Finance to eliminate reference to intent and instead focus on demonstrable prior actions, and to further distinguish this definition from the definition of Community Development Finance. The proposed definition of Community Development Finance focuses on any type of financing (debt or equity) in low-income communities. The definition also does not limit the relevant experience in terms of the types of entities receiving the financing. By contrast, the proposed, revised definition of Relevant Venture Capital Finance focuses more specifically on equity-type investments in small businesses in low-income communities or benefiting low-income communities. SBA believes that this change will better enable an applicant for NMVC company designation to demonstrate in its application the relevant types of experience.

SBA proposes to change the previously published version of § 108.110 to add the word ''team'' in the first sentence. The purpose of this change is to clarify that the management team as a whole, as opposed to each member of the team individually, must have knowledge, experience and capability in Community Development Finance or Relevant Venture Capital Finance satisfactory to SBA.

SBA proposes to change the previously published version of § 108.240 by withdrawing it in its entirety because, upon SBA's further consideration, SBA believes it will not be necessary or desirable for NMVC companies to have the ability to include non-cash contributions in Private Capital. SBA also proposes to make technical changes to the previously published version of §§ 108.200 and 108.230(d) to reflect the withdrawal of § 108.240.

SBA proposes to change the previously published version of § 108.320 by revising paragraphs (f) and (g). This section addresses the contents of the comprehensive business plan that applicants for NMVC company designation must submit for SBA's consideration. Paragraph (f) concerns the applicant's plan for providing operational assistance. One commenter expressed concern that the regulations did not clearly require NMVC companies to use licensed professionals, when necessary, to provide operational assistance to small business. Section 354(c)(2)(G) of the SBI Act, as amended by the Act, requires SBA to evaluate, among other things, the strength of an applicant's proposal to provide operational assistance to small business concerns, ''as the proposal relates to * * * the use of resources for the services of licensed professionals, when necessary * * *'' The previously published version of paragraph (f) in § 108.320 stated that applicants must address whether and to what extent they plan to use licensed professionals, which leaves open the possibility that they might choose not to use licensed professionals. In order to clarify that NMVC companies selected by SBA must use licensed professionals, when necessary, SBA proposes to revise paragraph (f) to require applicants to address how they plan to use licensed professionals, when necessary. SBA also proposes to revise the previously published version of § 108.2000(b)(4)(ii)(A) to make the same change with respect to an SSBIC applicant's planned use of operational assistance grant funds.

Another commenter suggested that SBA revise this paragraph (f) to request that in addition to addressing when applicants plan to use licensed professionals, they also address how they plan to provide operational assistance through the use of their own staff versus outside entities. SBA considers that applicants necessarily will have to address this topic in their plan for providing operational assistance and, therefore, believes that this topic need not be set forth as a specific requirement.

SBA also proposes to revise the previously published version of paragraph (g) to make a technical change suggested by a commenter.

SBA proposes to change the previously published version of § 108.330 to revise the name of the fee and when it is due. SBA reconsidered the provisions in the Act that authorize SBA to charge fees, and has determined that SBA has authority to charge a fee in connection with SBA's issuance of a grant. SBA proposes to require applicants for NMVC company designation, who will be entitled to a grant upon final approval as a NMVC company, to pay this fee in advance at the time of application submission. This will ensure that applicants are professional venture capital firms committed to participate in the program. However, SBA proposes to revise the previously published version of the regulation to state that SBA will refund this fee to those applicants that SBA does not select for conditional approval or final approval. SBA also proposes to revise the previously published version of the regulation to require payment of the full fee in advance, to reduce SBA's administrative costs to deposit fees and issue refunds.

SBA proposes to change the previously published version of § 108.340 by inserting the phrase ''(if any)'' in the first sentence to clarify that SBA may or may not conduct interviews or site visits with NMVC company applicants, depending on available time and resources. SBA proposes that only if SBA does in fact conduct such interviews or site visits will SBA consider them in evaluating and selecting applicants for conditional approval.

SBA proposes to change the previously published version of § 108.520 to clarify that SBA must approve both the initial management expenses of a NMVC company, and any subsequent increase in such expenses.

SBA proposes to change the previously published version of § 108.710 to add a new substantive requirement. The previously published

version of the regulation required that at the end of each fiscal year, 80 percent of a NMVC company's portfolio concerns must be low-income enterprises and must receive equity capital investments. In other words, 80 percent of the business concerns receiving financing must have received an equity capital investment, be a smaller enterprise, and be located in a low-income geographic area (''LI area''). SBA proposes that in addition, for all financings extended by a NMVC company, the NMVC company must have invested at least 80 percent (in total dollars) in low-income investments. In other words, 80 percent of the dollars used to finance business concerns must be invested in equity capital investments in smaller enterprises located in LI areas.

This additional provision would require that most of a NMVC company's capital and leverage go toward making equity investments in smaller enterprises located in LI areas. SBA believes that this will fulfill one of the Act's purposes—to address the unmet equity investment needs of businesses located in LI areas. SBA has not required 100 percent of a NMVC company's capital and leverage to meet this requirement, however, in order to give a NMVC company some flexibility as to its use of the remaining 20 percent. A NMVC company may choose to make other kinds of investments with a lower risk and/or higher anticipated rate of return to offset the expectation of higher risk and lower rate of return from low-income investments, in order to ensure the overall economic viability of the NMVC company. The economic viability of a NMVC company is an important public policy consideration because it better ensures both the safety and soundness of the use of taxpayer dollars for leverage and grant assistance to NMVC companies and the ability of a NMVC company to attract private investment dollars.

SBA proposes to change the previously published version of § 108.720 by revising paragraphs (b)(2) and (h). The previously published version of paragraph (b)(2) would be revised to require that a NMVC company must obtain SBA's prior written approval before financing a passive small business. SBA believes that this issue will not arise with any frequency, considering the types and sizes of financings NMVC companies are likely to make. However, to the extent that it does arise, by requiring advance approval SBA intends to ensure narrow application of this exception to the rule that only active operating small business concerns are eligible to receive financing from a NMVC company.

SBA also proposes to change the previously published version of paragraph (h) to include an additional situation in which a small business is ineligible for financing. SBA proposes that a NMVC company would be prohibited from providing funds that a small business will use to purchase stock in or provide capital to a Small Business Investment Company (''SBIC'') or to repay indebtedness incurred for the purpose of investing in an SBIC.

SBA proposes to change the previously published version of § 108.1230 to make technical corrections. In paragraph (d)(3), which addresses which representatives of a NMVC company from whom SBA will accept a certification in connection with a draw of leverage, SBA proposes to add to the list an individual who is authorized to act as or for a member-manager. This change addresses NMVC companies that are organized as limited liability companies. Similarly, SBA proposes to change the previously published version of § 108.1810 to make a technical correction, to address NMVC companies that are organized as limited liability companies.

SBA proposes to make several changes to the previously published version of § 108.2000. SBA proposes to change paragraph (b)(3) to charge a $5,000 grant issuance fee to SSBICs applying for grants under the NMVC program. SBA proposes that this fee will be in the same amount as that charged to applicants for the NMVC company program and will be refunded in full if the SSBIC does not receive a grant award. This change is necessary to treat all applicants for operational assistance grants under the NMVC program the same.

SBA also proposes to change the previously published version of § 108.2000(b)(4)(ii), which describes the elements of the plan an SSBIC must submit to SBA as part of its application for an operational assistance grant. SBA proposes to add four new issues that an SSBIC's plan must address: track record of management team in obtaining public policy results through investments; market analysis; regulatory capital; and projected impact. These changes are necessary to treat all applicants for operational assistance grants under the NMVC program the same.

SBA also proposes to change the previously published version of § 108.2000(b)(5), which describes the evaluation and selection criteria SBA will use to select SSBICs for an operational assistance grant. SBA proposes to add six new criteria in subparagraphs (ii), (iv), (v), (vi), (vii), and (viii). These changes are necessary to treat all applicants for operational assistance grants under the NMVC program the same.

SBA proposes to change the previously published version of § 108.2030 to revise the allowable time period within which binding commitments or annuities for grant matching resources may be payable to a NMVC company or SSBIC. SBA proposes that the allowable time period be five years. The reason for this change is that both Federal funds and matching resources must be available and expended within the same time period. By law, SBA's grant funds will be available for expenditure from the date of award to a date not more than five years from that date. As a result, the time period within which the grantee's grant matching resources are available to the grantee must not exceed the time period within which SBA grant funds will be available.

## V. Regulatory Compliance Section—Compliance With Executive Orders 12866, 12988 and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

### *Compliance With Executive Order 12866*

The Office of Management and Budget (OMB) has reviewed this proposed rule as a ''significant'' regulatory action under Executive Order 12866. A regulatory assessment is set forth below.

Low-income communities in the United States face multiple and varied barriers to sustainable growth. But a common obstacle for virtually all such communities is that they are unable to attract sufficient equity capital and technical assistance for starting and expanding businesses. Federal Reserve Board Chair Alan Greenspan has observed that equity capital is crucial to the existence of an innovative and productive business community, especially in lower-income communities. Yet the existing private venture-capital industry is heavily concentrated in affluent, high technology regions located in only a handful of states.

In order to promote economic development and address the unmet equity needs of smaller businesses located in low-income areas, Congress passed and President Clinton signed into law the legislation creating the NMVC program. SBA proposes to use these regulations to implement and administer the NMVC program. NMVC companies will be newly formed, for-profit investment companies with

private management. Their objective will be to create an economic infrastructure in underserved areas. NMVC companies will accomplish this by making equity investments in smaller enterprises, primarily located in low-income geographic areas. SBA anticipates that this type of investing will generate both financial and social returns. The social returns can include creating sustainable jobs at businesses receiving investments from NMVC companies, and encouraging such businesses to provide much-needed new products and services within underserved areas.

SBA estimates that the NMVC program will cost approximately $1 million annually to administer. The cost to the government includes the costs of staff (including benefits) and all other overhead expenses. SBA proposes to select participants for the NMVC program and regulate NMVC operations to ensure that public policy objectives are being met. Toward that end, SBA proposes to require NMVC companies to provide regular performance reports and take part in annual financial examinations.

SBA estimates that it will cost a NMVC company approximately $6,000 to apply for designation as a NMVC company, not including a $5,000 grant issuance fee due in advance at the time of application. This includes the cost of one staff person at a level comparable to a Federal employee at a GS–13 grade level spending 160 hours to complete the application. After receiving designation as a NMVC company, the annual cost to the NMVC company will be based on compliance with the reporting requirements of the program. SBA anticipates that compliance with the reporting requirements of the program will cost approximately $1,500. This includes the cost of one staff person at a level comparable to a Federal employee at a GS–13 grade level spending approximately 40 hours preparing the required performance and financial reports. The costs to NMVC companies and SSBICs that choose to participate in the grant aspect of the program include approximately $1,500 to prepare the initial grant application (approximately 40 hours of work), and approximately $600 annually thereafter to prepare the required quarterly status reports (approximately 16 hours of work). Again, these costs are estimated based upon one staff person at a level comparable to a Federal employee at a GS–13 grade level. There is also a fee payable by the NMVC company each time SBA examines the company. This rulemaking action proposes a base fee for the examination of $3,500.

SBA believes that there are no alternatives to the planned regulatory action that could more adequately address the equity needs of the nation's low-income areas. In developing the regulations, application package and reporting materials SBA purposefully followed proven industry practices. Based upon the foregoing, SBA believes that its proposed rule implements the congressionally-mandated NMVC program in the most cost effective and efficient manner.

*Compliance With Executive Order 12988*

SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of Executive Order 12988.

*Compliance With Executive Order 13132*

For purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs.

*Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35.*

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the collection of information (''collection'') for this program includes the NMVC program application package and reporting and recordkeeping requirements. SBA previously requested from the Office of Management and Budget (''OMB'') an emergency clearance of this collection. OMB reviewed and approved the collection and assigned OMB control number 3245–0332.

SBA has made the collection available to the public on SBA's web site at http://www.sba.gov/inv and by calling Terri Dennin at (202) 205–6234. SBA already has provided the public with a 60-day comment period on this collection (66 FR 7218). SBA received no comments on the collection.

**List of Subjects in 13 CFR Part 108**

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration is proposing to add 13 CFR part 108 as follows:

**PART 108—NEW MARKETS VENTURE CAPITAL (''NMVC'') PROGRAM**

**Subpart A—Introduction to Part 108**

Sec.
108.10 Description of the New Markets Venture Capital Program.
108.20 Legal basis and applicability of this part 108.
108.30 Amendments to Act and regulations.
108.40 How to read this part 108.

**Subpart B—Definition of Terms Used in Part 108**

108.50 Definition of terms.

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**Subpart N—Requirements and Procedures for Operational Assistance Grants to NMVC Companies and SSBICs**

108.2000 Operational Assistance grants to NMVC Companies and SSBICs.
108.2010 Restrictions on use of Operational Assistance grant funds.
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**Authority:** 15 U.S.C. 634(b)(6) and Pub. L. 106–544 (114 Stat. 2763).

## Subpart A—Introduction to Part 108

### § 108.10 Description of the New Markets Venture Capital Program.

The New Markets Venture Capital (''NMVC'') Program is a developmental venture capital program for the purpose of promoting economic development and the creation of wealth and job

opportunities in low-income geographic areas and among individuals living in such areas. SBA selects and then enters into participation agreements with selected newly formed venture capital companies, and provides leverage in the form of debenture guarantees to such companies to allow them to make equity capital investments in smaller enterprises located in low-income geographic areas. SBA also awards grants to such companies and to Specialized Small Business Investment Companies so that they can provide operational assistance to such smaller enterprises in connection with such investments.

**§ 108.20 Legal basis and applicability of this part 108.**

The regulations in this part implement Part B of Title III of the Small Business Investment Act of 1958, as amended. All NMVC Companies must comply with all applicable SBA regulations, accounting guidelines and valuation guidelines for NMVC Companies, available from SBA.

**§ 108.30 Amendments to Act and regulations.**

A NMVC Company is subject to all existing and future provisions of the Act and parts 108 and 112 of title 13 of the Code of Federal Regulations.

**§ 108.40 How to read this part 108.**

(a) *Center headings.* All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms. Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 108.50 have initial capitalization in this part 108.

(c) *''You.''* The pronoun ''you'' as used in this part 108 means a NMVC Company unless otherwise noted.

## Subpart B—Definition of Terms Used in Part 108

**§ 108.50 Definition of terms.**

*Act* means the Small Business Investment Act of 1958, as amended.

*Affiliate* or *Affiliates* has the meaning set forth in § 121.103 of this chapter.

*Applicant* means any entity submitting an application to SBA for designation as a NMVC Company under this part.

*Articles* mean articles of incorporation or charter for a Corporate NMVC Company, the partnership agreement or certificate for a Partnership NMVC Company, and the operating agreement or other organizational documents for a LLC NMVC Company.

*Assistance* or *Assisted* means Financing of or management services rendered to a Small Business by or through a NMVC Company pursuant to the Act and the regulations in this part.

*Associate* of a NMVC Company means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate NMVC Company;

(ii) A Control Person, employee or agent of a Partnership NMVC Company;

(iii) A managing member of a LLC NMVC Company;

(iv) An Investment Adviser/Manager of any NMVC Company, including any Person who contracts with a Control Person of a Partnership NMVC Company to be the Investment Adviser/Manager of such NMVC Company; or

(v) Any Person regularly serving a NMVC Company on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate NMVC Company or 10 percent of the membership interests of an LLC NMVC Company, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership NMVC Company. However, neither a limited partner in a Partnership NMVC Company nor a non-managing member in an LLC NMVC Company is considered an Associate if such Person is an entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the NMVC Company and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a NMVC Company.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the NMVC Company).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, if any Associate relationship described in paragraphs (1) through (7) of this definition exists at any time within six months before or after the date that a NMVC Company provides Financing, then that Associate relationship is considered to exist on the date of the Financing.

(11) If any NMVC Company has any ownership interest in another NMVC Company, the two NMVC companies are Associates of each other.

*Capital Impairment* has the meaning set forth in § 108.1830(b).

*Central Registration Agent* or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 108.1620 and performing similar functions for Debentures funded outside the pooling process.

*Close Relative* of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

*Commitment* means a written agreement between a NMVC Company and an eligible Small Business that obligates the NMVC Company to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the NMVC Company's obligation to fund the commitment, but these conditions must be outside the NMVC Company's control.

*Common Control* means a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more NMVC companies are presumed to be under Common Control if they are

Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

*Community Development Finance* means debt and equity-type investments in low-income communities.

*Conditionally Approved NMVC Company* means a company that—

(1) Has applied for participation as a NMVC Company, and

(2) SBA has conditionally approved to participate in the NMVC program for a specified period of time not to exceed two years, subject to the company fulfilling the requirements to be a NMVC Company within that specified period of time.

*Control* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a NMVC Company or other concern, whether through the ownership of voting securities, by contract, or otherwise.

*Control Person* means any Person that controls a NMVC Company, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership NMVC Company;

(2) Any Person serving as the general partner, officer, director, or manager (in the case of a limited liability company) of any entity that controls a NMVC Company, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership NMVC Company or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of the general partner of such Partnership NMVC Company;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a Partnership NMVC Company or any entity described in paragraphs (1) or (2) of this definition.

*Corporate NMVC Company.* See definition of NMVC Company in this section.

*Debentures* means debt obligations issued by NMVC companies pursuant to section 355 of the Act and held or guaranteed by SBA.

*Debt Securities* are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options that you acquire.

*Developmental Venture Capital* means capital in the form of Equity Capital Investments in Smaller Enterprises made with a primary objective of fostering economic development in Low-Income Geographic Areas.

*Distribution* means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in a Partnership NMVC Company, or to shareholders in a Corporate NMVC Company, or to members in an LLC NMVC Company. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the NMVC Company's non-SBA partners, shareholders, or members.

*Equity Capital Investments* means investments in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments must not require amortization. Equity Capital Investments may be guaranteed by one or more third parties; however, neither Equity Capital Investments nor such guarantee may be collateralized or otherwise secured. Investments classified as Debt Securities are not precluded from qualifying as Equity Capital Investments. Equity Capital Investments may provide for royalty payments only if the royalty payments are based on the earnings of the concern.

*Equity Securities* means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests.

*Financing* or *Financed* means outstanding financial assistance provided to a Small Business by a NMVC Company, whether through:

(1) Loans;

(2) Debt Securities;

(3) Equity Securities;

(4) Guarantees; or

(5) Purchases of securities of a Small Business through or from an underwriter (see § 108.825).

*Guaranty Agreement* means the contract entered into by SBA which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and SBA's rights in connection with such guarantee.

*Includible Non-Cash Gains* means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a NMVC Company obtains a written opinion from an investment banking firm acceptable to SBA stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

*Institutional Investor* means:

(1) *Entities.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (See also § 108.230(c)(4) for limitations on the amount of an Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 8a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Pub. L. 93–406, 88 Stat. 829), excluding plans established under section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (l)(ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that SBA determines to be an Institutional Investor.

(2) *Individuals.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a-77aa)) and whose commitment to the NMVC Company is backed by a letter of credit from a State or National bank acceptable to SBA.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the NMVC Company. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

*Investment Adviser/Manager* means any Person who furnishes advice or assistance with respect to operations of a NMVC Company under a written contract executed in accordance with the provisions of § 108.510.

*Lending Institution* means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or NASDAQ and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

*Leverage* means financial assistance provided to a NMVC Company by SBA through the guaranty of a NMVC Company's Debentures, and any other SBA financial assistance evidenced by a security of the NMVC Company.

*Leverageable Capital* means Regulatory Capital, excluding unfunded commitments.

*LLC NMVC Company.* See definition of NMVC Company in this section.

*Loan* means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

*Loans and Investments* means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating concerns acquired, and notes and other securities received, as set forth in the Statement of Financial Position of SBA Form 468.

*Low-Income Enterprise* means a Smaller Enterprise that, as of the time of the initial Financing, has its Principal Office located in a Low-Income Geographic Area.

*Low-Income Geographic Area (''LI Area'')* means—

(1) Any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the United States Department of Commerce for purposes of defining poverty areas), if—

(i) The poverty rate for that census tract is not less than 20 percent;

(ii) In the case of a tract—

(A) That is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(B) That is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(C) As determined by the Administrator in accordance with § 108.1940 of this part, a substantial population of Low-Income Individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(2) any area located within—

(i) A Historically Underutilized Business Zone (''HUBZone'') as defined in section 3(p) of the Small Business Act and 13 CFR 126.103;

(ii) An Urban Empowerment Zone or Urban Enterprise Community (as designated by the Secretary of the United States Department of Housing and Urban Development); or

(iii) A Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the United States Department of Agriculture).

*Low-Income Individual* means an individual whose income (adjusted for family size) does not exceed—

(1) For metropolitan areas, 80 percent of the area median income; and

(2) For nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income, or

(ii) 80 percent of the statewide nonmetropolitan area median income.

*Low-Income Investment* means an Equity Capital Investment in a Low-Income Enterprise.

*Management Expenses* has the meaning set forth in § 108.520.

*NAICS Manual* means the latest issue of the North American Industrial Classification System Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pa., 15250–7954.

*New Markets Tax Credit program* means the tax credit created by the Consolidated Appropriations Act of 2001, Pub L. No. 106–554, enacted December 21, 2000, to be implemented by the Internal Revenue Service, United States Department of Treasury.

*New Markets Venture Capital Company* or *NMVC Company* means a corporation (Corporate NMVC Company), a limited partnership organized as required by § 108.160 (Partnership NMVC Company), or a limited liability company (LLC NMVC Company) that—

(1) Has been granted final approval by SBA under § 108.390 of this part, and

(2) Has entered into a Participation Agreement with SBA. For certain purposes, the Entity General Partner of a Partnership NMVC Company is treated as if it were a NMVC Company (see § 108.160(a)).

*1940 Act Company* means a NMVC Company which is registered under the Investment Company Act of 1940.

*1980 Act Company* means a NMVC Company which is registered under the Small Business Investment Incentive Act of 1980.

*Operational Assistance* means management, marketing, and other technical assistance that assists a Small Business with its business development.

*Original Issue Price* means the price paid by the purchaser for securities at the time of issuance.

*Participation Agreement* means an agreement between SBA and a company to which SBA has granted final approval under § 108.390 of this part, that—

(1) Details the company's operating plan and investment criteria; and

(2) Requires the company to make investments in Smaller Enterprises at least 80 percent of which Smaller Enterprises are located in LI Areas.

*Partnership NMVC Company.* See definition of NMVC Company in this section.

*Person* means a natural person or legal entity.

*Pool* means an aggregation of SBA guaranteed Debentures approved by SBA.

*Portfolio* means the securities representing a NMVC Company's total outstanding Financing of Smaller Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

*Portfolio Concern* means a Small Business Assisted by a NMVC Company.

*Principal Office* means the location where the greatest number of the concern's employees at any one location perform their work. However, for those concerns whose ''primary industry'' (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

*Private Capital* has the meaning set forth in § 108.230.

*Publicly Traded and Marketable* means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

*Regulatory Capital* means:

(1) *General.* Regulatory Capital means Private Capital, excluding non-cash assets contributed to a NMVC Company, a Conditionally Approved NMVC Company, or an Applicant, and non-cash assets purchased by a Conditionally Approved NMVC Company or an Applicant, unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(2) *Exclusion of questionable commitments.* An investor's commitment to a NMVC Company, Conditionally Approved NMVC Company, or Applicant is excluded from Regulatory Capital if SBA determines that the collectability of the commitment is questionable.

(3) *Exclusion of amounts designated for Operational Assistance match.* Regulatory Capital excludes any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

*Relevant Venture Capital Finance* means Equity Capital Investments in small businesses in low-income communities or benefiting low-income communities.

*Retained Earnings Available for Distribution* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a NMVC Company may distribute to investors (including SBA) as a profit Distribution, or transfer to Private Capital.

*SBA* means the Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

*Secondary Relative* of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

*Small Business* means a small business concern as defined in section 103(5) of the Act (including its Affiliates), and which meets the criteria applicable to the Small Business Investment Company program as set forth in part 121 of this chapter.

*Small Business Investment Company (SBIC)* means a Licensee, as that term is defined in § 107.50 of this chapter.

*Smaller Enterprise* means any Small Business that:

(1) Together with its Affiliates has a net worth of not more than $6.0 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than $2.0 million, or

(2) Both together with its Affiliates, and by itself, meets the size standard of § 121.201 of this title at the time of Financing for the industry in which it is then primarily engaged.

*Specialized Small Business Investment Companies (SSBICs)* means any Small Business Investment Company that—

(1) Invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages; and

(2) Was licensed under section 301(d) of the Small Business Investment Act, as in effect before September 30, 1996.

*Trust* means the legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

*Trust Certificate Rate* means a fixed rate determined at the time Debentures are pooled.

*Trust Certificates (TCs)* means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

*Trustee* means the trustee or trustees of a Trust.

*Undistributed Net Realized Earnings* means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

*Unrealized Appreciation* means the amount by which a NMVC Company's valuation of each of its Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with NMVC Company's valuation policies, exceeds the cost basis thereof.

*Unrealized Depreciation* means the amount by which a NMVC Company's valuation of each of its Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with NMVC Company's valuation policies, is below the cost basis thereof.

*Unrealized Gain (Loss) on Securities Held* means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a NMVC Company's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

## Subpart C—Qualifications for the NMVC Program

### Organizing a NMVC Company

#### § 108.100 Business form.

A NMVC Company must be a newly formed for-profit entity or, subject to § 108.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act. It may be organized as a corporation (''Corporate NMVC Company''), a limited partnership (''Partnership NMVC Company''), or a limited liability company (''LLC NMVC Company'').

**§ 108.110 Qualified management.**

An Applicant must show, to the satisfaction of SBA, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of businesses contemplated by the Act, these regulations and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, SBA will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with SBA.

**§ 108.120 Economic development primary mission.**

The primary mission of a NMVC Company must be economic development of one or more LI Areas.

**§ 108.130 Identified low income geographic areas.**

A NMVC Company must identify the specific LI Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the NMVC program.

**§ 108.140 SBA approval of initial management expenses.**

A NMVC Company must have its Management Expenses approved by SBA at the time of designation as a NMVC Company. (See § 108.520 for the definition of Management Expenses.)

**§ 108.150 Management and ownership diversity requirement.**

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be a NMVC Company. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by SBA. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by state, Federal or other governmental authorities satisfactory to SBA;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange:

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to SBA.

(d) *Voting requirement.* The investors required for you to satisfy diversity may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior SBA approval.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a NMVC Company. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify SBA within 10 days; and

(2) Re-establish diversity within six months.

**§ 108.160 Special rules for NMVC Companies formed as limited partnerships.**

(a) *Entity General Partner.* (1) A general partner which is a corporation, limited liability company or partnership (an ''Entity General Partner'') shall be organized under state law solely for the purpose of serving as the general partner of one or more NMVC companies.

(2) SBA must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner. This provision must be stated in an Entity General Partner's Certificate of Incorporation, operating agreement, limited partnership agreement or other similar governing instrument.

(3) An Entity General Partner is subject to the same examination and reporting requirements as a NMVC Company under sections 361 and 362 of the Act. The restrictions and obligations imposed upon a NMVC Company by §§ 108.1810, 108.30, 108.410 through 108.450, 108.470, 108.500, 108.510, 108.585, 108.600, 108.680, 108.690 through 108.692, and 108.1910 apply also to an Entity General Partner of a NMVC Company.

(4) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(5) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 108.50.

(b) *Other requirements for Partnership NMVC Companies.* If you are a Partnership NMVC Company:

(1) You must have a minimum duration of 10 years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership NMVC Company may be terminated by a vote of your partners;

(2) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;

(3) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (b) in your limited partnership agreement.

(c) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 365 and 366 of the Act and by the conflict-of-interest rules under § 108.730. The term NMVC Company, as used in §§ 108.30, 108.460, and 108.680, includes all of the NMVC Company's Control Persons. The conditions specified in § 108.1810 and § 108.1910 apply to all general partners.

(d) *Liability of general partner for partnership debts to SBA.* Subject to section 365 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(e) *Special Leverage requirement.* Before your first issuance of Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the

Internal Revenue Service or by an opinion of counsel.

## Capitalizing a NMVC Company

### § 108.200 Adequate capital for NMVC Companies.

You must meet the requirements of these §§ 108.200 through 108.230 in order to qualify for designation as a NMVC Company and to receive Leverage.

### § 108.210 Minimum capital requirements for NMVC Companies.

You must have Regulatory Capital of at least $5,000,000 and Leverageable Capital of at least $500,000 to become a NMVC Company.

### § 108.230 Private Capital for NMVC Companies.

(a) *General.* Private Capital means the contributed capital of a NMVC Company, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a NMVC Company.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' contributed capital of a LLC NMVC Company, or the partners' contributed capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by a NMVC Company from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly from any Federal agency or department.

(4) Any portion of a commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are excluded from Private Capital.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) SBA gives its prior written approval of the capital contribution.

## Subpart D—Application and Approval Process for NMVC Company Designation

### § 108.300 When and how to apply for designation as a NMVC Company.

(a) *Notice of Funds Availability (''NOFA'').* SBA will publish a NOFA in the **Federal Register**, advising potential applicants of the availability of funds for the NMVC program. An entity may then submit an application for designation as a NMVC Company. When submitting its application, an Applicant must comply with both these regulations and any requirements specified in the NOFA, including submission deadlines. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round.

(b) *Application form.* An Applicant must apply for designation as a NMVC Company using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

### § 108.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Amounts.* The Applicant must indicate the amounts of—

(1) Regulatory Capital it proposes to raise;

(2) Binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than 30 percent of the Regulatory Capital it proposes to raise under paragraph (a)(1) of this section).

(b) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 108.320, and which demonstrates that the Applicant has the capacity to operate successfully as a NMVC Company.

(c) *New Markets Tax Credit program.* Applicant must address if and to what extent it intends to conform its activities to the New Markets Tax Credit laws. If Applicant plans to seek a New Markets Tax Credit, Applicant also must state the amount of tax credit allocation it intends to seek.

### § 108.320 Contents of comprehensive business plan.

(a) *Executive summary.* The executive summary must include a description of—

(1) The Applicant;

(2) Its strategy for how it proposes to make successful Developmental Venture Capital investments in identified LI Areas;

(3) The markets in the LI Areas it proposes to serve; and

(4) How it intends to work with community organizations in and be accountable to the residents of identified LI Areas in order to facilitate its Developmental Venture Capital investments.

(b) *Capacity, skills, and experience of the management team.* An Applicant must provide information generally as to the background, capability, education, reputation and training of its general partners, managers, officers, key personnel, investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(c) *Market analysis.* An Applicant must provide an analysis of the LI Areas in which it intends to focus its Developmental Venture Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Developmental Venture Capital investments and will have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. An Applicant also must analyze the extent of the demand in such areas for Developmental Venture Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Venture Capital investments.

(d) *Operational capacity and investment strategies.* An Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Venture Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Regulatory Capital.* An Applicant must include a detailed description of how it plans to raise its Regulatory

Capital. An Applicant must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* An Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) *Matching resources for Operational Assistance grant.* An Applicant must include a detailed description of how it plans to obtain binding commitments for cash or in-kind contributions, and/or to purchase an annuity, to match the funds requested from SBA for the Applicant's Operational Assistance grant. If it proposes to obtain commitments for cash or in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). Applicant must discuss its potential sources of matching resources, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant. Potential sources of matching resources must satisfy the requirements in § 108.2030(b)(1).

(h) *Projected amount of investment in LI Areas.* An Applicant must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises located in LI Areas, as compared to the amount that it proposes to invest in Small Businesses located outside of LI Areas.

(i) *Projected impact.* An Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Venture Capital investments and Operational Assistance activities in identified LI Areas;

(2) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

(j) *Affiliates and business relationships.* Applicant must submit information regarding the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

### § 108.330 Grant issuance fee.

An Applicant must pay to SBA a grant issuance fee of $5,000. An Applicant must submit this fee in advance, at the time of application submission. If SBA does not select an Applicant as a Conditionally Approved NMVC Company or designate an Applicant as a NMVC Company, SBA will refund this fee to the Applicant.

## Subpart E—Evaluation and Selection of NMVC Companies.

### § 108.340 Evaluation and selection—general.

SBA will evaluate and select an Applicant to participate in the NMVC program solely at SBA's discretion, based on SBA's review of the Applicant's application materials, interviews or site visits with the Applicant (if any), and background investigations conducted by SBA and other Federal agencies. SBA's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant that SBA designates as a NMVC Company can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that SBA selects Applicants in such a way as to promote Developmental Venture Capital investments nationwide and in both urban and rural areas.

### § 108.350 Eligibility and completeness.

SBA will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. SBA, at its sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to allow SBA to consider that Applicant's application.

### § 108.360 Evaluation criteria.

SBA will evaluate and select an Applicant for participation in the NMVC program by considering the following criteria—

(a) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the NMVC program;

(b) The likelihood that the Applicant will fulfill the goals described in its comprehensive business plan;

(c) The capability of the Applicant's management team;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies;

(e) The need for Developmental Venture Capital investments in the LI Areas in which the Applicant intends to invest;

(f) The extent to which the Applicant will concentrate its activities on serving the LI Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such areas as compared to other areas;

(g) The Applicant's demonstrated understanding of the markets in the LI Areas in which it intends to focus its activities;

(h) The likelihood that and the time frame within which the Applicant will be able to—

(1) Raise the Regulatory Capital it proposes to raise for its investments, and

(2) obtain the binding commitments for contributions in cash or in-kind and/or an annuity it proposes to obtain as its matching resources for its Operational Assistance grant award;

(i) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(j) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas; and

(k) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate LI Areas.

### § 108.370 Conditional approval.

From among the Applicants submitting eligible and complete applications, SBA will select a number of Applicants and will conditionally approve such selected Applicants to participate in the NMVC program. SBA

will give each such Conditionally Approved NMVC Company a specific period of time, not to exceed two years, to satisfy the requirements to become a NMVC Company.

**§ 108.380 Final approval as a NMVC Company.**

(a) *General rule.* With respect to each Conditionally Approved NMVC Company, SBA will either:

(1) Grant final approval to participate in the NMVC program and designate such company as a NMVC Company, if such Conditionally Approved NMVC Company:

(i) Within the specific period of time SBA gave to it when SBA conditionally approved it for participation in the NMVC program, has raised:

(A) At least $5,000,000 of Regulatory Capital; and

(B) At least $1,500,000 of matching resources for its Operational Assistance grant award or 30 percent of the Regulatory Capital it raised, whichever is greater; and

(ii) Enters into a Participation Agreement with SBA; or

(2) Revoke SBA's conditional approval of the company, at which time it is no longer a Conditionally Approved NMVC Company and must not participate in the NMVC program or represent itself as a Conditionally Approved NMVC Company.

(b) *Exception to requirement to raise matching resources*—(1) *General.* At its discretion and based upon a showing of good cause, SBA may consider a Conditionally Approved NMVC Company to have satisfied the requirement in paragraph (a)(1)(i)(B) of this section to raise matching resources in the amount of at least 30 percent of its Regulatory Capital if the Conditionally Approved NMVC Company—

(i) Already has raised at least 20 percent of the total amount of required matching resources; and

(ii) Has a viable plan that reasonably projects its capacity to raise the remainder of the required amount of matching resources.

(2) *Request for exception.* Before the expiration of the time period given to it by SBA to meet the requirements to become a NMVC Company, a Conditionally Approved NMVC Company may submit to SBA a request that SBA grant the exception described in paragraph (b)(1) of this section. Such Conditionally Approved NMVC must present to SBA evidence of good cause for such request, as well as evidence supporting the elements of the exception described in such paragraph.

(3) *No applicability to Regulatory Capital.* The exception described in this section applies only to matching resources for the Operational Assistance grant award. Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC Company if such Conditionally Approved NMVC Company does not raise the required minimum amount of Regulatory Capital within the time period SBA gave it to do so.

## Subpart F—Changes in Ownership, Structure, or Control

### Changes in Control or Ownership of NMVC Company

**§ 108.400 Changes in ownership of 10 percent or more of NMVC Company but no change of Control.**

You must obtain SBA's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

**§ 108.410 Changes in Control of NMVC Company (through change in ownership or otherwise).**

You must obtain SBA's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by SBA.

**§ 108.420 Prohibition on exercise of ownership or Control rights in NMVC Company before SBA approval.**

Without prior written SBA approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

**§ 108.430 Notification to SBA of transactions that may change ownership or Control.**

You must promptly notify SBA as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your capital. If there is any doubt as to whether a particular transaction or event will result in such a change, report the facts to SBA.

**§ 108.440 Standards governing prior SBA approval for a proposed transfer of Control.**

SBA approval is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by SBA. As a condition of approving a proposed transfer of control, SBA may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by SBA; or

(c) Require compliance with any other conditions set by SBA, including compliance with the requirements for minimum capital and management-ownership diversity as in effect at such time for new NMVC Companies.

**§ 108.450 Notification to SBA of pledge of NMVC Company's shares.**

(a) You must notify SBA in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged are at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 108.400 or § 108.410, as appropriate.

### Restrictions on Common Control or Ownership of Two or More NMVC Companies

**§ 108.460 Restrictions on Common Control or ownership of two (or more) NMVC Companies.**

Without SBA's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another NMVC Company; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another NMVC Company.

### Change in Structure of NMVC Company

#### § 108.470 SBA approval of merger, consolidation, or reorganization of NMVC Company.

You may not merge, consolidate, change form of organization (corporation or partnership) or reorganize without SBA's prior written approval. Any such merger or consolidation will be subject to § 108.440.

## Subpart G—Managing the Operations of a NMVC Company

### General Requirements

#### § 108.500 Lawful operations under the Act.

You must engage only in the activities contemplated by the Act and in no other activities.

#### § 108.502 Representations to the public.

You may not represent or imply to anyone that the SBA, the U.S. Government or any of its agencies or officers has approved any ownership interests you have issued or obligations you have incurred. Be certain to include a statement to this effect in any solicitation to investors. Example: You may not represent or imply that ''SBA stands behind the NMVC Company'' or that ''Your capital is safe because SBA's experts review proposed investments to make sure they are safe for the NMVC Company.''

#### § 108.503 NMVC Company's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing members, or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA. If SBA reasonably believes that your valuations, individually or in the aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party acceptable to SBA to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and at the end of your fiscal year.

(2) On a case-by-case basis, SBA may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

#### § 108.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA provided software) and transmit them to SBA. In addition, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

#### § 108.506 Safeguarding the NMVC Company's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

#### § 108.507 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture or of any written agreement with SBA.

(b) *False statement.* In any document submitted to SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact. A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

#### § 108.509 Employment of SBA officials.

Without SBA's prior written approval, for a period of two years after the date of your most recent issuance of Leverage (or the receipt of any SBA Assistance as defined in part 105 of this chapter), you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(a) Served as an officer, attorney, agent, or employee of SBA on or within one year before such date; and

(b) As such, occupied a position or engaged in activities which, in SBA's determination, involved discretion with respect to the granting of SBA Assistance.

### Management and Compensation

#### § 108.510 SBA approval of NMVC Company's Investment Adviser/Manager.

You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing members, or general partner. If you have Leverage or plan to seek Leverage, you must obtain SBA's prior written approval of the management contract. SBA's approval of an Investment Adviser/Manager for one NMVC Company does not indicate approval of that manager for any other NMVC Company.

(a) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to the Small Businesses in your Portfolio, and

(2) Indicate the basis for computing Management Expenses.

(b) *Material change to approved management contract.* If there is a material change, both you and SBA must approve such change in advance. If you are uncertain if the change is material, submit the proposed revision to SBA.

**§ 108.520 Management Expenses of a NMVC Company.**

SBA must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

## Cash Management by a NMVC Company

**§ 108.530 Restrictions on investments of idle funds by NMVC Companies.**

(a) *Permitted investments of idle funds.* Funds not invested in Small Businesses must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment, or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount.* (1) You are permitted to deposit funds in a federally insured institution in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103).

(2) Exception: You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 108.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

## Borrowing by NMVC Companies From NON-SBA Sources

**§ 108.550 Prior approval of secured third-party debt of NMVC companies.**

(a) *Definition.* In this § 108.550, ''secured third-party debt'' means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Conditions for SBA approval.* As a condition of granting its approval under this § 108.550, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

## Voluntary Decrease in Regulatory Capital

**§ 108.585 Voluntary decrease in NMVC Company's Regulatory Capital.**

You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 108.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 355(d) of the Act.

# Subpart H—Recordkeeping, Reporting, and Examination Requirements for NMVC Companies

## Recordkeeping Requirements for NMVC Companies

**§ 108.600 General requirement for NMVC Company to maintain and preserve records.**

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless SBA approves otherwise. You may obtain this chart of accounts from SBA.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or non-SBA lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c), and must remain accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership NMVC Company or LLC NMVC

Company, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses.

(ii) Your Articles, bylaws, minute books, and NMVC Company application.

(iii) All documents evidencing ownership of the NMVC Company including ownership ledgers, and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(l) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments.

(ii) All loan, participation, and escrow agreements.

(iii) Size status declarations (SBA Form 480).

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise.

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget.

**§ 108.610 Required certifications for Loans and Investments.**

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to SBA upon request.

(a) SBA Form 480, the Size Status Declaration, executed both by you and by the concern you are financing. By executing this document, both parties certify that the concern is a Small Business. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business.

(b) SBA Form 652, a certification by the concern you are financing that it will not illegally discriminate (see part 112 of this chapter).

(c) A certification by the concern you are financing of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

(d) For each Low-Income Investment, a certification by the concern you are financing as to the basis for its qualification as a Low-Income Enterprise.

**§ 108.620 Requirements to obtain information from Portfolio Concerns.**

All the information required by this section is subject to the requirements of § 108.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the applicant to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such community economic development information about the company, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the business and the amount of the proposed Financing.

(b) *Updated financial and community economic development information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and community economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds; and

(iv) Evaluate the community economic development impact of the Financing.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the business involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see § 108.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by SBA's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 108.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or SBA's examiners access to its books and records for such purpose.

**Reporting Requirements for NMVC Companies**

**§ 108.630 Requirement for NMVC companies to file financial statements and supplementary information with SBA (SBA Form 468).**

(a) *Annual filing of Form 468.* For each fiscal year, you must submit to SBA financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to SBA must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless SBA approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings of Form 468.* When requested by SBA, you must file interim reports on Form 468. SBA may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under an SBA Leverage commitment, you must also comply with any applicable filing requirements set forth in § 108.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies, which you may obtain from SBA.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Office of New Markets Venture Capital in the Investment Division of SBA.

(e) *Reporting of social, economic, or community development impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the social, economic, or community development impact of each Financing. This assessment must specify the fulltime equivalent jobs

created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in LI Areas.

(f) *Reporting of community development information.* For each Financing of a Low-Income Enterprise, your Form 468 must include an assessment of such Financing with respect to:

(1) The social, economic or community development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement;

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the NMVC program; and

(4) Whether, and if so, how you achieved accountability to the residents of the LI Area in connection with that Financing.

**§ 108.640 Requirement to file portfolio financing reports (SBA Form 1031).**

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

**§ 108.650 Requirement to report portfolio valuations to SBA.**

You must determine the value of your Loans and Investments in accordance with § 108.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

**§ 108.660 Other items required to be filed by NMVC Company with SBA.**

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give SBA a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give SBA a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

(2) SBA may require you to submit copies of the pleadings and other documents SBA may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise SBA of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, or general partner of the NMVC Company, or any other person who was required by SBA to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between you and SBA.

(f) *Other reports.* You must file any other reports SBA may require in writing.

**§ 108.680 Reporting changes in NMVC Company not subject to prior SBA approval.**

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require SBA's prior approval. You must report such changes to SBA within 30 days for post approval.

(b) *Approval by SBA.* You may consider any change submitted under this § 108.680 to be approved unless SBA notifies you to the contrary within 90 days after receiving it. SBA's approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions SBA may prescribe.

### Examinations of NMVC Companies by SBA for Regulatory Compliance

**§ 108.690 Examinations.**

All NMVC companies must submit to annual examinations by or at the direction of SBA for the purpose of evaluating regulatory compliance.

**§ 108.691 Responsibilities of NMVC Company during examination.**

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 108.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to SBA upon request.

**§ 108.692 Examination fees.**

(a) *General.* SBA will assess fees for examinations in accordance with this § 108.692. Unless SBA determines otherwise on a case by case basis, SBA will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $3,500 will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination and SBA did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Delay fee.* If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, SBA may assess an additional fee of up to $500 per day.

## Subpart I—Financing of Small Businesses by NMVC Companies

### Determining the Eligibility of a Small Business for NMVC Financing

**§ 108.700 Compliance with size standards in part 121 of this chapter as a condition of Assistance.**

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant meets the size standards for a Small Business, you may use either the financial size standards in § 121.301(c)(1) of this chapter or the

industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.301(c)(2) of this chapter.

**§ 108.710 Requirement to finance Low-Income Enterprises.**

(a) *Low-Income Enterprise Financings.* At the close of each of your fiscal years:

(1) At least 80 percent of your Portfolio Concerns must be Low-Income Enterprises in which you have an Equity Capital Investment; and

(2) For all Financings you have extended, you must have invested at least 80 percent (in total dollars) in Equity Capital Investments in Low-Income Enterprises.

(b) *Non-compliance with this section.* If you have not reached the percentages required in paragraph (a) of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you reach the required percentages (see § 108.1120).

**§ 108.720 Small Businesses that may be ineligible for financing.**

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor. Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of SBA, you may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b) (2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(3) *Exception for certain Partnership NMVC companies.* With the prior written approval of SBA, if you are a Partnership NMVC Company, you may form one or more wholly owned corporations in accordance with this paragraph (b) (3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such corporation(s) only if a direct Financing to such Small Businesses would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 108.730(a).

(c) *Real Estate Businesses.* (1)You are not permitted to finance:

(i) Any business classified under sector 233 (Building, Developing, and Contracting) of the NAICS Manual, or

(ii) Any business listed under sector 531 (Real Estate) unless at least 80 percent of the revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance a business, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

(d) *Project Financing.* You are not permitted to finance a business if:

(1) The assets of the business are to be reduced or consumed, generally without replacement, as the life of the business progresses, and the nature of the business requires that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Small Business. Examples include motion pictures and electric generating plants.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land, which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment.* (1) General rule. You are not permitted to finance a business if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Small Business are located outside the United States (unless you can show, to SBA's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Financing NMVC companies or SBICs.* You are not permitted to provide funds, directly or indirectly, that the Small Business will use:

(1) To purchase stock in or provide capital to a NMVC Company or SBIC; or

(2) To repay an indebtedness incurred for the purpose of investing in a NMVC Company or SBIC.

**§ 108.730 Financings which constitute conflicts of interest.**

(a) *General rule.* You must not self-deal to the prejudice of a Small Business, the NMVC Company, its shareholders or partners, or SBA. Unless you obtain a prior written exemption from SBA for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for a Small Business that satisfies all of the following conditions:

(i) Your Associate relationship with the Small Business is described by paragraph (8) or (9) of the definition of Associate in § 108.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of this section is a Close Relative or Secondary Relative of any

Person described in paragraphs (1), (2), (4), or (5) of the definition of Associate in § 108.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Small Business exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the NMVC Company.

(2) Provide Financing to an Associate of another NMVC Company if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that NMVC Company or a third NMVC Company (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) A Small Business Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such business; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to a Small Business to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without SBA' s prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from a Small Business any compensation in connection with Assistance you provide (except as permitted under § 108.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by any restrictions in Federal or State laws governing conflicts of interest and fiduciary obligations.

(d) *Financings with Associates*— (1) *Financings with Associates requiring prior approval.* Without SBA's prior written approval, you may not Finance any business in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Small Business, either at the same time or at different times, you must be able to demonstrate to SBA's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(l) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Small Business, and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Small Business on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are NMVC companies.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Small Business. You must identify any such Associate in your records available for SBA's review under § 108.600. Without SBA's prior written approval, the Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 108.730, you need not obtain SBA's approval of the transaction. However, you must promptly notify SBA of the transaction.

(g) *Restriction on options obtained by NMVC Company's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners of the management company that is providing services to you or to your general partner, may obtain options in a Financed Small Business only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) SBA gives its prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Small Business, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

**§ 108.740 Portfolio diversification (''overline'' limitation).**

(a) Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed 20 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost plus any amount of the Financing that was previously written off.

**§ 108.760 How a change in size or activity of a Portfolio Concern affects the NMVC Company and the Portfolio Concern.**

(a) *Effect on NMVC Company of a change in size of a Portfolio Concern.* If a Portfolio Concern no longer qualifies as a Small Business you may keep your investment in the concern and:

(1) Subject to the overline limitations of § 108.740, you may provide additional Financing to the concern up to the time it makes a public offering of its securities.

(2) Even after the concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of NMVC Company's initial Financing*— (1) *Retention of Investment.* Unless you receive SBA's written approval, you may not keep your investment in a Portfolio Concern, small or otherwise, which becomes ineligible by reason of a change in its business activity within one year of your initial investment.

(2) *Request for SBA 's approval to retain investment.* If you request that SBA approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If SBA approves your request to retain an investment under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 108.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment: and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 108.740.

## Structuring NMVC Company's Financing of Eligible Small Businesses

### § 108.800 Financings in the form of equity interests.

You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

### § 108.820 Financings in the form of guarantees.

(a) *General rule.* At the request of a Small Business or where necessary to protect your existing investment, you may guarantee the monetary obligation of a Small Business to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Small Business exceed the overline limitations of § 108.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of NMVC Company's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

### § 108.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of a Small Business through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the Small Business, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for SBA's inspection which show the relevant details of the transaction, including, but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another NMVC Company or from SBA.* You may purchase from, or exchange with, another NMVC Company, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you shall include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of a Small Business from a non-issuer not previously described in this § 108.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Small Business.

## Limitations on Disposition of Assets

### § 108.885 Disposition of assets to NMVC Company's Associates.

Except with SBA's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

# Subpart J—SBA Financial Assistance for NMVC Companies (Leverage)

## General Information About Obtaining Leverage

### § 108.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from SBA in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 108.1200 through 108.1240.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division Office of New Markets Venture Capital, 409 Third Street, S.W., Washington, DC 20416.

### § 108.1120 General eligibility requirement for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

### § 108.1130 Leverage fees payable by NMVC Company.

There is no fee for the issuance of Debentures by a NMVC Company.

### § 108.1140 NMVC Company's acceptance of SBA remedies under § 108.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 108.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

## Maximum Amount of Leverage for Which a NMVC Company Is Eligible

### § 108.1150 Maximum amount of Leverage for a NMVC Company.

The face amount of a NMVC Company's outstanding Debentures may not exceed 150 percent of its Leverageable Capital.

## Conditional Commitments by SBA To Reserve Leverage for a NMVC Company

### § 108.1200 SBA's Leverage commitment to a NMVC Company—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 108.1200 through 108.1240, you may

apply for SBA's conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

**§ 108.1220 Requirement for NMVC Company to file financial statements at the time of request for a draw.**

(a) If you submit a request for a draw against SBA's Leverage commitment more than 90 days since your submission of an annual Form 468 or a Form 468 (Short Form), you must:

(1) Give SBA a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 108.1220.

**§ 108.1230 Draw-downs by NMVC Company under SBA's Leverage commitment.**

(a) *NMVC Company's authorization of SBA to guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(c) *Effect of regulatory violations on NMVC Company's eligibility for draws*—(1) *General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 108.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 108.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the NMVC Company;

(ii) An officer of a corporate general partner of the NMVC Company;

(iii) An individual who is authorized to act as or for a general partner of the NMVC Company; or

(iv) An individual who is authorized to act as or for a member-manager of the NMVC Company.

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. If required by SBA, the statement must include the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If SBA required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under § 108.1810.

**§ 108.1240 Funding of NMVC Company's draw request through sale to third-party.**

(a) *NMVC Company's authorization of SBA to arrange sale of securities to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize SBA, or any agent or trustee SBA designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a rate approved by SBA; and

(2) The purchase of your security from the third-party and the pooling of your security with other securities with the same maturity date.

(b) *Sale of Debentures to a third-party.* If SBA arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

**Funding Leverage by Use of SBA Guaranteed Trust Certificates ("TCs")**

**§ 108.1600 SBA authority to issue and guarantee Trust Certificates.**

(a) *Authorization.* Section 356 of the Act authorizes SBA to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *SBA authority to arrange public or private fundings of Leverage.* SBA in its discretion may arrange for public or private financing under its guarantee authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions.* TCs shall provide for a pass-through to their holders of all amounts of principal and

interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities.* SBA shall approve the formation of each Pool or Trust. SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

**§ 108.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.**

(a) The rights, if any, of a NMVC Company to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) SBA shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment. whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor NMVC Company pursuant to the terms of the Debenture.

**§ 108.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.**

(a) *Agents.* SBA may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture, SBA may cause each NMVC Company to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of NMVC companies.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with SBA, the CRA, as SBA's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an SBA-approved Pool or Trust;

(ii) Issue the TCs in the form prescribed by SBA;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from NMVC companies;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from SBA;

(vii) Remain custodian of such other documentation as SBA shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs;

(ix) Perform such other functions as SBA may deem necessary to implement the provisions of this section.

(b) *Functions.* Either SBA or an agent appointed by SBA may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

**§ 108.1630 SBA regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.**

(a) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They also shall be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require.

(b) *Suspension and/or termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, SBA will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with part 134 of this chapter. SBA may, for any of the reasons stated in paragraphs (b) (1) through (b)(3) of this section, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this chapter.

**§ 108.1640 SBA access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.**

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to SBA for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

**Miscellaneous**

**§ 108.1700 Transfer by SBA of its interest in a NMVC Company's Leverage security.**

Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of SBA. Upon notice by SBA, a NMVC Company will make all payments of principal and interest as shall be directed by SBA. A NMVC Company will be liable for all damage or loss which SBA may sustain by reason of such disposal, up to the amount of the NMVC Company's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

**§ 108.1710 SBA authority to collect or compromise its claims.**

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA.

**§ 108.1720 Characteristics of SBA's guarantee.**

If SBA agrees to guarantee a NMVC Company's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures.

## Subpart K—NMVC Company's Noncompliance With Terms of Leverage

**§ 108.1810 Events of default and SBA's remedies for NMVC Company's noncompliance with terms of Debentures.**

(a) *Applicability of this section.* By issuing Debentures, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance and as if fully set forth in the Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *SBA remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed SBA with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of SBA or its designee as your receiver under section 363(c) of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (d), SBA may avail itself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act that causes detriment to SBA's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* You willfully violate § 108.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control.* You willfully violate § 108.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 108.1810(h).* You fail to take appropriate steps, satisfactory to SBA, to accomplish any action SBA may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify SBA as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than SBA.

(e) *SBA remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events in paragraph (d) of this section:

(1) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable: and

(2) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 363 (c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (f), SBA may avail itself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the prior written consent of SBA, you incur Management Expenses in excess of those permitted under §§ 108.510 and 108.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the prior written consent of SBA, other than:

(i) Distributions permitted under § 108.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' or members' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment.* Unless otherwise approved by SBA, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by SBA.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the prior written consent of SBA, you reduce your Regulatory Capital except as permitted by § 108.585.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 108.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by SBA, or of any agreement (including your Participation Agreement) with or conditions imposed by SBA in its administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d) (5) of this section, SBA determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 108.150.

(g) *SBA remedies for events of default with opportunity to cure.* (1) Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable; and

(ii) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 363(c) of the Act.

(2) SBA may invoke the remedies in paragraph (g)(1) of this section only if:

(i) It has given you at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to SBA's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, SBA, after written notification to you and until you cure such condition to SBA's satisfaction, may deny you additional Leverage and/or require you to take such actions as SBA may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of each NMVC Company must include the following provisions as a condition to the purchase or guarantee by SBA of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(1) through (f)(3) of this section as determined by SBA, SBA shall have the right, and you consent to SBA's exercise of such right:

(1) With respect to a Corporate NMVC Company, upon written notice, to require you to replace, with individuals approved by SBA, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership NMVC Company or an LLC NMVC Company, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the NMVC Company, which general partner or manager shall then be replaced in accordance with NMVC Company's Articles by a new general partner or manager approved by SBA; and/or

(3) With respect to a Corporate or Partnership or LLC NMVC Company, to obtain the appointment of SBA or its designee as your receiver under section 363(c) of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate a NMVC Company is not within such consent, but is governed instead by the relevant provisions of the Act.

## Computation of NMVC Company's Capital Impairment

### § 108.1830 NMVC Company's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, SBA has the right to impose the applicable remedies for noncompliance in § 108.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed in § 108.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify SBA promptly if you are capitally impaired.

(d) *SBA's right to determine NMVC Company's Capital Impairment condition.* SBA may make its own determination of your Capital Impairment condition at any time.

### § 108.1840 Computation of NMVC Company's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 108.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 108.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.* (1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and

meet the following criteria, which must be substantiated to the satisfaction of SBA (this is your ''Class 2 Appreciation''):

(i) The Small Business that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Small Business' pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of the Small Business' average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in § 107.1840(d)(4) of this chapter.

(5) Reduce the gain computed in paragraph (d) (4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

## Subpart L—Ending Operations as a NMVC Company

### § 108.1900 Termination of participation as a NMVC Company.

You may not terminate your participation as a NMVC Company without SBA's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the NMVC Company.

## Subpart M—Miscellaneous

### § 108.1910 Non-waiver of SBA's rights or terms of Leverage security.

SBA's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. SBA's failure to require you to perform any term or provision of your Leverage does not affect SBA's right to enforce such term or provision. Similarly, SBA's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 108.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

### § 108.1920 NMVC Company's application for exemption from a regulation in this part 108.

(a) *General.* You may file an application in writing with SBA to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. SBA may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to SBA's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the NMVC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

### § 108.1930 Effect of changes in this part 108 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

### § 108.1940 Procedures for designation of additional Low-Income Geographic Areas.

(a) *General.* On its own initiative or upon written request by a Person which addresses the relevant factor(s) set forth in paragraph (b) of this section, SBA may consider whether to designate additional census tracts (or equivalent county divisions) as LI Areas.

(b) *Criteria.* SBA will consider one or more of the following factors in determining whether to designate a particular census tract (or equivalent county division) as an additional LI Area:

(1) A substantial number of Low-Income Individuals reside in that census tract (or equivalent county division).

(2) As adequately supported by studies or other analyses or reliable data, that census tract (or equivalent county division) has a pattern of unmet needs for investment capital.

(3) As adequately supported by studies or other analyses or reliable data, that census tract (or equivalent county division) has indications of economic distress.

(c) *Procedure for designation.* (1) If SBA decides to consider the designation of an additional LI Area, SBA will publish in the **Federal Register** a notice that it is considering such designation. SBA will advise the public that it will consider any comments supporting or opposing the designation, submitted within a specified time period.

(2) In making a final decision on whether to designate a particular census tract (or equivalent county division) as an additional LI Area, SBA will consider evidence submitted by any requester, SBA's own research, any public comments submitted, and any other information deemed relevant by SBA.

(3) If SBA designates a particular census tract (or equivalent county division) as an additional LI Area, SBA will publish a notice in the **Federal Register** and, if appropriate, will amend this part 108 to include the additional LI Area.

## Subpart N—Requirements and Procedures for Operational Assistance Grants to NMVC Companies and SSBICs

### § 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in subparts D and E of this part 108.

(b) *SSBICs*—(1) *Notice of Funds Availability (''NOFA'').* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same as the NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(2) *Eligibility.* An SSBIC is eligible to apply for an Operational Assistance grant if:

(i) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Developmental

Venture Capital investments in the amount of such increase;

(ii) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (b)(2)(i) of this section; and

(iii) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Developmental Venture Capital investments.

(3) *Application requirements*—(i) *How to apply.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

(ii) *Grant issuance fee.* An SSBIC must pay to SBA a grant issuance fee of $5,000. An SSBIC must submit this fee in advance, at the time of application submission. If SBA does not award a grant to the SSBIC, SBA will refund this fee to the SSBIC.

(4) *Contents of Application.* Each application must contain the information specified in the application packet provided by SBA, including the following information:

(i) *Amounts.* An SSBIC must specify the amount of Operational Assistance grant funds it seeks from SBA and the amount of Regulatory Capital it intends to raise after December 21, 2000.

(ii) *Plan.* An SSBIC must submit a plan addressing the following issues:

(A) *Plan for providing Operational Assistance.* The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(B) *Matching resources for Operational Assistance grant.* The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash or in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(C) *Projected amount of investment in LI Areas.* The SSBIC must describe the amount of Developmental Venture Capital investments it intends to make.

(D) *Track record of management team in obtaining public policy results through investments.* The SSBIC must provide information concerning the past track record of the SSBIC in making investments that have had a demonstrable impact on the socially or economically disadvantaged businesses targeted by the SSBIC program (for example, new businesses created, jobs created, or wealth created). Such information might include case studies or examples of the SSBIC's successful Financings.

(E) *Market analysis.* The SSBIC must provide an analysis of the LI Areas in which it intends to makes its Developmental Venture Capital investments and provide its Operational Assistance to Smaller Enterprises, demonstrating that the SSBIC understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Developmental Venture Capital investments and have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. The SSBIC also must analyze the extent of the demand in such areas for Developmental Venture Capital investments and any factors or trends that may affect the SSBIC's ability to make effective Developmental Venture Capital investments.

(F) *Regulatory Capital.* The SSBIC must include a detailed description of how it plans to raise its Regulatory Capital. The SSBIC must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the SSBIC.

(G) *Projected impact.* The SSBIC must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(*1*) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(*2*) A description of the criteria to be used to measure the benefits created as a result of its activities;

(*3*) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

(5) *Evaluation and selection.* SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will evaluate and select SSBICs for an Operational Assistance grant award solely at SBA's discretion, by considering the following criteria:

(i) The strength of the SSBIC's application, including the strength of its proposal to provide Operational Assistance to Smaller Enterprises in which it intends to invest;

(ii) The SSBIC's regulatory compliance status and past track record in being able to accomplish program goals through its investment activity;

(iii) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in paragraph (b)(4)(ii)(B) of this section;

(iv) The need for Developmental Venture Capital investments in the LI Areas in which the SSBIC intends to invest;

(v) The SSBIC's demonstrated understanding of the markets in the LI Areas in which it intends to invest;

(vi) The extent to which the activities proposed by the SSBIC will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas;

(vii) The likelihood that the SSBIC will fulfill the goals described in its application and meet the objectives of the NMVC program; and

(viii) The strength of the SSBIC's application compared to applications submitted by other SSBICs intending to invest in the same or proximate LI Areas.

(6) *Grant award.* An SSBIC selected for an Operational Assistance grant award will receive a grant award only if it increases its Regulatory Capital and raises the matching resources required in § 108.2030 by a date established by SBA.

**§ 108.2010 Restrictions on use of Operational Assistance grant funds.**

(a) *Restrictions applicable only to SSBICs.* An SSBIC that receives an Operational Assistance grant must use both grant funds awarded by SBA and

its matching resources only to provide Operational Assistance in connection with a Low-Income Investment made by the SSBIC with Regulatory Capital raised after December 21, 2000.

(b) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for ''general and administrative expense,'' as defined in the Federal Acquisition Regulations, ''Contract Cost Principles and Procedures,'' 48 CFR 31.001.

**§ 108.2020 Amount of Operational Assistance grant.**

(a) *Amount of grant to NMVC Company.* NMVC Companies are eligible for an Operational Assistance grant award equal to the amount of matching resources raised by the NMVC Company in accordance with §§ 108.380(a)(1)(i)(B) and 108.2030.

(b) *Amount of grant to SSBIC.* SSBICs are eligible for an Operational Assistance grant award equal to the amount of matching resources raised by the SSBIC in accordance with §§ 108.2000 and 108.2030.

(c) *Pro rata reductions.* In the event that the total amount of funds available to SBA for purposes of making Operational Assistance grant awards to NMVC Companies and SSBICs is not sufficient to award grants in the amounts described in paragraphs (a) and (b) of this section, SBA will make pro rata reductions in the amounts otherwise awarded to each such NMVC Company and SSBIC.

**§ 108.2030 Matching requirements.**

(a) *General.* All Operational Assistance grant funds SBA awards to an NMVC Company or a SSBIC must be matched on a dollar for dollar basis with funds or other resources raised by the NMVC Company or SSBIC.

(b) *Allowable sources.* (1) Any source other than SBA is an allowable source of matching resources for an Operational Assistance grant award.

(2) Neither a NMVC Company nor a SSBIC may use funds or other resources that it has used to satisfy a legal requirement for obtaining funds under any other Federal program, to satisfy the matching resources requirements described in this part 108.

(3) A portion of Private Capital may be designated as matching resources if the designated funds are used to purchase an annuity pursuant to paragraph (c)(2)(iv) of this section or are otherwise segregated in a manner acceptable to SBA.

(c) *Type and form of matching resources.* (1) Matching resources may come from cash contributions or in-kind contributions. In-kind contributions cannot exceed 50 percent of the total amount of match raised by the NMVC Company or SSBIC.

(2) Matching resources may be in the form of:

(i) Cash,

(ii) In-kind contributions,

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed five years), and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed five years).

(d) *Amount of matching resources*—(1) *NMVC Companies.* The amount of matching resources required of an NMVC Company is set forth in § 108.380(a)(1)(i)(B).

(2) *SSBICs.* The amount of matching resources required of an SSBIC is 30 percent of the increase in its Regulatory Capital since December 21, 2000, with which it has made or will make Low-Income Investments.

**§ 108.2040 Reporting and recordkeeping requirements.**

(a) *NMVC Companies.* Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part 108.

(b) *SSBICs.* An SSBIC receiving an Operational Assistance grant award must comply with all reporting, record retention and recordkeeping requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between SBA and the SSBIC, as well as the reporting requirements in § 108.630(f) and the filing requirement in § 108.640.

Dated: April 16, 2001.

**John Whitmore,**

*Acting Administrator.*

[FR Doc. 01–9839 Filed 4–20–01; 8:45 am]

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# Part III

# Department of Housing and Urban Development

## 24 CFR Part 7

## Equal Employment Opportunity; Updating of EEO Policies and Procedures; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 7**

**[Docket No. FR–4607–F–02]**

**RIN 2501–AC73**

## Equal Employment Opportunity; Updating of EEO Policies and Procedures

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's regulations governing the Department's equal employment opportunity policies, procedures and programs. The amendments update the Department's current EEO regulations and make them consistent with recently issued regulations of the Equal Employment Opportunity Commission (EEOC). The final rule follows publication of an October 26, 2000 proposed rule, and takes into consideration the public comment received on the proposed rule.

**DATES:** *Effective Date:* May 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** William C. King, Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–5921. (This telephone number is not toll-free.) Persons with hearing or speech impairments may access this number via TTY by contacting the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background—The October 26, 2000 Proposed Rule

On October 26, 2000 (65 FR 64320), HUD published a proposed rule for public comment proposing to update its regulations in 24 CFR part 7 pertaining to the Department's equal employment opportunity policies, procedures and programs. The amendments contained in the October 26, 2000 proposed rule would conform HUD's regulations to the recently amended EEOC regulations in 29 CFR part 1614. The revised part 1614 regulations became effective on November 9, 1999 (see final rule issued July 12, 1999, at 64 FR 37644). In addition, the October 26, 2000 proposed rule would provide HUD's current and former employees and applicants with a more complete guide to the processing of equal employment opportunity (EEO) complaints. The most significant change contained in the October 26, 2000 proposed rule was the establishment of an Alternative Dispute Resolution (ADR) program designed to promote impartial, fair and early resolution of EEO complaints.

### II. This Final Rule

This final rule makes effective the policies and procedures of the October 26, 2000 proposed rule, and takes into consideration the public comment received on the proposed rule. The amendments made by this final rule provide for regulations that supersede the last revision of 24 CFR part 7, issued on April 29, 1996. The final rule adopts the substance of the October 26, 2000 proposed rule without change, but makes a few non-substantive changes to the ADR provisions at § 7.5 for purposes of clarity.

### III. Discussion of the Public Comment Received on the October 26, 2000 Proposed Rule

The public comment period for the proposed rule closed on November 27, 2000. By close of business on that date, HUD had received a single public comment from a private individual. The commenter recommended that the final rule expand the provision of equal employment opportunity and protection from discrimination to include sexual orientation. The commenter wrote that this change is necessary for HUD to achieve an environment where any employee may hope to advance based on merit and without fear of discrimination or harassment. After careful consideration, HUD has decided not to adopt the suggestion made by the public commenter.

This HUD rule is designed to implement EEOC's revised regulations at 29 CFR 1614 governing federal sector employment. The EEOC derives its authority and jurisdiction over federal sector employment discrimination from EEO statutes that prohibit discrimination based on race, color, national origin, religion, disability, age and sex. Sexual orientation is not currently covered by any federal statutory provision.

However, HUD is committed to providing a workplace that is free from all forms of discrimination, including discrimination based on sexual orientation. In keeping with this commitment, the Department, on January 18, 2000, promulgated and disseminated its most recent EEO Policy Statement which states, in part, that discrimination based on sexual orientation is not acceptable and will not be tolerated by anyone at HUD. This statement is consistent with Executive Order 13087.

### IV. Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. This final rule involves internal HUD operations and pertains only to current/former employees and applicants for employment at HUD.

*Environmental Impact*

In accordance with 24 CFR 50.19(c)(3) of HUD's regulations, this final rule provides for the enforcement of nondiscrimination within HUD, and therefore is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

*Executive Order 13132, Federalism*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act 1995 (Pub.L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of the UMRA.

### List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

Accordingly, 24 CFR part 7 is revised to read as follows:

## PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY, PROCEDURES AND PROGRAMS

### Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, National Origin, Age, Disability or Reprisal

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**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794; 42 U.S.C. 2000e note, 2000e-16, 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969; 34 FR 19285, Aug. 12, 1969; E.O. 10577, 3 CFR 1954–1958; E.O. 11222, 3 CFR 1964–1965.

## Subpart A—Equal Employment Opportunity Without Regard to Race, Color Religion, Sex, National Origin, Age, Disability or Reprisal

### General Provisions

#### § 7.1 Policy.

The Department's equal employment opportunity policy conforms with the policies expressed in title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4); the Civil Rights Act of 1991; Executive Order 11478 of 1969 (34 FR 12985, 3 CFR 1966–1970 Comp., p. 803); the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206d); sections 501 and 504 of the Rehabilitation Act of 1973, and reaffirming Executive Order 12871 (29 U.S.C. 791, 794); the Civil Service Reform Act of 1978 (5 U.S.C. 1101 *et seq.*); Executive Order 13087 of 1998 (63 FR 30097); and with the EEOC's implementing regulations, codified under 29 CFR part 1614. It is HUD's policy to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, disability or reprisal in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with current or former employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative employment at every level within the Department. Procedures for filing EEO claims are found in the EEOC regulations at 29 CFR part 1614. HUD is committed to promoting affirmative employment through the removal of barriers and by positive actions at every level, including the early resolution of EEO disputes.

#### § 7.2 Definitions.

*AE* means affirmative employment.

*Aggrieved individual* means a person who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. The terms ''aggrieved individual'' and ''aggrieved person'', as used in this part, are interchangeable.

*Alternative Dispute Resolution (ADR)* means a variety of approaches used to resolve conflict rather than traditional adjudicatory or adversarial methods such as litigation, hearings, and administrative processing and appeals. The approaches used may include, but are not limited to: negotiation, conciliation, facilitation, mediation, fact-finding, peer review, mini-trial, arbitration, or ombudsman.

*Claim* means action the agency has taken or is taking that causes the aggrieved person to believe that he or she is a victim of discrimination. This term replaces the formerly used term ''allegation'' and is used interchangeably with the term ''issue''.

*Comparable* means a person designated as head of an organizational unit that is analogous to that headed by an Assistant Secretary.

*Conflict-of-interest complaint* means an EEO complaint arising in the Department which names the Director of EEO or the Deputy Director of EEO, or both, as the responsible management officials.

*Director of Equal Employment Opportunity (EEO)* means the Director of HUD's Office of Departmental Equal Employment Opportunity who is also designated as the Director of EEO in this part.

*Disability* means the same as the term ''handicap'' under EEOC's regulations at 29 part 1614.

*Discrimination Complaint Manager (DCM)* means the designee, appointed by the Assistant Secretary (EEO Officer) or the Assistant Secretary's comparable, who assists the EEO Officer in discharging his or her EEO responsibilities and is responsible for carrying out the EEO discrimination complaint process for the organizational unit pursuant to the applicable civil rights laws, the regulations at 29 CFR part 1614 and this part.

*Diversity Program Manager* means the designee appointed by the Assistant Secretary (EEO Officer) or the Assistant Secretary's comparable who assists the EEO Officer in promoting appreciation of the contributions of women, minorities, and persons with disabilities, and in promoting the value of all Department employees.

EEO means equal employment opportunity.

*EEO Officer Pro Tem* means the Chief of Staff or an official at a neutral federal agency designated to process an EEO claim that would be a conflict of interest for the Director of EEO or the Deputy Director of EEO, or both.

*EEOC* and *Commission* mean the Equal Employment Opportunity Commission.

*Final action* means the Department's issuance of a final decision or final order.

*Final decision* means HUD's determination of the findings of fact and law on the merits or the procedural issues of an EEO complaint based upon the available record.

*Final order* means the Department's final action which states whether the Department will fully implement the decision or order of an EEOC Administrative Judge, or both.

*Neutral* means an individual who mediates or otherwise functions to specifically aid the parties in resolving the issues, and has no official, financial, or personal conflict of interest with respect to the issues being disputed, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

*Organizational unit* means the jurisdictional area of the Department's program offices such as the Office of the

Secretary, the Office of General Counsel, etc.

*Record* means all documents related to the EEO complaint as outlined in EEOC Management Directive 110.

*Reprisal* means the action taken against a current or former employee or applicant in retaliation for previous EEO participation in protected EEO activity or for opposing employment practice or policy illegal under EEO statutes. The terms ''reprisal'' and ''retaliation'' are used interchangeably.

**§ 7.3 Designations.**

(a) *Director of Equal Employment Opportunity.* The Director of the Office of Departmental Equal Employment Opportunity (ODEEO) is designated as the Director of EEO, except for complaints naming the Director or Deputy Director of Departmental EEO, or both, as the responsible management official(s) in complaints arising in the ODEEO which present a conflict-of-interest. In such cases, the Director of EEO may:

(1) Transfer the case to the Chief of Staff for processing; or

(2) On behalf of the Department, enter into an agreement with one or more federal agencies for processing of the Department's conflict-of-interest cases by the designated federal official chosen to serve as the EEO Officer Pro Tem.

(b) *Deputy Director of Equal Employment Opportunity.* The Deputy Director of the ODEEO is designated as the Deputy Director of EEO and acts in the absence of the Director of EEO.

(c) *Equal Employment Opportunity Officer.* The Director of EEO shall designate the Assistant Secretary or the Assistant Secretary's comparable as EEO Officer for the Department's respective organizational units for complaints arising in the respective Assistant Secretary's or Assistant Secretary's comparable organizational unit.

(d) *Equal Employment Opportunity Discrimination Complaint Manager (DCM).* Each Assistant Secretary (EEO Officer) shall designate a DCM to represent the organizational unit in EEO matters and assist the EEO Officer in carrying out EEO responsibilities. The DCM shall be the Administrative Officer (AO) for the organizational unit or another designee of the EEO Officer.

**§ 7.4 Affirmative employment programs.**

The Office of the Secretary, each Assistant Secretary, the General Counsel, the Inspector General, the President of the Government National Mortgage Association, the Chief Financial Officer, the Chief Procurement Officer, the Chief Information Officer, the Director of Lead Hazard Control, the Director of the Office of Multifamily Housing Assistance Restructuring, the Director of the Departmental Enforcement Center, the Director of the Real Estate Assessment Center, and the Director of the Office of Federal Housing Enterprise Oversight and other positions that may be established and are comparable to an Assistant Secretary, shall establish, maintain and carry out a plan of affirmative employment (AE) to promote equal opportunity in every aspect of employment policy and practice. Each plan shall identify instances of under-representation of minorities, women and persons with disabilities, recognize situations or barriers that impede equality of opportunity, and include objectives and action items targeted to eliminate any employment, training, advancement, and retention issues which adversely affect minorities, women and persons with disabilities. Each plan must be consistent with 29 CFR part 1614, is subject to approval by the Director of EEO and shall be developed within the framework of Department-wide guidelines published by the Director of EEO.

**§ 7.5 EEO Alternative Dispute Resolution Program.**

In accordance with the Secretary's Policy Statement regarding Alternative Dispute Resolution (ADR) located on the Department's website and 29 CFR 1614.102(b)(2), the Department shall establish and maintain an ADR program that addresses, at a minimum, EEO matters at the pre-complaint and formal complaint stages of the EEO process. ADR is a non-adversarial process that does not render a judgment with respect to the dispute. With the assistance of an impartial and neutral third party, ADR offers parties involved the opportunity to reach early and informal resolution of EEO matters in a mutually satisfactory fashion.

(a) *Program availability.* In appropriate cases, the EEO ADR Program is made available to an aggrieved person or Complainant during the pre-complaint and the formal complaint processing periods. Participation in the program by the parties is knowing and voluntary. Agency managers have a duty to cooperate in an ADR proceeding once the agency has determined that a matter is appropriate for ADR and the aggrieved person/complainant has elected to participate in ADR. At the formal stage, the complainant may request participation in the ADR Program. However, a determination of the appropriateness of ADR at the time of the request will be made on a case-by-case basis by the appropriate ODEEO official designated by the Director of EEO and does not affect the processing of the formal complaint, including the investigation.

(b) *EEO ADR program procedures.* The ODEEO shall establish and maintain all EEO ADR Program procedures which include appropriate consultations.

(c) *ADR training.* Training and education on the EEO ADR Program will be provided to all Department employees, managers and supervisors, and other persons protected under the applicable laws.

(d) *Pre-complaint ADR election process.* The appropriateness of a particular EEO matter or EEO complaint for the Department's ADR Program shall be determined on a case-by-case basis by the ODEEO official designated by the Director of EEO. The EEO Counselor shall advise the aggrieved person that the aggrieved person may choose between participation in the EEO ADR Program or the EEO traditional counseling activities provided for at 29 CFR 1614.105(c). The aggrieved person's election to proceed through ADR instead of EEO counseling is final.

(e) *ADR counseling requirements.* (1) The minimum information to be provided by the EEO Counselor about the Department's ADR Program includes the following:

(i) Definition of the term ADR;

(ii) An explanation of the stages in the EEO process at which ADR may be available;

(iii) A description of the ADR technique(s) used by the Department;

(iv) A description of how the program is consistent with the EEO ADR core principles that ensure fairness and require voluntariness, neutrality, confidentiality, and enforceability;

(v) An explanation of procedural and substantive alternatives; and

(vi) All time frames for the EEO administrative process including ADR.

(2) The EEO Counselor shall have no further involvement in resolving the EEO matter after the referral to the EEO ADR program.

(f) *Extension of pre-complaint processing period for ADR.* Where the aggrieved person chooses to participate in ADR, the pre-complaint processing period shall not exceed 90 days from the date of initial contact with the EEO Office.

(1) The aggrieved person shall be informed in writing by the EEO Counselor, no later than the thirtieth day after contacting the EEO Counselor, of the right to file a discrimination complaint, if the matter presented by

the aggrieved person has not been resolved.

(2) Prior to the end of the 30-day period from the date of initial contact with the EEO Office, the aggrieved person may agree, in writing, with the Department to postpone the final interview and extend the pre-complaint period for an additional period of no more than 60 days if the matter is not resolved. If the matter has not been resolved before the conclusion of the agreed extension, the notice of right to file a discrimination complaint shall be issued no later than the 90th day of initial contact with the EEO Office. The notice shall inform the aggrieved person of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the aggrieved person's duty to assure that the Department is informed immediately if the aggrieved person retains counsel or a representative and if the aggrieved person changes address.

(g) *EEO ADR Program's relationship to negotiated grievance, MSPB appeal and administrative grievance procedures.* Participation in the EEO ADR program does not preclude the aggrieved person or Complainant from exercising rights under any of the Department's other complaint or appeal procedures, when no resolution is reached. When participation in ADR results in a settlement agreement and the aggrieved person or Complainant believes the Department has failed to comply with its terms, the aggrieved person or Complainant may exercise the right of appeal pursuant to 29 CFR 1614.504.

## Responsibilities

### § 7.10 Responsibilities of the Director of EEO.

The Director and Deputy Director of EEO are responsible for:

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the Government's equal employment opportunity policy and the Department's EEO/ADR/AE programs;

(b) Developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO programs, including a Department-wide program of affirmative employment developed in coordination with other officials; and approving programs of affirmative employment established by each EEO Officer or comparable organizational head;

(c) Evaluating, at least annually, the sufficiency of each organizational unit's EEO/ADR/AE program and providing reports thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

(d) Appraising the Department's personnel operations at regular intervals to ensure their conformity with the policies of the Government's and the Department's EEO program;

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO/ADR/AE programs;

(f) Selecting EEO Counselors;

(g) Providing for counseling by an EEO Counselor to a current or former employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, disability, or in retaliation for participation in protected EEO activity; or for opposing a policy or practice illegal under EEO statutes;

(h) Providing for the prompt, fair and impartial processing of individual complaints involving claims of discrimination within the Department subject to 29 CFR part 1614;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as may be necessary, including disciplinary action warranted in circumstances where an employee has been found to have engaged in a discriminatory practice.

(j) Executing settlement agreements to resolve EEO complaints;

(k) Making available an ADR Program for EEO matters at both the pre-complaint and formal EEO complaint stages of the EEO administrative process;

(l) Developing and providing annual mandatory EEO and ADR training for EEO Counselors, and all supervisors and managers in conjunction with HUD Training Academy, Office of Human Resources, and the Office of General Counsel, other federal agencies and resources with ADR information and expertise; and

(m) Publicizing to all employees and posting at all times the names, business telephone numbers and addresses of the EEO Counselors, EEO Director, EEO Officers, and Diversity Program Managers, notice of EEO complaint processing time limits and the requirements of contacting an EEO Counselor and completing the counseling phase before filing a complaint.

### § 7.11 Responsibilities of the EEO Officers.

Each EEO Officer is responsible for:

(a) Advising the Director of EEO on all matters affecting the implementation of the Department's EEO/ADR/AE policies and programs in the organizational unit;

(b) Developing and maintaining a program of affirmative employment for the organizational unit and ensuring that the program is carried out in an exemplary manner;

(c) Publicizing to all employees of the organizational unit the name and address of the Director of EEO, the EEO Officer(s), and the EEO Counselor(s), the EEO Discrimination Complaint Manager(s), the Affirmative Employment Program (AEP) Manager, the Diversity Program Manager, ADR Officials, and the EEO complaint procedures;

(d) Informing all managers and supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselors, DCMs, ADR officials, EEO investigators, and of the EEO complaint process and the importance of cooperating and coordinating with all appropriate Department personnel to informally find solutions to problems brought to the EEO Officer's attention by current or former employees and applicants;

(e) Evaluating and documenting the performance by the managers and supervisors in the organizational unit in carrying out their responsibilities under this subpart;

(f) Seeking a resolution of EEO matters brought to their attention;

(g) Designating a senior level Affirmative Employment Program (AEP) Manager in Headquarters responsible for preparing the AEP plan; managing the plan; providing advice and guidance to managers and supervisors in removing barriers to EEO/AE/ADR and in implementing all of their EEO/AE responsibilities; and reviewing all recruitment and personnel actions taken by managers and supervisors to ensure the achievement of AEP objectives;

(h) Designating the Administrative Officer (AO) or other Headquarters organizational unit official as the DCM to manage and direct the organization's EEO responsibilities. In making such designation, the EEO Officer shall ensure that the designation as the DCM does not otherwise conflict with the official duties of the employee so designated;

(i) Designating a senior level Diversity Program Manager in HUD Headquarters to manage and direct the organization's Diversity Program and providing resources for diversity activities for its employees;

(j) Ensuring the successful operation of the EEO/AE/ADR Program by requiring management's support;

(k) Approving and making reasonable accommodation to the known physical or mental limitations of qualified employees with disabilities unless the accommodation would impose an undue hardship on the operations of Department; and

(l) Adhering to and implementing the Department's policy on religious accommodation.

**§ 7.12 Responsibilities of the EEO Counselors.**

The EEO Counselor is responsible for counseling and attempting resolution of matters brought to the EEO Counselor's attention pursuant to §§ 7.25 and 7.30 and 29 CFR part 1614, by any current or former employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, disability or in reprisal for participating in EEO activity or opposing policies and practices that are illegal under the EEO statutes. These responsibilities include, but are not limited to:

(a) Advising individuals, in writing, of their rights and responsibilities, including:

(1) The right to request a hearing and decision from EEOC or an immediate final decision from the agency after an investigation;

(2) Election rights;

(3) The right to file a notice of intent to sue and a lawsuit under the ADEA instead of an administrative complaint of age discrimination; and

(4) The duty to mitigate damages;

(5) Relevant time frames.

(b) EEO Counselors shall advise aggrieved persons that only the claims raised in pre-complaint counseling (or issues or claims like or related to claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Department.

(c) EEO Counselors shall advise aggrieved persons of their duty to keep the Department and EEOC informed of their current address and the name of the representative, if applicable, and to serve copies of hearing and appeal notices on the Department.

(d) EEO Counselors shall provide to the aggrieved person the notice of the right to file an individual or a class complaint. If the aggrieved person informs the EEO Counselor that the aggrieved person wishes to file a class complaint, the EEO Counselor shall explain the class complaint procedures and the responsibilities of a class agent and provide class complaint counseling prior to the issuance of the notice of right to file a complaint.

(e) EEO Counselors shall advise aggrieved persons that, where the Department agrees to offer ADR in a particular case, they may choose between participation in the EEO ADR Program and the traditional EEO counseling process. The EEO Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person initially contacted the Department's EEO office to request counseling, unless the aggrieved person agrees to a longer counseling period or if the aggrieved person elects the ADR program and agrees to extend the initial 30-day pre-complaint period for an additional period of no more than 60 days.

(f) If the matter has not been resolved before the conclusion of the agreed extension, the EEO Counselor shall issue the notice of right to file a discrimination complaint no later than the 90th day of the aggrieved person's initial contact with the EEO Office. The notice shall inform the aggrieved person of the right to file a discrimination complaint within 15 days of receipt of the notice; of the appropriate official with whom to file a complaint; and of the aggrieved person's duty to assure that the Department is informed immediately if the aggrieved person retains counsel or a representative and if the aggrieved person changes address.

(g) EEO Counselors shall prepare a report sufficient to document the fact that the required counseling actions were taken and an attempt to resolve any jurisdictional questions was made. The report shall include a precise description of the claim(s) and the basis(es) identified by the aggrieved person; pertinent documents gathered during the inquiry, specific information concerning timeliness of the initial counseling contact, and a statement as to whether a resolution attempt was undertaken, and if so, the disposition.

(h) EEO Counselors shall not attempt in any way to dissuade the aggrieved person from filing an EEO complaint. The EEO Counselor shall not reveal to the responsible management officials the identity of an aggrieved person who consulted the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Department has received a formal discrimination complaint from that person involving that same matter.

**§ 7.13 Responsibilities of the Assistant Secretary for Administration.**

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, automated systems and procedures which will promote continuing affirmative employment to ensure equal opportunity in the recruitment, selection, placement, training, awards, recognition and promotion of employees, including an applicant flow tracking system;

(b) Provide positive assistance and guidance to organizational units and personnel offices to ensure the effective implementation of the personnel management policies, programs, automated systems, and EEO procedures;

(c) Participate at the national level with other government departments and agencies, other employers, and other public and private groups, in cooperative action to improve employment opportunities and community conditions which affect employability;

(d) Prepare and implement plans for recruitment and reports in accordance with the Federal Equal Opportunity Recruitment Program (FEORP) and the Disabled Veterans Affirmative Action Program (DVAAP);

(e) Provide reasonable accommodations to the known physical or mental limitations of qualified employees with disabilities unless the accommodations would impose an undue hardship on the operation of the Department's programs;

(f) Adhere to and implement the Department's policy on religious accommodation;

(g) Designate a senior level Disability Program Manager to promote EEO/ADR/AE for persons with disabilities; to assure the accessibility of all HUD facilities and programs; and to manage the resources for providing reasonable accommodation;

(h) In conjunction with the Director of EEO, provide and coordinate mandatory EEO Counselor training;

(i) Provide and coordinate mandatory supervisors' and managers' EEO/AE/ADR training;

(j) Provide applicant data to ODEEO for analysis; and

(k) Designate a DCM to represent the organizational unit in EEO matters. The DCM shall be the AO for the organizational unit or another designee of the EEO Officer.

**§ 7.14 Responsibilities of the Office of Human Resources.**

In accordance with guidelines issued by the Assistant Secretary for Administration, Human Resources Officers shall:

(a) Appraise job structure and employment practices to ensure equality

of opportunity for all employees to participate fully on the basis of merit in all occupations and levels of responsibility;

(b) Communicate the Department's EEO policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, disability, or age and solicit their recruitment assistance on a continuing basis;

(c) Upon request, provide personnel information to EEO Counselors and other authorized officials or agents of the agency who are involved in the processing of a discrimination complaint;

(d) Evaluate hiring methods and practices to ensure impartial consideration for all job applicants;

(e) Ensure that new employee orientation programs contain appropriate references to the Department's EEO/ADR/AE policies, procedures and programs and accomplishment of EEO objectives under the Department's Performance, Accountability, Communications System (PACS) or other Departmental performance appraisal system;

(f) Participate in the preparation and distribution of such educational materials as may be necessary to adequately inform all employees of their rights and responsibilities as described in this part, including the Department's EEO program directives;

(g) In coordination with the Director of the HUD Training Academy, develop an on-going training program for supervisors and managers to ensure understanding of the Departmental EEO/ADR/AE programs, policy and other requirements which foster effective teamwork and high morale;

(h) In coordination with the Director of the HUD Training Academy, the Office of General Counsel, the Office of Administration and the Director of EEO, develop an on-going training program for managers and supervisors to ensure understanding of the Department's EEO and ADR programs. At a minimum, the training should include:

(1) The Civil Rights Act of 1964 (42 U.S.C. 2000d);

(2) Sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794);

(3) The Administrative Dispute Resolution Act of 1996 (5 U.S.C. 556, 571) and its amendments emphasizing the federal government's interest in encouraging mutual resolution of disputes and the benefits associated with using ADR;

(4) EEOC's regulations and policy guidance concerning EEO, AE and ADR;

(5) The ADR methods employed by the Department;

(6) An explanation of how to draft a settlement agreement that complies with the standards required by ODEEO and 29 CFR part 1614;

(7) An explanation of the recourse available where noncompliance by the Department is alleged; and

(8) Training on EEO policy, programs and procedures;

(i) In coordination with the Director of the HUD Training Academy, the Office of General Counsel, the Office of Administration, and the Director of EEO, the Department may enter into agreements to have EEO/AE/ADR mandatory annual supervisory and management training provided by other federal agencies or other resources;

(j) Decide all personnel actions on merit principles and in a manner which will demonstrate affirmative EEO for the organization;

(k) Ensure to the greatest possible utilization and development of the skills and potential abilities of all employees;

(l) Track applicant flow and promptly take or recommend appropriate action to overcome any impediment to achieving the objectives of the EEO/ADR/AE programs and accomplishing the EEO objectives under the Performance, Accountability, Communications System (PACS) or other Departmental performance appraisal system;

(m) Provide applicant data to ODEEO for analysis; and

(n) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishments in EEO.

### § 7.15 Responsibilities of managers and supervisors.

All managers and supervisors of the Department are responsible for:

(a) Removing barriers to EEO and ensuring that affirmative employment objectives are accomplished in their areas of responsibility;

(b) Evaluating and documenting subordinate managers and supervisors on their performance of EEO/ADR/AE responsibilities;

(c) Encouraging and taking positive steps to ensure respect for and acceptance of minorities, women and persons with disabilities, veterans and others of diverse characteristics in the workforce;

(d) Ensuring the non-discriminatory treatment of all employees and for providing full and fair opportunity for all employees in obtaining employment and career advancement, including support for ADR, the Upward Mobility Program, the Mentoring Program and the implementation of Individual Development Plans;

(e) Encouraging and authorizing staff participation in the various Diversity Program observances and training opportunities;

(f) Being proactive in addressing EEO/ADR/AE issues, and maintaining work environments that encourage and support complaint avoidance through sound management and personnel practices;

(g) Resolving complaints of discrimination early in the EEO process either independently, or through the use of ADR techniques;

(h) Making reasonable accommodations to the known physical and mental limitations of applicants and employees with disabilities when those accommodations can be made without undue hardship on the business of the Department;

(i) Attending mandatory annual supervisory and management training; and

(j) Adhering to and implementing the Department's policy on religious accommodations.

### § 7.16 Responsibilities of employees.

All employees of the Department are responsible for:

(a) Being informed as to the Department's EEO/ADR/AE programs;

(b) Adopting an attitude of full acceptance and respect for minorities, females, persons with disabilities, veterans and others of diverse characteristics in the workforce, and support for and participation in ADR;

(c) Providing equality of treatment and service to all persons with whom they come in contact in carrying out their job responsibilities;

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO/ADR/AE programs; and

(e) Cooperating during EEO investigations and throughout the entire EEO ADR process.

## Pre-Complaint Processing

### § 7.25 Pre-complaint processing.

(a) An ''aggrieved person'' must request counseling in accordance with 29 CFR 1614.105(a). The aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action. EEOC's regulation at 29 CFR 1614.105 shall govern the Department's pre-complaint processing.

(b) The Department or the EEOC shall extend the 45-day time limit in

paragraph (a) of this section when the individual shows that the individual was not notified of the time limits and was not otherwise aware of them, that the individual did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence the individual was prevented by circumstances beyond the individual's control from contacting the EEO Counselor within the time limits, or for other reasons considered sufficient by the ODEEO or the EEOC.

(c) At the initial counseling session, EEO Counselors must advise individuals, in writing, of their rights and responsibilities, including:

(1) The right to request a hearing and decision from an Administrative Judge of the EEOC or an immediate final decision from the Department following an investigation in accordance with 29 CFR 1614.108(f);

(2) Election rights pursuant to 29 CFR 1614.301 and 29 CFR 1614.302;

(3) The right to file a notice of intent to sue pursuant to 29 CFR 1614.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this subpart;

(4) The duty to mitigate damages;

(5) Relevant time frames; and

(6) The requirement that only the claims raised in pre-complaint counseling (or claims like or related to claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Department.

### § 7.26 EEO Alternative Dispute Resolution Program.

(a) The aggrieved person may elect to participate in the EEO ADR Program or the traditional EEO counseling procedures. When ADR is chosen, the EEO Counselor shall advise the aggrieved person that if the dispute is resolved during the ADR process, the terms of the agreement must be in writing and signed by both the aggrieved person and the appropriate Department representative. The Director of EEO may execute ADR settlement agreements that are initiated in the EEO process. The EEO Counselor shall advise the aggrieved person that if no resolution is reached under the EEO ADR Program, or if the matter has not been resolved 90 days from the initial contact with the EEO Office, the aggrieved person will receive a final interview and the notice of right to file a formal complaint shall be issued by the EEO Counselor. Nothing said or done during attempts to resolve the complaint through ADR may be included in any EEO complaint (should ADR be unsuccessful) nor can the ADR proceedings be disclosed.

(b) In appropriate cases (as determined by the Director of EEO on a case-by-case basis), ADR is available during the formal complaint process. Participation in ADR at the formal complaint stage does not affect the normal processing of the formal complaint, including the investigation. Should ADR be initiated at the formal complaint stage, the time period for processing the complaint may be extended by agreement for not more than 90 days. If ADR does not resolve the issue(s), the complaint must be processed within the extended time period agreed upon by the parties, but no later than the 90th day.

## Complaints

### § 7.30 Presentation of complaint.

At any stage in the presentation of a complaint, including the counseling stage, the Complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of the Complainant's own choosing, except as limited by 29 CFR part 1614.

### § 7.31 Who may file a complaint, with whom filed, and time limits.

(a) *Who may file a complaint.* Any aggrieved person (referred to elsewhere in this part as the Complainant in the formal complaint stage) who has satisfied the requirements of § 7.25, may file a complaint, unless there is an executed settlement agreement or amended complaint of like or similar issues. The complaint must be filed with the Director of EEO within 15 days of receipt of the notice of right to file a complaint issued by the EEO Counselor. The Department may accept a complaint only if the Complainant has met the appropriate requirements of 29 CFR part 1614.

(b) *Filing and computation of time.* (1) All time periods in this subpart stated in terms of days are calendar days unless otherwise stated.

(2) A document shall be deemed timely if the document is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if the document is received by mail within five days of the expiration of the applicable filing period.

(3) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(4) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless the last day falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

### § 7.32 Representation and official time.

(a) At any stage in the processing of an EEO complaint, including the counseling stage under 29 CFR 1614.105 and during participation in the EEO ADR Program, the Complainant shall have the right to be accompanied, represented, and advised by a representative of Complainant's choice, except as limited by 29 CFR part 1614.

(b) If the Complainant is an employee of the Department, the Complainant shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Department and EEOC requests for information if the Complainant is otherwise in active duty status. If the Complainant is an employee of the Department and the Complainant designates another employee of the Department as the Complainant's representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Department and EEOC requests for information.

(c) The Department is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the Complainant and representative to confer. The Complainant and the Complainant's representative, if employed by the Department and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Department or the EEOC during the investigation, informal adjustment, or hearing on the complaint.

(d) In cases where the representation of a Complainant or the Department would conflict with the official or collateral duties of the representative, the EEOC or the Department may, after giving the representative an opportunity to respond, disqualify the representative.

(e) Unless the Complainant states otherwise in writing, after the Department has received written notice of the name, address and telephone number of a representative for the Complainant, all official correspondence shall be with the representative with copies to the Complainant. When the Complainant designates an attorney as representative, service of all official correspondence

shall be made on the attorney and the Complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The Complainant must serve all official correspondence on the designated representative of the Department and shall notify the Department of any changes of the representative and Complainant's address.

(f) The Complainant shall at all times be responsible for proceeding with the complaint and cooperating in the entire EEO complaint process, whether or not the Complainant has designated a representative.

(g) Witnesses who are Federal employees, regardless of their tour of duty and regardless of whether they are employed by the Department or some other Federal agency, shall be in a duty status when their presence is authorized or required by EEOC or Department officials in connection with an EEO complaint.

**§ 7.33 Contents of the complaint.**

(a) *Information to be included in complaint.* (1) The complaint filed should include the following information:

(i) The specific claim or personnel matter which is alleged to be discriminatory;

(ii) The date the act or matter occurred;

(iii) The protected basis or bases on which the alleged discrimination occurred;

(iv) Facts and other pertinent information to support the claim(s) of discrimination; and

(v) The relief desired.

(2) To expedite the processing of complaints of discrimination, the Complainant may use the HUD EEO–1 Complaint Form to file the complaint.

(b) *Amendments.* (1) A Complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a Complainant may file a motion with the EEOC Administrative Judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(2) The Department shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the Complainant of the date on which the complaint or amendment was filed. The Department shall advise the Complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the Complainant that:

(i) The Complainant has the right to appeal the dismissal of or final action on a complaint; and

(ii) The Department is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the Department shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the Complainant may request a hearing from an EEOC Administrative Judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

(c) *Joint processing and consolidation.* (1) Complaints of discrimination filed by two or more Complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Department or the EEOC for joint processing after appropriate notification to the parties.

(2) Two or more complaints of discrimination filed by the same Complainant shall be consolidated by the Department for joint processing after appropriate notification to the Complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Department shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the Complainant may request a hearing from an EEOC Administrative Judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

(3) EEOC Administrative Judges or the EEOC may, in their discretion, consolidate two or more complaints of discrimination filed by the same Complainant.

(d) *Class complaints.* (1) *Definitions.* (i) A class is a group of employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by the Department's personnel management policy or practice that discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, disability, or in reprisal for participating in protected EEO activity or for opposing a practice made illegal under the EEO statutes.

(ii) A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class that satisfies the requirements of 29 CFR 1614.204.

(2) *Pre-complaint processing.* A current or former employee or applicant who wishes to file a class complaint must be counseled in accordance with 29 CFR 1614.105. A Complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a Complainant moves for class certification after completing the counseling process in 29 CFR 1614.105, no additional counseling is required. Class certification shall be denied by the EEOC Administrative Judge, when the Complainant has unduly delayed in moving for certification.

(3) *Certification.* Class complaints are certified by an EEOC Administrative Judge in accordance with the provisions of 29 CFR 1614.204.

(e) *Mixed case complaints.* (1) *Definitions.* A mixed case complaint is a complaint of employment discrimination filed with a Federal agency based on race, color, religion, sex, national origin, age, disability, or in reprisal for participating in protected EEO activity or for opposing a policy or practice made illegal by the EEO statutes, related to or stemming from an action that can be appealed to the Merit Systems Protection Board (MSPB). The complaint may contain only a claim of employment discrimination or the complaint may contain additional claims that the MSPB has jurisdiction to address.

(2) *Election.* An aggrieved person may initially file a mixed case complaint with the Department pursuant to this section or an appeal on the same matter with the MSPB pursuant to 5 CFR 1201.151, but not both. The Department shall inform every employee who is the subject of an action that is appealable to the MSPB and who has either orally or in writing raised the issue of discrimination during the processing of the action of the right to file either a mixed case complaint with the Department or to file a mixed case appeal with the MSPB. If a person files a mixed case appeal with the MSPB instead of a mixed case complaint and the MSPB dismisses the appeal for jurisdictional reasons, the Department shall promptly notify the individual in writing of the right to contact an EEO counselor within 45 days of receipt of this notice and to file an EEO complaint, subject to 29 CFR 1614.107.

(3) *Procedures for agency processing of mixed case complaints.* When a complainant elects to proceed initially under 29 CFR part 1614, subpart C,

rather than with the MSPB, the procedures in 29 CFR part 1614, subpart A, shall govern the processing of the mixed case complaint with the following exceptions:

(i) At the time the Department advises a Complainant of the acceptance of a mixed case complaint, the Department shall also advise the Complainant that:

(A) If a final decision is not issued within 120 days of the date of filing of the mixed case complaint, the Complainant may appeal the matter to the MSPB at any time thereafter as specified at 5 CFR 1201.154(b)(2) or may file a civil action as specified at 29 CFR 1614.310(g), but not both; and (B) If the Complainant is dissatisfied with the Department's final decision on the mixed case complaint, the Complainant may appeal the matter to MSPB (not EEOC) within 30 days of receipt of the Department's final decision;

(ii) Upon completion of the investigation, the notice provided the Complainant in accordance with 29 CFR 1614.108(f) will advise the Complainant that a final decision will be issued within 45 days without a hearing; and

(iii) At the time that the Department issues its final decision on a mixed case complaint, the Department shall advise the Complainant of the right to appeal the matter to the MSPB (not EEOC) within 30 days of receipt and of the right to file a civil action as provided at 29 CFR 1614.310(a).

(4) *Dismissal.* The Department may dismiss a mixed case complaint for the reasons provided in, and under the conditions prescribed in 29 CFR 1614.107. If MSPB's Administrative Judge finds that MSPB does not have jurisdiction over the matter, the Department shall resume processing of the complaint as a non-mixed case EEO complaint.

**§ 7.34 Acceptability.**

(a) The Director of EEO shall determine whether a complaint comes within the purview of 29 CFR part 1614 and shall advise the Complainant and Complainant's representative, if applicable, in writing of the acceptance or dismissal of the claims(s) of the complaint. The Notice of Receipt is provided to the Complainant, Complainant's representative, if applicable, and to the organizational unit through the appropriate EEO Officer and DCM.

(b) Dismissals of complaints are governed by the notice requirements and procedures in 29 CFR 1614.106(e)(1) and 29 CFR 1614.107.

(c) Prior to a request for a hearing in a case, the Department shall dismiss an entire complaint for any of the reasons provided in 29 CFR 1614.107(a)(1) through (9), including a complaint that alleges dissatisfaction with the processing of a previously filed complaint; or where the Department, strictly applying the criteria in EEOC decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(1) Evidence of multiple complaint filings; and

(2) Claims that are similar or identical, lack specificity or involve matters previously resolved; or

(3) Evidence of circumventing other administrative processes, retaliating against the Department's in-house administrative processes or overburdening the EEO complaint system.

(d) Where the Director of EEO believes that some, but not all, of the claims in a complaint should be dismissed for the reasons provided in this section and 29 CFR 1614.107(a)(1) through (9), the Department shall notify the Complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under 29 CFR 1614.107(b)(1) that some claims should be dismissed is reviewable by an EEOC Administrative Judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

**§ 7.35 Processing.**

(a) The Director of EEO will process complaints filed under 29 CFR part 1614 for the Department with the assistance of the EEO Officer, DCM, the EEO Counselor and the full cooperation of all other Department managers, supervisors and other employees.

(b) The Director of EEO shall, in accordance with 29 CFR part 1614, provide for the development of an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The person assigned to develop the factual record may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue and is encouraged, in accordance with 29 CFR 1614.108(b), to incorporate ADR techniques into the investigative efforts in order to promote early resolution of complaints.

(c) The Director of EEO will provide the Complainant and Complainant's representative, if applicable, and the EEO Officer a copy of the record developed. Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in 29 CFR 1614.108(f), the Department shall provide the Complainant with a copy of the investigative file, and shall notify the Complainant that, within 30 days of receipt of the investigative file, the Complainant has the right to request a hearing and decision from an EEOC Administrative Judge or may request an immediate final decision pursuant to 29 CFR 1614.110 from the Department.

**§ 7.36 Hearing.**

(a) *Notification of right to request a hearing.* The Director of EEO will notify the Complainant, the General Counsel, EEO Officer, DCM and Complainant's representative, where applicable, of the Complainant's right to request an administrative hearing and decision before the EEOC or the Department's final decision and the time frames for executing the right to request an administrative hearing. Note: Where a mixed case complaint is filed, the Complainant has no right to a hearing before an EEOC Administrative Judge unless the MSPB has dismissed the mixed case complaint or appeal for jurisdictional reasons. (See 29 CFR 1614.302(2)(b).)

(b) *Requesting a hearing.* Where the Complainant has received the notice required in § 7.35(c) and 29 CFR 1614.108(f) or at any time after 180 days have elapsed from the filing of the complaint, the Complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Department's acknowledgment letter. The Complainant shall send a copy of the request for a hearing to the Department's EEO office. Within 15 days of receipt of a copy of complainant's request for a hearing, or the docketing notice from the EEOC, whichever is earlier, the Director of EEO shall provide a copy of the complaint file to EEOC and, if not previously provided, to the Complainant,

Complainant's representative, if applicable, and the appropriate Office of General Counsel.

(c) *EEOC appointment of EEOC Administrative Judge.* When a Complainant requests a hearing, the EEOC shall appoint an EEOC Administrative Judge to conduct a hearing in accordance with this section. Upon appointment, the EEOC Administrative Judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an EEOC Administrative Judge or hearing examiner with appropriate security clearances.

(d) *Dismissals.* EEOC Administrative Judges may dismiss complaints pursuant to 29 CFR 1614.107, on their own initiative, after notice to the parties, or upon the Department's motion to dismiss a complaint.

(e) *Offer of resolution.* Any time after the filing of the written complaint but not later than the date an EEOC Administrative Judge is appointed to conduct a hearing, the Department may make an offer of resolution to a Complainant who is represented by an attorney.

(1) Any time after the parties have received notice that an EEOC Administrative Judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the Department may make an offer of resolution to the Complainant, whether represented by an attorney or not.

(2) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Department's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief.

(3) With regard to monetary relief, the Department may make a lump sum offer covering all forms of monetary liability, or the Department may itemize the amounts and types of monetary relief being offered.

(4) The Complainant shall have 30 days from receipt of the offer of resolution to accept the offer of resolution. If the Complainant fails to accept an offer of resolution and the relief awarded in the EEOC Administrative Judge's decision, the Department's final decision, or the EEOC decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the Complainant shall not receive payment from the Department of attorney's fees or costs incurred after the expiration of the 30-day acceptance period.

(5) An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a Complainant fails to accept an offer of resolution, the Department may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(f) *Orders to produce evidence and failure to comply.* (1) The Complainant, the Department, and any employee of the Department shall produce such documentary and testimonial evidence as the EEOC Administrative Judge deems necessary. The EEOC Administrative Judge shall serve all orders to produce evidence on both parties.

(2) When the Complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an EEOC Administrative Judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the EEOC Administrative Judge shall, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Discovery, conduct and record of hearing.* (1) *Discovery.* The EEOC Administrative Judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the EEOC Administrative Judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the EEOC Administrative Judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. Grounds for objection to producing evidence shall be that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) *Conduct of hearing.* The Department shall provide for the attendance at a hearing of all employees approved as witnesses by an EEOC Administrative Judge. Attendance at hearings will be limited to persons determined by the EEOC Administrative Judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The EEOC Administrative Judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The EEOC Administrative Judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the EEOC Administrative Judge shall exclude irrelevant or repetitious evidence. The EEOC Administrative Judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing Complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an EEOC Administrative Judge, or who otherwise engages in improper conduct.

(3) *Record of hearing.* The hearing shall be recorded and the Department shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the EEOC Administrative Judge at the hearing shall be made part of the record of the hearing. If the Department submits a document that is accepted, the Department shall furnish a copy of the document to the Complainant. If the Complainant submits a document that is accepted, the EEOC Administrative Judge shall make the document available to the Department representative for reproduction.

**§ 7.37 Final action.**

(a) *Department final decision without a hearing.* The Director of EEO shall make the final decision for the Department based on the record developed through the processing of the complaint. The Director of EEO may consult with the General Counsel, the Assistant Secretary of Administration, the Office of Human Resources, the EEO Officer, the DCM, the EEO Counselor,

other managers and supervisors, all designees and comparables, and all other persons the Director of EEO deems necessary. The decision, where appropriate, shall include the remedial and corrective action necessary to ensure that the Department is in compliance with the EEO statutes and to promote the Department's policy of equal employment opportunity. When the Department dismisses an entire complaint under 29 CFR 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under 29 CFR 1614.108(f), the Department shall take final action by issuing a final decision. The final decision shall consist of findings by the Department on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with 29 CFR part 1614, subpart E. The Department shall issue the final decision within 60 days of receiving notification that a Complainant has requested an immediate decision from the Department, or within 60 days of the end of the 30-day period for the Complainant to request a hearing or an immediate final decision where the Complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of the Notice of Appeal Petition (EEOC Form 573) shall be attached to the final action.

(b) *Department final order after decision by EEOC Administrative Judge.* When an EEOC Administrative Judge has issued a decision under 29 CFR 1614.109 (b), (g) or (i), the Department shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the EEOC Administrative Judge's decision. The final order shall notify the Complainant whether or not the Department will fully implement the decision of the EEOC Administrative Judge and shall contain notice of the Complainant's right to appeal to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the EEOC Administrative Judge, then the Department shall simultaneously file an appeal in accordance with 29 CFR 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(c) *Decision and final order by EEOC Administrative Judge after hearing.* Unless the EEOC Administrative Judge makes a written determination that good cause exists for extending the time for issuing a decision, an EEOC Administrative Judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the EEOC Administrative Judge of the complaint file from the Department. The EEOC Administrative Judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If the Department does not issue a final order within 40 days of receipt of the EEOC Administrative Judge's decision in accordance with 29 CFR 1614.110, then the decision of the EEOC Administrative Judge shall become the final action of the Department.

(d) *Decision and final order by EEOC Administrative Judge without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the EEOC Administrative Judge, file a statement with the EEOC Administrative Judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in 29 CFR 1614.109(g)(1). The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the EEOC Administrative Judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a hearing or make such other ruling as is appropriate.

(3) If the EEOC Administrative Judge determines that some or all facts are not in genuine dispute, the EEOC Administrative Judge may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

**§ 7.38 Appeals.**

(a) *Appeals to the EEOC.* (1) A Complainant may appeal the Department's final action or dismissal of a complaint. The regulations at 29 CFR part 1614, subpart D, govern a Complainant's right of appeal.

(2) The Department may appeal as provided in 29 CFR 1614.110(a).

(3) A class agent or the Department may appeal an EEOC Administrative Judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Department may appeal a final decision on a petition pursuant to 29 CFR 1614.204(g)(4).

(b) *Time limits for appeals to the EEOC.* Appeals described in 29 CFR 1614.401 (a) and (c) must be filed within 30 days of Complainant's receipt of the dismissal, final action or decision, or within 30 days of receipt by the attorney of record, if represented. Appeals described in 29 CFR 1614.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a Complainant has notified the Director of EEO of alleged noncompliance with a settlement agreement in accordance with 29 CFR 1614.504, the Complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Department's determination.

(c) *How to appeal.* (1) The Complainant, the Department, a class agent, grievant or individual class claimant (referred to elsewhere in this part as the appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(2) The appellant shall furnish a copy of the appeal to the opposing party at the same time the appeal is filed with the EEOC. In or attached to the appeal to the EEOC, the appellant must certify the date and method by which service was made on the opposing party.

(3) If an appellant does not file an appeal within the time limits of this section, the appeal shall be dismissed by the EEOC as untimely.

(4) Any statement or brief on behalf of a Complainant in support of the appeal must be submitted to the Office of

Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Department in support of its appeal must be submitted to the Office of Federal Operations within 20 days of filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(5) The Department must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the Complainant has filed an appeal or within 30 days of submission of an appeal by the Department.

(6) The Department may be represented by the Office of General Counsel in appeals before the Office of Federal Operations.

(7) Any statement or brief in opposition to an appeal must be submitted to the EEOC and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

(d) *Request for reconsideration.* A decision issued under paragraph (a) of § 1614.405 is final within the meaning of 29 CFR 1614.407 unless the EEOC reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the EEOC, which the EEOC in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the Department.

## Other Complaint and Appeal Procedures

### § 7.39 Negotiated grievance, MSPB appeal and administrative grievance procedures.

(a) *Negotiated grievance procedure.* An aggrieved person covered by a collective bargaining agreement that permits allegations of discrimination to be raised in a negotiated grievance procedure can file a complaint under these procedures or a negotiated grievance, but not both. An election to proceed under this section is indicated only by the filing of a written complaint. An election to proceed under a negotiated grievance procedure is indicated by the filing of a timely grievance. (See 29 CFR 1614.301.)

(b) *MSPB appeal procedure.* (1) *Who can file appeal and when.* An aggrieved person alleging discrimination on basis of race, color, religion, sex, national origin, age or reprisal because of participation in related to or stemming from an action that can be appealed to the MSPB can file a complaint under these procedures, or an appeal with the MSPB, but not both. Whichever is filed first, the complaint or the appeal, is considered an election to proceed in that forum. (See 29 CFR 1614.302 through 29 CFR 1614.309.)

(2) *Right to file civil action about MSPB appeal or decision.* The procedures of this section are governed by 29 CFR § 1614.310.

(3) *MSPB appeal rights.* The provisions of 29 CFR part 1614, subpart C, shall govern MSPB appeal rights.

(c) *Administrative grievance procedure.* (1) *Grievance.* A request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction related to employment with the Department and over which the Department has control, including an allegation of coercion, reprisal or retaliation. The range of matters is limited to those for which no other means of administrative review is provided.

(2) *Covered employee.* Any non-bargaining unit employee, including a former employee or applicant for whom a remedy can be provided.

(3) *Responsibilities of participants in the grievance procedure.* Each employee has the responsibility for making a maximum effort to achieve informal settlement of a personal grievance.

(4) *Grievance requirements.* The procedures, responsibilities and processes to be followed by an employee wishing to file an administrative grievance are found in HUD Handbook 771.2 REV–2, Administrative Grievances.

## Remedies, Enforcement and Compliance

### § 7.40 Remedies and enforcement.

(a) *Remedies and relief.* When the Department, or the EEOC, in an individual case of discrimination, finds that a current or former employee or applicant has been discriminated against, the Department shall provide full relief in accordance with 29 CFR 1614.501.

(b) *Attorney's fees and costs.* In a decision or final action, the Department, EEOC Administrative Judge or the EEOC may award the applicant or current or former employee reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(1) Full relief in Title VII and Rehabilitation Act cases may include compensatory damages, an award of attorney's fees (including expert witness fees) and costs when requested and verified, in accordance with the requirements of 29 CFR 1614.501(e).

(2) Time period and persons covered. Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Department, EEOC Administrative Judge or EEOC, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the Complainant. The Department is not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the EEOC affirms on appeal an EEOC Administrative Judge's decision finding discrimination after the Department takes final action by not implementing an EEOC Administrative Judge's decision or when the parties agree the Department will pay for attorney's fees for pre-complaint representation.

(c) *Notice of representation.* Written submissions to the Department that are signed by the representative shall be deemed to constitute notice of representation.

(d) *Nonattorney fees and costs.* Reporter, witness, printing and other related fees and costs may be awarded, in accordance with 29 CFR 1614.501(e)(1)(iii) and 1614.501(e)(2)(ii)(C).

### § 7.41 Compliance with EEOC final decisions.

(a) Relief ordered in a final EEOC decision is mandatory and binding on the Department except as provided in this section. The Department's failure to implement ordered relief shall be subject to judicial enforcement, as specified in 29 CFR 1614.503(g).

(b) Notwithstanding paragraph (a) of this section, when the Department requests reconsideration and the case involves removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the Department shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty

status in the position specified by the EEOC, pending the outcome of the Department's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of paragraph (b) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the EEOC upholds its decision after reconsideration.

(2) When the Department requests reconsideration, the Department may delay the payment of any amounts ordered to be paid to the Complainant until after the request for reconsideration is resolved. If the Department delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the Department to make the payment, then the Department shall pay interest from the date of the original appellate decision until payment is made.

(3) The Department shall notify the EEOC and the employee in writing at the same time the Department requests reconsideration that the relief the Department provides is temporary or conditional and, if applicable, that the Department will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Department to provide notification will result in the dismissal of the Department's request.

(4) When no request for reconsideration is filed or when a request for reconsideration is denied, the Department shall provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 60 days after receipt of the final decision, unless otherwise ordered in the decision.

**§ 7.42 Enforcement of EEOC final decisions.**

(a) *Petition for enforcement.* A Complainant may petition the EEOC for enforcement of a decision issued under the EEOC's appellate jurisdiction. The petition shall be submitted to the Office of Federal Operations. The petition shall specifically provide the reasons that led the Complainant to believe that the Department is not complying with the decision.

(b) *Referral to the EEOC.* Where the Director, Office of Federal Operations, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the EEOC, or, as directed by the EEOC, refer the matter to another appropriate Department.

(c) *EEOC notice to show cause.* The EEOC may issue a notice to the Secretary that the Department has failed to comply with a decision and to show cause why there is noncompliance. Such notice may request the head of the Department or a representative to appear before the EEOC or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons for non-compliance.

(d) *Notification to complainant of completion of administrative efforts.* Where the EEOC has determined that the Department is not complying with a prior decision, or where the Department has failed or refused to submit any required report of compliance, the EEOC shall notify the Complainant of the right to file a civil action for enforcement of the decision pursuant to title VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Department's refusal to implement the ordered relief in accordance with the Administrative Procedure Act (5 U.S.C. 701 *et seq.*), and the mandamus statute (28 U.S.C. 1361), or to commence new proceedings in accordance with the appropriate statutes.

**§ 7.43 Settlement agreements.**

(a) The Department shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. These efforts shall include ADR. Any settlement reached shall:

(1) Be in writing;

(2) Identify the claims resolved;

(3) Be signed by both parties and/or their designees; and

(4) Otherwise comply with 29 CFR part 1614.

(b) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or civil action shall be binding on the Department. If the Complainant believes that the Department has failed to comply with the terms of a settlement agreement or decision, the Complainant shall notify the Director of EEO, in writing, of the alleged noncompliance within 30 days of when the Complainant knew or should have known of the alleged noncompliance. The Complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(c) The Department shall resolve the matter and respond to the Complainant, in writing. If the Department has not responded to the Complainant, in writing, or if the Complainant is not satisfied with the Department's attempt to resolve the matter, the Complainant may appeal to the EEOC for a determination as to whether the Department has complied with the terms of the settlement agreement or final decision. The Complainant may file such an appeal 35 days after the Complainant has served the Department with the allegations of noncompliance, but must file an appeal within 30 days of the Complainant's receipt of the Department's determination. The Complainant must serve a copy of the appeal on the Department and the Department may submit a response to the EEOC within 30 days of receiving notice of the appeal.

**§ 7.44 Interim relief.**

(a) When the Department appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the EEOC Administrative Judge's decision orders retroactive restoration, the Department shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Department appeal. The employee may decline the offer of interim relief.

(b) Service under the temporary or conditional restoration provisions of paragraph (a) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the EEOC upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure, if the EEOC reverses the decision on appeal.

(c) When the Department appeals, the Department may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the Complainant until after the appeal is resolved. If the Department delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Department to make the payment, then the Department shall pay interest from the date of the original decision until payment is made.

(d) The Department shall notify the EEOC and the employee in writing at the same time the Department appeals that the relief the Department provides is temporary or conditional and, if applicable, that the Department will delay the payment of any amounts owed but will pay interest as specified in paragraph (c) of this section. Failure of the Department to provide notification will result in the dismissal of the Department's appeal.

(e) The Department may, by notice to the Complainant, decline to return the Complainant to the Complainant's place of employment if the Department determines that the return or presence of the Complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the Complainant to the Complainant's place of employment is not reviewable. A grant of interim relief does not insulate a Complainant from subsequent disciplinary or adverse action.

(f) If the Department files an appeal and has not provided required interim relief, the Complainant may request dismissal of the Department's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the Department's appeal. A copy of the request must be served on the Department at the same time the request is filed with EEOC. The Department may respond with evidence and argument to the Complainant's request to dismiss within 15 days of the date of service of the request.

## Statistics and Reporting Requirements

### § 7.45 EEO group statistics and reports.

(a) The Department shall establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability of its employees and applicant flow in accordance with 29 CFR 1614.601 through 29 CFR 1614.602 and the Department shall report to the EEOC on employment by race, national origin, sex and disability, in the form and at such times as the EEOC may require.

(b) The Department shall report to the EEOC information concerning pre-complaint counseling and the status, processing and disposition of complaints under this part, at such times and in such manner as the EEOC prescribes.

(c) The Department shall advise the EEOC whenever the Department is served with a Federal court complaint based upon a complaint that is pending on appeal at the EEOC.

(d) The Department shall submit annual written national equal employment opportunity plans of action for the review and approval of the EEOC. Plans shall be submitted in a format prescribed by the EEOC and in accordance with 29 CFR 1614.602.

## Subpart B—[Reserved]

Dated: April 16, 2001.

**Mel Martinez,**

*Secretary.*

[FR Doc. 01–9889 Filed 4–20–01; 8:45 am]

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# Part IV

# Environmental Protection Agency

## 40 CFR Parts 9, 141, and 142

## National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9, 141, and 142**

**[WH–FRL–6970–3]**

**RIN 2040–AB75**

## National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Today's action proposes a nine-month delay to February 22, 2002 of the current May 22, 2001 effective date of the arsenic standard. This standard was promulgated by the Agency on January 22, 2001 (66 FR 6976), and previously delayed on March 23, 2001 (66 FR 16134) to May 22, 2001. On January 22, 2001, the U.S. Environmental Protection Agency (EPA) published a final standard for arsenic in drinking water that would lower the current arsenic standard from 50 parts per billion (ppb) to 10 ppb by 2006. On January 24, 2001, the **Federal Register** published the White House's regulatory review plan to allow members of the new administration a 60-day opportunity to review published regulations that have not taken effect.

Following **Federal Register** promulgation of the arsenic rule, a number of concerns were raised to EPA by states, public water systems, and other stakeholders regarding the adequacy of science and the basis for national cost estimates underlying the rule. Because of the importance of the arsenic rule and the national debate surrounding it related to science and costs, EPA's Administrator publicly announced on March 20, 2001, that the Agency would take additional steps to reassess the scientific and cost issues associated with this rule and seek further public input on each of these important issues.

Consistent with this commitment, EPA will request the National Academy of Sciences to convene a panel of scientific experts first, to review, the Agency's interpretation and application of arsenic research discussed and evaluated as part of the National Academy of Sciences 1999 arsenic report and, second, to review and evaluate any new arsenic research that has become available since the 1999 NAS report. At the same time, EPA will work with the National Drinking Water Advisory Council to review the assumptions and methodologies underlying the Agency's estimate of arsenic compliance costs.

As its next step in this process of reviewing the January 22, 2001 arsenic rule, EPA will prepare a proposal for comment on a range of arsenic MCL options from 3ppb to 20ppb.

The nine-month extension of the effective date from May 22, 2001, to February 22, 2002, for which EPA today requests comment would allow time to complete the reassessment process outlined above and to afford the public a full opportunity to provide further input on the science and costing analysis underlying EPA's promulgation of the January 22, 2001, arsenic standard.

**DATES:** Written comments should be submitted on this proposed regulation by May 7, 2001 to the address listed below.

**ADDRESSES:** You may send written comments on this proposed rule to the W–99–6–IV Arsenic Comments Clerk, Water Docket (MC–4101); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave., NW, Washington, DC 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW; EB–57; Washington, DC 20460; (202) 260–3027 between 9 a.m. and 3:30 p.m. Eastern Time, Monday through Friday. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing and docket review. The proposed rule and supporting documents, including public comments, are available for review in the Water Docket at the above address.

**FOR FURTHER INFORMATION CONTACT:** For information about today's proposal, contact Ephraim King, Director, Standards and Risk Management Division, Office of Ground Water and Drinking Water (4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone: (202) 260–7575.

**SUPPLEMENTARY INFORMATION:** *Additional Information for Commenters.* Please submit an original and three copies of your comments and enclosures (including references). To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Electronic comments must be submitted as a WordPerfect 5.1, WP6.1 or WP8 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WP 5.1, WP6.1 or WP8, or ASCII file format. Electronic comments on this Notice may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) or submissions in other electronic formats (e.g., Word, pdf, Excel) will be accepted.

*Availability of Docket.* The docket for this rulemaking has been established under number W–99–16–IV, and includes supporting documentation as well as printed, paper versions of electronic comments. The docket is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket; EB 57; U.S. EPA; 401 M Street, SW; Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment. Every user is entitled to 100 free pages, and after that the Docket charges 15 cents a page. Users are invoiced after they copy $25, which is 267 photocopied pages. The Safe Drinking Water Hotline can provide copies of some of the supporting documentation electronically, phone: (800) 426–4791, or (703) 285–1093, e-mail: Hotline-sdwa@epa.gov. EPA's arsenic in drinking water web page contains links to the proposed and final arsenic regulations and other supporting material on line at *http://www.epa.gov/safewater/arsenic.html.*

### Regulated Entities

A public water system, as defined in 40 CFR 141.2, provides water to the public for human consumption through pipes or other constructed conveyances, if such system has ''at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.'' A public water system is either a community water system (CWS) or a non-community water system (NCWS). A community water system, as defined in § 141.2, is ''a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.'' The definition in § 141.2 for a non-transient, non-community water system [NTNCWS] is ''a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year.'' EPA has an

inventory totaling over 54,000 community water systems and approximately 20,000 non-transient, non-community water systems nationwide. Entities potentially regulated by this action are community water systems and non-transient, non-community water systems. The following table provides examples of the regulated entities under this rule.

TABLE OF REGULATED ENTITIES

| Category | Examples of potentially regulated entities |
|---|---|
| Industry | Privately owned/operated community water supply systems using ground water or mixed ground water and surface water. |
| State, Tribal, and local government. | State, Tribal, or local government-owned/operated water supply systems using ground water or mixed ground water and surface water. |
| Federal government | Federally owned/operated community water supply systems using ground water or mixed ground water and surface water. |

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 as revised by the January arsenic rule.

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## I. Background and History Preceding This Notice

### *A. What is Covered in the January 22, 2001 National Primary Drinking Water Regulations Final Rule?*

In the Monday, January 22, 2001, **Federal Register**, EPA issued final regulations for arsenic and clarifications to compliance and new-source contaminants monitoring (66 FR 6976). The Agency established a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero milligrams per liter (mg/L) and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (i.e., 10 micrograms per liter (μg/L)). The arsenic regulation was intended to apply to non-transient non-community water systems and to community water systems.

In addition, on January 22, 2001, EPA published clarifications for monitoring and demonstration of compliance for new systems or sources of drinking water for inorganic, volatile organic, and synthetic organic contaminants. The regulations also recognized the State-specified time period and sampling frequency for new public water systems and systems using a new source of water for demonstrating compliance with drinking water regulations. The effective date for the new rule was, in general, March 23, 2001, although the compliance dates for affected systems are years away.

### *B. What did EPA's Administrator Announce on March 23, 2001?*

On March 23, 2001 (66 FR 16134), the Administrator announced a 60-day delay of the effective date for the arsenic rule from March 23, 2001 to May 22, 2001. That extension was in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan,'' published in the **Federal Register** on January 24, 2001 (66 FR 7702).

### *C. What Does Today's Action do?*

Today, EPA is proposing a further extension of the effective date for the arsenic rule, until February 22, 2002, to allow additional time for reconsideration of specific aspects of the arsenic rule as explained in the next section. EPA will consider comments received during the comment period for this notice which address the extension, and EPA will decide whether to issue a final extension of the effective date by May 22, 2001. The compliance dates for the arsenic rule remain unaffected by today's action.

## II. Basis for Today's Notice and Process for Review of Rule

### *A. Why is EPA Undertaking a Further Review of the Arsenic in Drinking Water Rule?*

The purpose of today's proposed extension to the effective date is to allow additional time for review of the science and costing analysis underlying the arsenic in drinking water rule. EPA understands and appreciates that the question of setting a final arsenic in drinking water standard is a controversial one for several reasons. From an economic standpoint, the new regulation can be expected to have significant impacts on a number of drinking water utilities, especially those serving less than 10,000 people in areas of high naturally occurring arsenic. Stakeholders have an understandable desire to ensure that any new regulation be based on accurate and reliable compliance cost estimates. Stakeholders also want to be confident that the health risks associated with a new standard have been appropriately evaluated and are based on the best available science.

The Agency is committed to safe and affordable drinking water for all Americans. However, we want to be sure that the conclusions about arsenic in the final rule are supported by the best available science. The Agency is therefore moving rapidly to review arsenic research and cost estimates related to the arsenic standard so that communities that need to reduce arsenic in drinking water can proceed with confidence that the new standard is based on sound science and accurate cost estimates. Independent review of the science and technical analysis behind the final standard will help resolve questions that have arisen about the health basis and costs of reducing arsenic to 10 parts per billion in drinking water.

*B. What Will be the Process for Review of the Rule?*

EPA has considered a number of possible mechanisms for conducting the necessary reviews of the underlying science and cost of compliance estimates associated with the arsenic in drinking water rule. EPA's criteria for conducting the review will be to ensure that reviewers are recognized experts in their fields; that reviewers are as impartial and objective as possible; that reviewers represent an array of backgrounds and perspectives (within their disciplines); that the review can be conducted within a relatively short time frame (i.e, within approximately four months); and that the results of the review be made publicly available for comment. EPA is using the following mechanisms for the review:

- Review of Health Effects of Arsenic and Consideration of Key Issues Associated with the Risk Analysis: National Academy of Sciences' National Research Council.
- Review of Cost of Compliance Estimates: Specially convened subgroup of the National Drinking Water Advisory Council.

In the case of the National Research Council, EPA will rely on the same independent judgment, objective analysis, and scientific expertise that is reflected in the March 1999 report, entitled, ''Arsenic in Drinking Water'' in reviewing the Agency's interpretation and application of existing arsenic research as well as new studies of arsenic health effects arsenic science that have been published since the 1999 report. With regard to costing issues, the National Drinking Water Advisory Council has a charter, under the Federal Advisory Committee Act, to advise the Agency on an array of drinking water issues associated with implementing the national drinking water program and has previously provided recommendations to the Agency in the development of the arsenic in drinking water rule.

As its next step in the process for review of the arsenic MCL, EPA will prepare a proposal requesting comment on a range of arsenic MCLs from 3ppb to 20ppb. The purpose of this further proposal is to provide for additional public comment on the range of science and cost issues related to the arsenic rule. EPA will provide the results of the independent science and cost reviews as they become available. EPA will then analyze the results of these reviews together with any public comment to reach a final decision on how to proceed with regard to the arsenic MCL. As it becomes available, further information on this process will also be available on EPA's arsenic in drinking water webpage at www.epa.gov/safewater/arsenic.html and from the Safe Drinking Water Hotline phone: (800) 426–4791, or (703) 285–1093, e-mail: Hotline-sdwa@epa.gov.

## III. Administrative Requirements

*A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' and, as such, has not been submitted to OMB for review.

*B. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This regulation is not subject to Executive Order 13045 because it not economically significant.

*C. Unfunded Mandates Reform Act (UMRA) of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This is because the rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus today's proposal is not subject to the requirements of section 202 and 205 of the UMRA. For the same reason, EPA also has determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. This action does not impose any requirement on anyone. Thus, there are no costs associated with this action. Therefore, today's rule is not

subject to the requirements of section 203 of UMRA.

*D. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposed action does not impose any requirements on anyone and does not voluntarily request information. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR parts 9, 141 and 142 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0231.

Copies of the ICR document(s) may be obtained from Sandy Farmer, by mail at the Office of Environmental Information Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* Include the ICR and/or OMB number in any correspondence.

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.

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.

*E. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 USC 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's Chief of Counsel for Advocacy.

For the purposes of assessing the impacts of today's rule on all three categories of small entities, EPA considered small entities to be systems serving 10,000 or fewer customers. In accordance with the RFA requirements, EPA proposed using this alternative definition for all three categories of small entities in the **Federal Register** (63 FR 7605, February 13, 1998), requested public comment and consulted with SBA regarding the alternative definition as it relates to small businesses. In the preamble to the final Consumer Confidence Reports (CCR) regulation (63 FR 4511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed action does not impose any requirements on anyone, including small entities.

*F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not impose any new technical standards.

*G. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not establish or change any requirements. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal

governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. As a result of administrative review of the final regulation published on January 22, 2001, the Environmental Protection Agency (EPA) is delaying the effective date for the drinking water regulation for arsenic. The purpose is to reassess the scientific and cost issues and seek further public input, as well as to fully review the support available for small systems. This proposal merely allows people to comment on EPA's intent to review the final arsenic regulation. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

*I. Executive Order 12866—Plain Language Considerations*

Executive Order 12866 requires each agency to write all rules in plain language. EPA invites public comment on how to make this proposed rule easier to understand. Comments may address the following questions and other factors as well:

A. Has EPA organized the material to suit your needs?
B. Are the requirements in the rule clearly stated?
C. Does the rule contain technical wording or jargon that is not clear?
D. Would a different format (grouping or order of sections, use of headings, paragraphing) make the rule easier to understand?
E. Would more (but shorter) sections be better?
F. Could EPA improve clarity by using additional tables, lists or diagrams?
G. What else could EPA do to make the rule easier to understand?

**List of Subjects in 40 CFR Part 141**

Environmental protection, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: April 18, 2001.

**Christine Todd Whitman,**

*Administrator.*

## PARTS 9, 141, AND 142—PROPOSED DELAY OF EFFECTIVE DATE

For the reasons stated in the preamble, EPA proposes:

1. To delay the effective date of the amendments to 40 CFR parts 9, 141, and 142 published January 22, 2001 (66 FR 6976) and delayed on March 23, 2001 (66 FR 16134) from May 22, 2001 to February 22, 2002 except for the amendments to §§ 141.23(i)(1) and (i)(2), 141.24(f)(15), (h)(11) and (h)(20), 142.16(e), (j), and (k) which are effective January 22, 2004;

2. To withdraw the amendments to 40 CFR 141.6 published on March 23, 2001 (66 FR 16134); and

3. To amend 40 CFR part 141 as follows:

## PART 141— NATIONAL PRIMARY DRINKING WATER REGULATIONS

a. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

### Subpart A—[Amended]

b. Paragraph (j) of 40 CFR 141.6 added at 66 FR 7061, January 22, 2001, and amended on March 23, 2001, is further amended by revising the last sentence to read as follows:

**§ 141.6 Effective dates.**

* * * * *

(j) * * * However, the consumer confidence rule reporting requirements relating to arsenic listed in § 141.154(b) and (f) are effective for the purpose of compliance on February 22, 2002.

* * * * *

[FR Doc. 01–10110 Filed 4–19–01; 3:10 pm]

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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.

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**H.R. 132/P.L. 107–6**

To designate the facility of the United States Postal Service located at 620 Jacaranda Street in Lanai City, Hawaii, as the ''Goro Hokama Post Office Building''. (Apr. 12, 2001; 115 Stat. 8)

**H.R. 395/P.L. 107–7**

To designate the facility of the United States Postal Service located at 2305 Minton Road in West Melbourne, Florida, as the ''Ronald W. Reagan Post Office of West Melbourne, Florida''. (Apr. 12, 2001; 115 Stat. 9)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

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