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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 925

**[Docket No. FV02–925–2 IFR]**

## Grapes Grown in a Designated Area of Southeastern California; Revision to Container and Pack Requirements

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

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

**SUMMARY:** This rule revises container and pack requirements prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allows reusable plastic containers (RPCs) in shipping grapes, revises lot stamping requirements for RPCs, exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the order, and revises marking and minimum net weight requirements for clarity. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns.

**DATES:** April 29, 2002; comments received by June 25, 2002, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 925 (7 CFR part 925), as amended, regulating the handling of grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

This rule revises container and pack requirements prescribed under the California grape order. The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the Committee. This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, allows RPCs in shipping grapes, revises lot stamping requirements for RPCs, and exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the order. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes at its February 12, 2002, meeting and clarified via a fax vote on February 21, 2002.

### Addition of Four New Containers and Usage of RPCs

Section 925.52(a)(4) of the grape order provides authority to regulate size, capacity, weight, dimensions, marking, materials, and pack of containers, which may be used in the handling of grapes.

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to be packed in containers which are new and clean and which otherwise meet the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of Title 3: California Code of Regulations (CA Code of Regulations).

Currently, § 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and

regulations authorize ten containers (28, 39J, 39K, 38Q, 38R, 38S, 38T, 38U, 38V, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were last revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the CA Code of Regulations, but has not yet been added to the list of approved containers under the Federal order. The 38L grape lug is defined as any container with an inside depth of 7⅝ inches, an outside width of 13 11/16 inches, and an outside length of 16 inches.

Since that time, many retailers have asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Recently, the Grape and Tree Fruit League (League) petitioned the California Department of Food and Agriculture (CDFA) to add the 38M grape lug to the list of standardized containers in the CA Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted by the retail trade. The CDFA expects the 38M grape lug to be standardized in the CA Code of Regulations by May 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended adding most of the containers previously approved as experimental containers, including the 38M grape lug, to the list of containers authorized under the order's rules and regulations. In reviewing container dimensions, the Committee concluded that the depth, width, and length dimensions for the 38L, 38M, CP, and CP1 grape lug's encompass the dimensions of the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, that the following four containers be added to the list of containers authorized in the order's rules and regulations:

| Container | Depth inside | Width outside | Length outside |
|---|---|---|---|
| 38L Grape Lug | 7⅝ | 13 11/16 | 16 |
| 38M Grape Lug | 4¼–5¾ | 15⅜–16 | 23½–24 |
| CP Grape Lug | 3 15/16–4¾ | 15¾–15 9/16 | 23½–23¾ |
| CP1 Grape Lug | 4¾–5 | 19½–20 | 23¾–24 |

These containers may be constructed of several different materials (e.g., plastic or fiberboard) but should conform to the range of dimensions listed above.

These containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in these containers. This, in turn, helps ensure that the grapes are fresh when they arrive at destination. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Section 925.304(b)(1) of the rules and regulations requires grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. Grapes packed in RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing RPCs to be reused is expected to reduce the burden on handlers as they will not have to apply and obtain Committee approval annually to utilize them.

Adding these four containers to the rules and regulations will enable handlers to meet their customer requirements this season. This action will help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact the grape import requirements.

**Lot Stamping Requirements**

Section 925.55 of the order requires inspection and certification of grapes, handled by handlers.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration.

Each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate.

During the 2001 season, the Committee approved the use of RPCs for experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and placed on the RPCs. However, it was difficult to remove the adhesive label in the wash cycle. Additionally, handlers found that workers needed to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118

degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately $0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principal display panel where the container markings will adhere to the box. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that the lot numbers be stamped on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers. The pallets will be wrapped with clear plastic immediately after inspection, ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by $950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate. This action will not affect imports.

**Minimum Net Weight Requirements**

Section 925.52(a)(4) of the grape order provides authority to fix the size, capacity, weight, dimensions, markings, materials, and pack of the container, which may be used in the handling of grapes.

Section 925.304(b)(2) specifies that the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper, and experimental containers, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Section 925.340(b)(2) further specifies that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the California Table Grape Commission (Commission) funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and USDA approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. The minimum net weight of grapes in 20-pound containers is based on the average net weight of grapes in a representative sample of containers. The minimum net weight of grapes for the 18-pound containers also is based on an average net weight of grapes in a representative sample of containers. The language in § 925.304 (b)(2) is changed to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds causes confusion in the marketplace and impacts on handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 and 20 pounds, respectively. To address this issue, the text of this interim final rule provides that containers other than master containers containing individual consumer packages are to be marked with the net weight of 18 or 20 pounds, as appropriate.

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed the best means of allowing handlers to meet orders for master containers containing individual consumer packages that had different minimum net weight requirements. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages and unanimously recommended revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds. These revisions will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. These revisions do not impact the grape import regulation.

**Initial Regulatory Flexibility Analysis**

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

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

There are approximately 80 producers of grapes in the production area and approximately 26 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Last year, about 69 percent of the handlers could be considered small businesses under SBA's definition and about 31 percent could be considered large businesses. It is estimated that about 88 percent of the producers have annual receipts of less than $750,000. Therefore, the majority of handlers and

producers of grapes may be classified as small entities.

This rule invites comments on revisions to container and pack requirements prescribed under the California grape order. This rule adds four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, which covers grapes grown in a designated area of Southeastern California. This rule also allows handlers to ship grapes in RPCs, revises lot stamping requirements for RPCs, and exempts master containers containing individual consumer packages from the minimum net weight requirements specified under the grape order. Additionally, this rule clarifies marking requirements for 18 and 20 pound containers and removes obsolete language contained in §§ 925.304(a) and 925.304(b)(iii) that was applicable to the period June 1, 1998, through August 15, 1998.

The order regulates the handling of grapes grown in California and is administered locally by the Committee. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. The Committee unanimously recommended these changes. Authority for these actions is provided in §§ 925.52 and 925.55 of the order.

**Addition of Four New Containers and Usage of RPCs**

Section 925.304(b)(1) of the order's rules and regulations outlines container and pack requirements for grapes and requires such grapes to be packed in containers which are new and clean and which otherwise meet the requirements of §§ 1380.14, 1380.19(n), 1436.37, and 1436.38 of the Code of Regulations.

Currently § 925.304(b)(1)(i) through (b)(1)(iii) of the order's rules and regulations authorize ten containers (28, 39J, 39K, 38Q, 38R, 38S, 38T, 38U, 38V, and a 5 kilo) for use by grape handlers, and also authorize the Committee to approve other types of containers for experimental or research purposes.

Section 925.304(f) states that certain container and pack requirements cited in this regulation are specified in the Code of Regulations and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Container requirements prescribed under the California grape order were last revised in January 1998 (63 FR 655, January 7, 1998). In March 1998, the 38L grape lug was added to the Code of Regulations, but has not yet been added to the list of approved containers under the order. The 38L grape lug is defined as any container with an inside depth of 7⅝ inches, an outside width of 13 11/16 inches, and an outside length of 16 inches.

Since that time, many retailers have asked handlers to pack grapes in specific RPCs, corrugated lugs, and master containers that are not authorized as containers under § 925.304(b)(1)(i). There are several manufacturers of these containers, and each manufacturer's container dimensions vary slightly. During previous seasons, handlers applied for and obtained Committee approval to use these containers on an experimental basis.

Recently, the League petitioned the CDFA to add the 38M grape lug to its list of standardized containers in the Code of Regulations. Standard containers represent container types that are recognized by the industry and adopted by the retail trade.

The range of dimensions allowed for the 38M grape lug encompasses the dimensions of many of the containers used experimentally during previous seasons, including some RPCs. The CDFA expects the 38M grape lug to be standardized in the Code of Regulations by May 2002.

At its February 12, 2002, meeting, the Committee unanimously recommended adding most of the containers previously approved as experimental containers during the 2001 season, including the 38M grape lug, to the list of containers authorized under the rules and regulations. In reviewing container dimensions, the Committee concluded that the 38L, 38M, CP, and CP1 grape lugs' depth, width, and length dimensions will encompass the containers previously approved by the Committee for experimental purposes. Therefore, the Committee unanimously recommended, through a fax vote on February 21, 2002, that the following four containers be added to the list of containers authorized in the order's rules and regulations:

| Container | Depth inside | Width outside | Length outside |
|---|---|---|---|
| 38L Grape Lug | 7⅝ | 13 11/16 | 16 |
| 38M Grape Lug | 4¼–5¾ | 15⅜–16 | 23½–24 |
| CP Grape Lug | 3 15/16–4¾ | 15¾–15 9/16 | 23½–23¾ |
| CP1 Grape Lug | 4¾–5 | 19½–20 | 23¾–24 |

These containers may be constructed of several different materials (e.g., plastic or fiberboard), but should conform to the range of dimensions listed above.

The Committee discussed alternatives to this change, including making no changes to the list of containers authorized under the grape order's rules and regulations. The Committee determined that the 38L, 38M, CP, and CP1 grape lugs should be added to the rules and regulations as these containers are an integral part of the marketing efforts used by many handlers to meet market demands. Some of these containers are RPCs. Retailers have requested that fruit be shipped in RPCs, as it can be cooled quickly in them, helping to ensure freshness. The use of RPCs may result in substantial savings to retailers for storage and disposal as retailers return RPCs to a central area for cleaning and redistribution. Cost savings may accrue to handlers, as well, since they do not have to buy new containers for each shipment.

Section 925.304(b)(1) of the rules and regulations requires such grapes to be packed in new and clean containers. Containers, other than RPCs, are intended to be used once and discarded. Grapes packed in RPCs are typically delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. As RPCs are reusable, the Committee recommended that the rules and regulations be revised to allow RPCs to be reused, provided such containers are cleaned. Allowing cleaned RPCs to be reused is expected to help handlers better meet buyer needs.

Adding these four containers to the rules and regulations will enable handlers to meet their customer's requirements this season. This action will help the industry in providing consumers with high quality grapes, promoting buyer satisfaction, and improving producer returns. This action will not impact grape imports.

**Lot Stamping Requirements**

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier in a 3 box by 3 box pallet configuration.

Each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate.

During the 2001 season, the Committee approved usage of RPCs for experimental purposes. RPCs are made of plastic and retailers send these reusable containers to a central clearinghouse after use for cleaning and sanitizing. Because RPCs are reusable, these plastic containers do not support markings that are permanently affixed to the container. All markings must be printed on cards, which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container. Because of their unique portability, the industry and inspection service are concerned that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers.

The industry experimented last season with round adhesive labels on RPCs. The lot stamp number was stamped on the round adhesive label and the label was placed on the RPCs. However, manufacturers found that it was difficult to remove in the wash cycle. Additionally, handlers found that workers need to affix the adhesive label to the RPCs, and inspectors needed to stamp the lot stamp number on the adhesive labels, outside of cold storage facilities. During July 2001, temperatures in the production area reached 100 to 118 degrees Fahrenheit. Committee members estimated that for each hour that grapes were outside of cold storage after harvest, a day's shelf life was lost. Handler members calculated that affixing adhesive labels to RPCs cost the grape industry approximately $0.10 per grape lug in materials and labor. The inspection service and the Committee have presented their concerns to the manufacturers of these types of grape lugs. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection service, and the manufacturer. However, the manufacturer believes that this change may not be feasible in the near future.

To address the additional time and cost of affixing adhesive labels to containers, the Committee unanimously recommended that the lot numbers be stamped on two USDA-approved pallet tags, with each pallet tag affixed to opposite sides of each pallet of containers. The pallets will be wrapped with clear plastic immediately after inspection ensuring the tags cannot be easily removed, although the tags remain visible beneath the wrap. The Committee estimated that affixing lot stamp numbers to pallet tags would reduce handler costs by $950,000, make handler operations more efficient, and will provide consumers with high quality grapes. Additionally, each lot will be traceable through the lot stamp, since the lot stamp number on the pallet tag corresponds to the lot stamp number annotated on the inspection certificate. This action will not affect imports.

The Committee discussed alternatives to this change, including making no changes to the lot stamp-numbering requirement. The Committee believed that relaxing the lot stamp numbering requirement under the rules and regulations will result in better quality grapes being shipped to consumers, a reduction in handler costs, and improved producer returns. Thus, the Committee recommended revising § 925.304(b)(4) to require the number be stamped on two USDA-approved pallet tags for RPCs, and that the pallet tags be placed on opposite sides of each pallet. This action will not affect imports.

**Minimum Net Weight Requirements**

Section 925.52(a)(4) of the grape order provides authority to fix the size, capacity, weight, dimensions, markings, materials, and pack of the container which may be used in the handling of grapes.

Section 925.304(b)(2) specifies the minimum net weight of grapes in any container, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material or packed in bags or wrapped in plastic or paper. It specifies that approved experimental containers shall be 20 pounds based on the average net weight of grapes in a representative sample of containers.

Section 925.340(b)(2) further specifies that containers of grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight requirement of 18 pounds.

Several years ago, the Commission funded a 3-year research project designed to determine if current practices were getting the product to the retailer and ultimately the consumer in the best possible condition. A study of grape packaging was conducted by Dr. Harry Shorey of the University of California at Davis and the University of California at Kearney Agricultural Center at Parlier. The study concluded that the California grape industry should modify container dimensions so that containers will fit better on the standard 48 x 40-inch pallets, and that the container minimum net weights should be reduced to 18 and 20 pounds. Based on these conclusions, the Committee recommended and the Secretary approved reducing the minimum net weight requirements in March 1996 to enhance the deliverability of grapes (61 FR 11129, March 19, 1996).

Since that time, grape handlers have packed grapes in 18 and 20-pound containers and marked such containers as 18 and 20 pounds. Approximately 95 percent of all grapes shipped during the 2001 season were shipped in 18-pound containers. Grapes normally lose moisture during shipment. To address mislabeling concerns, it is common practice in the industry to pack containers of grapes slightly over the minimum net weight required to allow for shrink, and to mark these containers as 18 or 20 pounds, respectively. Last season, some containers were packed with slightly more than 21 pounds and marked as 21 pounds. Marking containers other than 18 or 20 pounds causes confusion in the marketplace and impacts on handler assessments and statistical reporting. Thus, the Committee unanimously recommended at its February 12, 2002 meeting, that containers packed with slightly more than 18 or 20 pounds shall be marked as 18 or 20 pounds, as appropriate. To address this issue, § 925.304(b)(2) is revised to provide that containers other than master containers containing individual consumer packages are to be marked with the minimum net weight of 18 or 20 pounds, as appropriate.

The Committee discussed alternatives to this change. The Committee believes that allowing markings other than 18 or 20-pound markings could cause confusion in the marketplace and may not address the mislabeling concerns as grapes lose moisture and shrink during shipment. Thus, the Committee unanimously recommended at its February 12, 2002, meeting, that the container marking requirements in § 925.304(b)(2) be revised as provided in this interim final rule.

Recently, retailers have requested master containers containing individual consumer packages that weigh a total of 24 pounds, 16 pounds, or 10 pounds. An individual consumer package is a package that is customarily produced and distributed for sale to individuals for their personal consumption.

The Committee discussed alternatives to this change, including making no change to the minimum net weight requirement for master containers containing individual consumer packages, but believes that providing this exception for master containers is in the best interest of handlers. The Committee estimated that approximately 2 percent of the crop is shipped in master containers containing individual consumer packages. The 2002 crop is estimated to be 9.5 million lugs. Allowing master containers containing individual consumer packages will enable handlers to market an additional 190,000 lugs of grapes. Therefore, The Committee unanimously recommended revising § 925.304(b)(2) to exempt master containers containing individual consumer packages from the minimum net weight requirements of 18 or 20 pounds.

Finally, the language in § 925.304(b)(2) is changed for clarity to specifically provide that containers containing grapes packed in bags or wrapped in plastic or paper prior to being placed in these containers must meet a minimum net weight requirement of 18 pounds based on an average net weight of grapes in a representative sample of containers.

These revisions will enable handlers to compete more effectively in the marketplace and to better meet the needs of buyers. Imported grapes will not be affected by this action.

**Removal of Obsolete Language**

This rule also makes minor changes to remove obsolete language in paragraphs (a) and (b)(1)(iii) of § 925.304. These paragraphs include references to the period June 1, 1998, through August 15, 1998, which marked the trial usage of the ''DGAC Consumer No. 1 Institutional'' (DGAC) grade. This rule removes those two obsolete references.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large grape handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the grape industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 12, 2002, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. A fax vote was conducted to clarify the recommendation regarding the number and dimensions of containers to be added to the list currently authorized under the grape order. All handlers were provided information on the number and dimensions of containers to be added to the order.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on adding four new containers (38L, 38M, CP, and CP1) to the list of containers authorized for use by grape handlers regulated under the grape order, which covers grapes grown in a designated area of Southeastern California, allowing reusable plastic containers (RPCs) in shipping grapes, revising lot stamping requirements for RPCs, and exempting master containers containing individual consumer packages from the minimum net weight requirements specified under the order. Additionally, this rule revises marking and minimum net weight requirements for 18 and 20-pound containers for clarity, and removes obsolete language contained in §§ 925.304(a) and 925.304(b)(iii) that was applicable to the period June 1, 1998, through August 15, 1998. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of buyers, and to improve producer returns. Any comments received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements currently in effect for grapes grown in designated areas of southeastern California; (2) The Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments begin approximately April 20, 2002, and this rule should be in effect as soon as possible, so handlers can take advantage of these changes; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 925**

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

For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

## PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR part 925 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 925.304 is amended by removing the last two sentences in paragraph (a) and revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(iii), (b)(2), and (b)(4) to read as follows:

### § 925.304 California Desert Grape Regulation 6.

* * * * *

(b) *Container and pack.* (1) Such grapes shall be packed in one of the following containers, which are new and clean, and otherwise meet the requirements of sections 1380.14, and 1380.19(n), 1436.37, and 1436.38 of Title 3: California Code of Regulations, except that reusable plastic containers may be reused if such containers are clean:

CONTAINER DESCRIPTIONS IN INCHES

| Container | Depth | Width | Length |
|---|---|---|---|
| 28 Sawdust Pack | 7¾ (inside) | 14 15/16 (inside) | 18⅝ (inside) |
| 38J Polystyrene Lug | 6¾ (inside) | 12½ (inside) | 15⅜ (inside) |
| 38K Standard Grape | 4½–8½ (inside) | 13½–14½ (outside) | 16⅝–17½ (outside) |
| 38L Grape Lug | 7⅝ (inside) | 13 11/16 (outside) | 16 (outside) |
| 38M Grape Lug | 4¼–5¾ (inside) | 15⅜–16 (outside) | 23½–24 (outside) |
| 38Q Polystyrene Lug | 6¼–8¼ (inside) | 11¼ (inside) | 18⅛ (inside) |
| 38R Grape Lug | 4–7 (inside) | 15¾–16 (outside) | 19 11/16–20 (outside) |
| 38S Grape Lug | 5–9 (inside) | 11 11/16–12 (outside) | 19 11/16—20 (outside) |
| 38T Grape Lug | 5½–7½ (inside) | 13⅛–13 15/16 (outside) | 15 5/16–16 (outside) |
| 38U Grape Lug | 6 3/16–7 (inside) | 13 11/16 (outside) | 20½ (outside) |
| 38 V Grape Lug | 5¾ (inside) | 14 (outside) | 16 (outside) |
| CP Grape Lug | 3 15/16–4¾ (inside) | 15¾–15 9/16 (outside) | 23½–23¾ (outside) |
| CP1 Grape Lug | 4¾–5 (inside) | 19½–20 (outside) | 23¾–24 (outside) |

* * * * *

(iii) Such other types and sizes of containers as may be approved by the Committee for experimental or research purposes.

(2) The minimum net weight of grapes in any such containers, except for containers containing grapes packed in sawdust, cork, excelsior or similar packing material, or packed in bags or wrapped in plastic or paper, and containers authorized in paragraph (b)(1)(iii) of this section, shall be 20 pounds based on the average net weight of grapes in a representative sample of containers. Grapes in any such containers packed in bags, or wrapped in plastic or paper prior to being placed in these containers shall meet a minimum net weight of 18 pounds based on the average net weight of grapes in a representative sample of containers: *Provided,* That grapes packed in master containers containing individual consumer packages are exempt from container marking requirements and minimum net weight requirements. Containers of grapes other than master containers containing individual consumer packages shall be marked with the minimum net weight of 20 or 18 pounds.

* * * * *

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by 3 box pallet configuration: *Provided,* That pallets of reusable plastic containers shall have the lot stamp number stamped on two USDA-approved pallet tags, each affixed to opposite sides of the pallet of containers, in addition to other required information on the cards of the individual containers, as provided in sections 1460.30 and 1359 of Title 3: California Code of Regulations.

* * * * *

Dated: April 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10298 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 930

**[Docket No. FV02–930–2 FR]**

## Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rates

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound. It also increases the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. Both assessment rates were recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2001–2002 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** This final rule becomes effective April 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject

to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable tart cherries beginning July 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Board for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree will be increased from $0.0006 to $0.000875 per pound.

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

For the 2000–2001 fiscal period, the Board recommended, and USDA approved, assessment rates that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rates are expected to generate enough income to meet the Board's operating expenses in 2001–2002.

The Board met on January 25, 2001, and unanimously recommended 2001–2002 expenditures of $442,500. The Board also recommended an assessment rate of $0.00175 per pound of tart cherries utilized in the production of tart cherry products other than juice, juice concentrate, and puree products, and an assessment rate of $0.000875 per pound for juice, juice concentrate and puree products. In comparison, last year's budgeted expenditures were $455,000. The recommended assessment rates of $0.00175 and $0.000875 are higher than the current rates of $0.0012 and $0.0006, respectively. The Board recommended increased assessment rates to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

In deriving the recommended assessment rates, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree will be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income will be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) will be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

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

Although the assessment rates are effective for an indefinite period, the Board will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modifications of the assessment rates are needed. Further rulemaking would be undertaken as necessary. The Board's 2001–2002 budget has been reviewed and approved by USDA, and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

**The Regulatory Flexibility Act and Effects on Small Businesses**

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS's Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of

regulatory options and economic or regulatory impacts.

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

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2001–2002 expenditures of $442,500 and assessment rate increases from $0.0012 to $0.00175 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and from $0.0006 to $0.000875 per pound for cherries utilized for juice, juice concentrate, or puree.

This rule increases the assessment rate established for the Board and collected from handlers for the 2001–2002 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.0012 to $0.00175 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.0006 to $0.000875 per pound. The Board unanimously recommended 2001–2002 expenditures of $442,500. The quantity of assessable tart cherries expected to be produced during the 2001–2002 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2001–2002 fiscal period include $80,000 for meetings, $100,000 for compliance, $185,000 for personnel, $75,000 for office expenses, and $2,500 for industry educational efforts. Budgeted expenses for those items in 2000–2001 were $75,000 for meetings, $120,000 for compliance, $175,000 for personnel, $80,000 for office expenses, and $5,000 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 1999/00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999/00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $428,750 (245 million pounds × $0.00175 per pound). The potential income from the tart cherries utilized for juice, juice concentrate, or puree will be $13,125 (15 million pounds × $0.000875 per pound). Therefore, total assessment income for 2001–2002 is estimated at $441,875. This amount plus adequate funds in the reserve and interest income should be adequate to cover budgeted expenses. Funds in the reserve (approximately $250,000) will be kept within the approximately six months' operational expenses as recommended by the Board which will be consistent with the order (§ 930.42(a)).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate increases the burden on handlers, and may increase the burden on producers. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 25, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

A proposed rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11622). Copies of the rule were mailed by the Board's staff to all Board members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register, and USDA. That rule provided a 15-day comment period which ended on April 1, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http//www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT SECTION**.

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because the 2001–2002 fiscal period began on July 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period. Moreover, handlers are aware of this action which was unanimously recommended by the Board, and the Board needs sufficient funds to pay its expenses on a continuous basis. Further, this action was recommended at a public meeting and a 15-day comment period was provided for public input. No comments were received.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

**§ 930.200 Handler assessment rates.**

On and after the effective date of this rule, the assessment rate imposed on handlers shall be $0.00175 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.000875 per pound.

Dated: April 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10296 Filed 4–25–02; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 932

**[Docket No. FV02–932–1 FIR]**

## Olives Grown in California; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Olive Committee (Committee) for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** May 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning January 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Committee for the 2002 and subsequent fiscal years from $27.90 per ton to $10.09 per ton of olives.

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

For the 2001 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 11, 2001, and unanimously recommended fiscal year 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton of olives. In comparison, last year's budgeted expenditures were $1,348,242 and the assessment rate was $27.90. The assessment rate of $10.09 is

$17.81 lower than the rate previously in effect.

Expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in assessable tonnage makes possible the lower assessment rate.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual tonnage and additional pertinent factors. As mentioned earlier olive shipments for the year are estimated at 123,439 for fiscal year 2002. This compares to an assessable tonnage of 46,374 for fiscal year 2001. The significant tonnage increase in fiscal year 2002, due in part to the alternate-bearing nature of olives, has made it possible for the Committee to decrease the assessment rate from $27.90 to $10.09 per ton. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order—approximately one fiscal periods' expenses, or $1,428,585 (§ 932.40).

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

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002 budget has been reviewed and approved by USDA, and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 1,200 producers of olives in the production area and approximately 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

The majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity. Thus, the majority of handlers may be classified as large entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2002 and subsequent fiscal years from $27.90 to $10.09 per ton of olives. The Committee unanimously recommended 2002 expenditures of $1,428,585 and an assessment rate of $10.09 per ton. The assessment rate of $10.09 is $17.81 lower than the 2001 rate. The quantity of assessable olives for the 2002 fiscal year is estimated at 123,439 tons. Thus, the $10.09 rate should provide $1,245,500 in assessment income and should be adequate, when combined with funds from the authorized reserve and interest income, to meet this year's expenses.

The expenditures recommended by the Committee for the 2002 fiscal year include $811,935 for marketing development, $339,650 for administration, $250,000 for research, and $27,000 for capital expenditures. Budgeted expenses for these items in 2001 were $596,415, $343,490, $408,337, and $0, respectively.

Last year's assessable tonnage was 46,374 tons, and this year's assessable tonnage is 123,439 tons. Although the Committee increased 2002 marketing development and capital expenditures, the significant increase in tonnage makes the lower assessment rate possible.

Funds budgeted for research activities are reduced due to completion of the mechanical harvester project. The reduced research expenditures will fund scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area. Market development expenditures are significantly higher as the Committee's website will be redesigned and outreach programs will be implemented for students and teachers. Capital expenditures are higher as the Committee will purchase a vehicle for Committee staff.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, and Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of $10.09 per ton of assessable olives was derived by considering anticipated expenses, the Committee's estimate of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2002 season is estimated to be approximately $502.27 per ton of olives. Therefore, the estimated assessment revenue for the 2002 fiscal year as a percentage of total grower revenue will be approximately 2 percent.

This action continues to decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the

assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

An interim final rule concerning this action was published in the **Federal Register** on February 6, 2002 (67 FR 5438). Copies of that rule were mailed or sent via facsimile to all olive handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on April 8, 2002, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**List of Subjects in 7 CFR Part 932**

Marketing agreements, Olives, Reporting and recordkeeping requirements.

## PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 67 FR 5438 on February 6, 2002, is adopted as a final rule without change.

Dated: April 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10297 Filed 4–25–02; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 985

**[Docket No. FV–02–985–1 FR]**

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2002–2003 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2002–2003 marketing year, which begins on June 1, 2002. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 849,471 pounds and 45 percent, respectively, and for Class 3 (Native) spearmint oil of 800,761 pounds and 38 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the spearmint oil market.

**EFFECTIVE DATE:** June 1, 2002, through May 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule establishes the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 2002–2003 marketing year, which begins on June 1, 2002. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to authority in §§ 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 2002–2003 marketing year at its October 3, 2001, meeting. For Scotch spearmint oil, in a vote of six in favor, one opposed, and one abstention, the Committee recommended the establishment of a salable quantity and allotment percentage of 849,471 pounds and 45 percent, respectively. For Native spearmint oil, in a vote of seven in favor and one opposed, the Committee recommended the establishment of a salable quantity and allotment percentage of 800,761 pounds and 38 percent, respectively.

This final rule limits the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 2002–2003 marketing year, which begins on June 1, 2002. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order currently accounts for approximately 55 percent of the annual U.S. production of Scotch spearmint oil and over 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 72 percent was produced in the regulated production area in the Far West. The Far West continued to produce an average of about 69 percent of the world's Scotch spearmint oil supply during the period from 1980 to 1990. International production characteristics have changed since 1990, however, with foreign Scotch spearmint oil production contributing significantly to world production. The Far West's market share as a percent of total world sales has averaged about 44 percent since 1990.

During the period between 1996 and 2000, the Committee employed a marketing strategy for Scotch spearmint oil that was intended to foster market stability and expand market share. This marketing strategy was an attempt to remain competitive on an international level by regaining a substantial amount of the Far West's historical share of the global market for this class of oil. In implementing this strategy, the Committee had been recommending the establishment of a salable quantity and allotment percentage for Scotch spearmint oil in excess of the estimated trade demand for each marketing year. In the development of its annual marketing policy statements during this period, the Committee considered general market conditions for each class of spearmint oil, including the Far West's world market share as it relates to the overall market stability of spearmint oil.

During its deliberations at the October 11, 2000, meeting, however, the Committee concluded that this marketing strategy for Scotch spearmint oil had not been entirely effective. Although sales had increased, the Far West's market share as a percentage of total world sales had not increased on average, and the market price for Scotch spearmint oil had continued to decline throughout this period. During the 2000–2001 marketing year, the price paid to producers for Scotch spearmint oil dropped to a low of $8.00 per pound. Although the current price for Scotch oil is estimated to increase to approximately $8.40 per pound, the Committee continues to believe that such returns are generally below the cost of production for most producers, which, according to the Washington State University Cooperative Extension Service (WSU), was between $13.87 and $14.62 per pound in 2001.

For the 2001–2002 marketing year (the marketing year ending on May 31, 2002) the Committee determined at its October 11, 2000, meeting, that it would attempt to stabilize prices at a reasonable level while still considering global market share. The Committee's transitional recommendation for Scotch spearmint oil for the 2001–2002 marketing year was, therefore, based on a desire to remain competitive on an international level while maintaining the supply of oil at a level that could enhance prices and help producers remain solvent. The 2001–2002 salable quantity is somewhat higher than the estimated trade demand. This shifted the Committee's Scotch spearmint oil market strategy from one considering primarily the Far West's share of the world market to an approach primarily considering current price, supply, and demand. This action made an adequate supply of Scotch spearmint oil available as evidenced by the substantial amount of oil carried into the marketing year.

Although still concerned with global spearmint oil market share, the Committee calculated the 2002–2003 Scotch spearmint oil salable quantity and allotment percentage by primarily utilizing information on price and available supply as they are affected by the estimated trade demand. The recommendation for 2002–2003 implements the Committee's stated intent of keeping adequate supplies available at all times, while trying to bring prices to producers to a level that will help them stay in business and still allow the industry to compete with less expensive oil produced outside the regulated area. The industry continues to be interested in expanding market share. The Committee's calculations are detailed below.

Despite the recent downward trend in the price of both classes of spearmint oil, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. According to the National Agricultural Statistics Service, for example, the average price paid for both classes of spearmint oil ranged from about $4.00 per pound to about $12.50 per pound during the period between 1968 and 1980. Excluding the most recent three marketing years, prices since the order's inception have generally stabilized at about $11.00 per pound for Native spearmint oil and at about $13.00 per pound for Scotch spearmint oil. Over the last few years, the price has dropped to between $8.00 and $11.00 per pound and $9.00 and $10.00 per pound, respectively, for Scotch and Native spearmint oils despite the Committee's efforts to balance available supplies with demand. Based on comments made at the Committee's meeting, factors that are currently contributing to depressed prices include the general uncertainty being experienced through the U.S. economy and the continuing overall weak farm situation, as well as an abundant global supply of spearmint oil.

Conditions similar to those affecting the Scotch spearmint oil market contributed to the Committee's current recommendation for a salable quantity of 800,761 pounds and an allotment percentage of 38 percent for Native spearmint oil for the 2002–2003 marketing year. The supply and demand characteristics of the current Native spearmint oil market are keeping the price flat at about $9.00 per pound—a level the Committee considers too low for the majority of producers to maintain viability. The WSU study indicates that the cost of producing Native spearmint oil in 2001 ranged between $10.26 and $10.92 per pound. Thus, with over 90 percent of the world production currently located in the Far West, the Committee's method of calculating the Native spearmint oil salable quantity and allotment percentage continues to primarily utilize information on price and

available supply as they are affected by the estimated trade demand. The Committee's stated intent is to make adequate supplies available to meet market needs and improve producer prices.

The Committee based its recommendation for the salable quantity and allotment percentage for each class of spearmint oil for the 2002–2003 marketing year on the information discussed above, as well as the data outlined below.

**(1) Class 1 (Scotch) Spearmint Oil**

(A) Estimated carry-in on June 1, 2002—260,181 pounds. This figure is the difference between the estimated 2001–2002 marketing year trade demand of 860,000 pounds and the revised 2001–2002 marketing year total available supply of 1,120,181 pounds. The 2001–2002 marketing year total available supply was revised due to differences in the carry-in estimated on October 11, 2000, and the actual carry-in on June 1, 2001, as well as producer deficiencies on June 1, 2001. A producer is deficient when the producer is unable to produce oil equal to his or her salable quantity and is unable to fill this deficiency from reserve pool oil or excess oil from another producer. When prices are below a producer's costs of production, acreage and production are reduced.

(B) Estimated trade demand for the 2002–2003 marketing year—875,000 pounds. This figure represents the Committee's estimate based on the average of the estimates provided by producers at five Scotch spearmint oil production area meetings held in September 2001, as well as estimates provided by handlers and others at the meeting. Handler trade demand estimates for the 2002–2003 marketing year ranged from 675,000 to 900,000 pounds. The average of annual sales for the last five years is 936,000 pounds.

(C) Salable quantity required from the 2002–2003 marketing year production—614,819 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand (875,000 pounds) and the estimated carry-in on June 1, 2002 (260,181 pounds).

(D) Total estimated allotment base for the 2002–2003 marketing year—1,887,713 pounds. This figure represents a one-percent increase over the revised 2001–2002 total allotment base. This figure is generally revised each year on June 1 due to producer allotment base being lost based on the provisions of § 985.53(e). The revision is usually minimal.

(E) Computed allotment percentage—32.6 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—45 percent. This recommendation is based on the Committee's determination that a decrease from the current season's allotment percentage of 48 percent to the computed 32.6 percent would be too drastic a reduction in a single year. The recommended level of 45 percent is also only slightly below the 5-year average sales level, and if sales in 2002–2003 are average or better, the carry-out would be reduced.

(G) The Committee's recommended salable quantity—849,471 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2002–2003 marketing year—1,109,652 pounds. This figure is the sum of the 2002–2003 recommended salable quantity (849,471 pounds) and the estimated carry-in on June 1, 2002 (260,181 pounds).

**(2) Class 3 (Native) Spearmint Oil**

(A) Estimated carry-in on June 1, 2002—198,583 pounds. This figure is the difference between the estimated 2001–2002 marketing year trade demand of 929,000 pounds and the revised 2001–2002 marketing year total available supply of 1,127,583 pounds.

(B) Estimated trade demand for the 2002–2003 marketing year—960,000 pounds. This figure is based on input from producers at the four Native spearmint oil production area meetings held in September 2001, from handlers, and from Committee members and other meeting participants at the October 3, 2001, meeting. The average estimated trade demand provided at the four production area meetings was 975,000 pounds.

(C) Salable quantity required from the 2002–2003 marketing year production—761,417 pounds. This figure is the difference between the estimated 2002–2003 marketing year trade demand (960,000 pounds) and the estimated carry-in on June 1, 2002 (198,583 pounds).

(D) Total estimated allotment base for the 2002–2003 marketing year—2,107,267 pounds. This figure represents a one percent increase over the revised 2001–2002 total allotment base. This figure is generally revised each year on June 1 due to producer allotment base being lost based on the provisions of § 985.53(e). The revision normally involves a minimal amount of spearmint oil.

(E) Computed allotment percentage—36.1 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—38 percent. This is the Committee's recommendation based on the computed allotment percentage, the average of the computed allotment percentage figures from the four production area meetings (38.1 percent), and input from producers and handlers at the October 3, 2001, meeting.

(G) The Committee's recommended salable quantity—800,761 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 2002–2003 marketing year—999,344 pounds. This figure is the sum of the 2002–2003 recommended salable quantity (800,761 pounds) and the estimated carry-in on June 1, 2002 (198,583 pounds).

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 849,471 pounds and 45 percent and 800,761 and 38 percent, respectively, are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices and the anticipated supply and trade demand during the 2002–2003 marketing year. The salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 2002–2003 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This regulation is similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this action are expected to be offset by the benefits derived from a stable market and improved returns. In conjunction with

the issuance of this final rule, the Committee's marketing policy statement for the 2002–2003 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of § 985.50 of the order. During its discussion of potential 2002–2003 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages will allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, as well as changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

**Final Regulatory Flexibility Analysis**

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

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

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 118 producers of Class 1 (Scotch) spearmint oil and approximately 107 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 30 of the 118 Scotch spearmint oil producers and 19 of the 107 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. An average spearmint oil-producing farm has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2002–2003 marketing year. The Committee recommended this rule to help maintain stability in the spearmint oil market by avoiding extreme fluctuations in supplies and prices. Establishing quantities to be purchased or handled during the marketing year through volume regulations allows producers to plan their mint planting and harvesting to meet expected market needs. This action is authorized by the provisions of §§ 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

Demand for spearmint oil tends to be relatively stable from year-to-year. The demand for spearmint oil is expected to grow slowly for the foreseeable future because the demand for consumer products that use spearmint oil will likely expand slowly, in line with population growth.

Demand for spearmint oil at the farm level is derived from retail demand for spearmint-flavored products at retail such as chewing gum, toothpaste, and mouthwash. The manufacturers of these products are by far the largest users of mint oil. However, spearmint flavoring is generally a very minor component of the products in which it is used, so changes in the raw product price have no impact on retail prices for those goods.

Spearmint oil production tends to be cyclical. Years of large production, with demand remaining reasonably stable, have led to periods in which large producer stocks of unsold spearmint oil have depressed producer prices for a number of years. Shortages and high prices may follow in subsequent years, as producers respond to price signals by cutting back production.

The wide fluctuations in supply and prices that result from this cycle, which was even more pronounced before the creation of the marketing order, can create liquidity problems for some producers. The marketing order was designed to reduce the price impacts of the cyclical swings in production. However, producers have been less able to weather these cycles in recent years because of the decline in prices of many of the alternative crops they grow. As

noted earlier, almost all spearmint oil producers diversify by growing other crops.

Instability in the spearmint oil subsector of the mint industry is much more likely to originate on the supply side than the demand side. Fluctuations in yield and acreage planted from season-to-season tend to be larger than fluctuations in the amount purchased by buyers.

The significant variability is illustrated by the fact that between 1980 and 2000, production tended to vary by 25 percent above and below the average production level of 1,888,810 pounds. The 25 percent figure (469,321 pounds) is the standard deviation around the average production level. Production in the shortest crop year was about 48 percent of the 21-year average and the largest crop was approximately 163 percent. A key consequence is that in years of oversupply and low prices, the season average producer price of spearmint oil is below the average cost of production (as measured by the Washington State University Cooperative Extension Service).

In an effort to stabilize prices, the spearmint oil industry uses the volume control mechanisms authorized under the order. This authority allows the Committee to recommend a salable quantity and allotment percentage for each class of oil for the upcoming marketing year. The salable quantity for each class of oil is the total volume of that oil which producers may sell during the marketing year. The allotment percentage for each class of spearmint oil is derived by dividing the salable quantity by the total allotment base.

Each producer is then issued an annual allotment certificate for the applicable class of oil, indicated in pounds, which is calculated by multiplying the producer's allotment base by the applicable allotment percentage. This is the amount of oil for the applicable class that the producer can sell.

By November 1 of each year, the Committee identifies any oil that individual producers have produced above the volume specified on their annual allotment certificates. This excess oil is placed in a reserve pool administered by the Committee.

There is a reserve pool for each class of oil which may not be sold during the current marketing year unless USDA approves a Committee recommendation to make a portion of the pool available. However, limited quantities of reserve oil are typically sold to fill deficiencies. A deficiency occurs when on-farm production is less than a producer's allotment. In that case, a producer's own reserve oil can be sold to fill that deficiency. Excess production (higher than the producer's allotment) can be sold to fill other producers' deficiencies.

In any given year, the total available supply of spearmint oil is composed of current production plus carry-over stocks from the previous crop. The Committee seeks to maintain market stability by balancing supply and demand, and to close the marketing year with an appropriate level of carry-out. If the industry has production in excess of the salable quantity, then the reserve pool absorbs the surplus quantity of spearmint oil, which goes unsold during that year unless the oil is needed for unanticipated sales.

Under its provisions, the order may attempt to stabilize prices by (1) limiting supply and establishing reserves in high production years, thus minimizing the price-depressing effect that excess producer stocks have on unsold spearmint oil, and (2) ensuring that stocks are available in short supply years when prices would otherwise increase dramatically. The reserve pool generally increases in large production years while stocks are drawn down in short crop years.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The Committee estimated the available supply for both classes of oil at 2,108,996 pounds, and that the total expected carry-in on June 1, 2002, will be 458,764 pounds. Therefore, with volume control, sales by producers for the 2002–2003 marketing year should be limited to 1,650,232 pounds (the recommended salable quantity for both classes of spearmint oil).

The recommended allotment percentages, upon which 2002–2003 producer allotments are based, are 45 percent for Scotch and 38 percent for Native. Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.66 decline in average producer price per pound for both classes of spearmint oil resulting from the higher quantities produced and marketed without volume control. Northwest producer prices for both classes of spearmint oil for 1999 and 2000 averaged $9.13, based on National Agricultural Statistics Service data. The severe surplus situation for the spearmint oil market that would exist without volume controls in 2002–2003 would also likely dampen prospects for improved producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and does not likely result in fewer retail sales of such products.

The Committee discussed alternatives to this rule including higher and lower levels for the salable quantities and allotment percentages for both classes of oil, as well as not regulating the handling of spearmint oil during the 2002–2003 marketing year.

The Committee discussed and rejected the idea of not regulating Scotch spearmint oil, because of the severe price-depressing effects that would occur without volume control. The Committee also considered alternative regulation levels for Scotch spearmint oil. The Committee explored maintaining the Scotch spearmint oil allotment percentage at the same level as the current year (48 percent) or increasing the percentage, allowing even more product into the market. These options were discussed at length by the Committee, producers, and handlers in attendance at the meeting. Both options were rejected because current supplies are very abundant and resultant prices are considered too low for general producer viability.

Finally, the Committee discussed recommending a level of regulation as low as a 32.6 percent allotment percentage. As noted earlier, the Committee determined that a drop in the allotment percentage for Scotch spearmint oil from 48 percent during the current year to 32.6 percent would likely be too extreme an adjustment in one marketing year. The Committee opted for a much smaller decline of 3 percentage points, to a salable percentage of 45 percent. The recommended salable quantity is 849,971 pounds.

One Committee member, however, voted against the recommended Scotch spearmint oil salable quantity and allotment percentage in support of a lower level. In consideration of the current, relatively depressed price for Scotch spearmint oil, he felt a more restrictive level of regulation would help to enhance returns to producers.

The general consensus of the individuals commenting during the meeting indicated strong support for a shift in Scotch spearmint oil marketing strategy from one considering primarily the Far West's share of the world market to an approach primarily considering current price, supply, and demand. The Committee's belief that the Scotch spearmint oil market can be improved and stabilized is reflected in its recommendation to establish the salable quantity and allotment percentage at 849,471 pounds and 45 percent, respectively.

The Committee discussed alternative allotment percentage levels for Native spearmint oil ranging from a low of about 35 percent to a high of about 41 percent. With the current price for Native spearmint oil lower than the 20-year average, and demand fairly flat, the Committee, after considerable discussion, determined that 800,761 pounds and 38 percent would be the most effective salable quantity and allotment percentage, respectively, for the 2002–2003 marketing year.

The one dissenting member stated that 38 percent is too great a change from the current season's allotment percentage of 45 percent, and that demand generally supports more supply than would be released at 38 percent. After a great deal of discussion, the Committee recommended the lower percentage as a means of balancing supplies with market needs. If more supplies are needed during the marketing year, the percentage could be increased.

The Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended would achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pronounced cyclical price patterns that occurred prior to the order, and that prices in 2002–2003 would decline substantially below current levels.

As stated earlier, the Committee believes that the order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from about $4.00 per pound to about $12.50 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980. Excluding the most recent three marketing years, prices since the order's inception have generally stabilized at about $13.00 per pound for Scotch spearmint oil and about $11.00 per pound for Native spearmint oil.

Over the last three years, however, large production and carry-in inventories have contributed to declining prices, despite the Committee's efforts to balance available supplies with demand. Over the last three years, prices have ranged from $8.00 to $11.00 per pound for Scotch spearmint oil and between $9.00 to $10.00 per pound for Native spearmint oil.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability, and price improvement.

As stated earlier, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. These requirements have been approved by the Office of Management and Budget under OMB Control No. 0581–0065. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. In addition, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on March 11, 2002 (67 FR 10848). A 15-day comment period was provided to allow interested persons the opportunity to respond to the proposal. Furthermore, a copy of the rule was provided to Committee staff, whom in turn made it available to spearmint oil producers, handlers, and other interested persons. Finally, the rule was made available on the Internet by the Office of the Federal Register and USDA. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 985.221 is added to read as follows:

[**Note**: This section will not appear in the Code of Federal Regulations.]

### § 985.221 Salable quantities and allotment percentages—2002–2003 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2002, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 849,471 pounds and an allotment percentage of 45 percent.

(b) Class 3 (Native) oil—a salable quantity of 800,761 pounds and an allotment percentage of 38 percent.

Dated: April 19, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–10295 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

## Animal and Plant Health Inspection Service

## 9 CFR Part 93

**[Docket No. 01–121–2]**

## Limited Ports of Entry for Pet Birds, Performing or Theatrical Birds, and Poultry and Poultry Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

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

**SUMMARY:** On February 12, 2002, we published a direct final rule in the **Federal Register** (See 67 FR 6369–6370.) The direct final rule notified the public of our intention to amend the regulations regarding ports designated for the importation of pet birds, performing or theatrical birds, and poultry and poultry products by removing Boston, MA, from the lists of limited ports of entry. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as April 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sara Kaman, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 22nd day of April 2002.

**W. Ron DeHaven,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 02–10299 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. NM212; Special Conditions No. 25–02–04–SC]**

## Special Conditions: Airbus, Model A340–500 and –600 Airplanes; Sudden Engine Stoppage

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

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for Airbus Model A340–500 and –600 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load, which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**EFFECTIVE DATE:** April 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, FAA, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 14, 1996, Airbus applied for an amendment to U.S. type certificate (TC) A43NM to include the new Models A340–500 and –600. These models are derivatives of the A340–300 airplane, which is approved under the same TC.

The Model A340–500 fuselage is a 6-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 553 engines, each rated at 53,000 pounds of thrust. The airplane has interior seating arrangements for up to 375 passengers, with a maximum takeoff weight (MTOW) of 820,000 pounds. The Model 340–500 is intended for long-range operations and has additional fuel capacity over that of the model A340–600.

The Model A340–600 fuselage is a 20-frame stretch of the Model A340–300 and is powered by 4 Rolls Royce Trent 556 engines, each rated at 56,000 pounds of thrust. The airplane has interior seating arrangements for up to 440 passengers, with a MTOW of 804,500 pounds.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model A340–500 and –600 airplanes meet the applicable provisions of the regulations incorporated by reference in TC A43NM or the applicable regulations in effect on the date of application for the change to the type certificate. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC A43NM are 14 CFR part 25 effective February 1, 1965, including Amendments 25–1 through 25–63 and Amendments 25–64, 25–65, 25–66, and 25–77, with certain exceptions that are not relevant to these special conditions.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model A340–500 and –600 airplanes must be shown to comply with 14 CFR 25–1 through 25–91, with certain FAA-allowed reversions for specific part 25 regulations to the part 25 amendment levels of the original type certification basis.

Airbus has also chosen to comply with part 25 as amended by Amendments 25–92, –93, –94, –95, –97, –98, and –104.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A340–500 and –600 because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A340–500 and –600 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate

for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

**Novel or Unusual Design Features**

The Airbus Model A340–500 and A340–600 airplanes will incorporate novel or unusual design features involving engine size and torque load that affect sudden engine stoppage conditions. Airbus proposes to treat the sudden engine stoppage condition resulting from structural failure as an ultimate load condition. Section 25.361(b)(1) of part 25 specifically defines the seizure torque load resulting from structural failure as a limit load condition.

**Discussion**

The limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden engine stoppage events are rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines are capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Model A340–500 and –600 airplanes.

In order to maintain the level of safety envisioned in § 25.361(b), a more comprehensive criteria is needed for the new generation of high bypass engines. These special conditions would distinguish between the more common seizure events and those rarer seizure events resulting from structural failures. For those rarer but severe seizure events, these criteria could allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

**Publication of Notice of Proposed Special Conditions**

Notice of proposed special conditions No. NM–02–04–SC for Airbus Model A340–500 and –600 airplanes was published in the **Federal Register** on February 25, 2002 (67 FR 8487). No comments were received, and the special conditions are adopted as proposed.

**Applicability**

These special conditions are applicable to the Airbus Model A340–500 and –600 airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects certain novel or unusual design features on the Model A340–500 and A340–600 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A340–500 and –600 airplanes.

The following special conditions are issued in lieu of compliance with 14 CFR 25.361(b) and in lieu of the previously issued special conditions, ''Limit Engine Torque,'' recorded as item 9 of Special Conditions No. 25–ANM–69 (Docket No. NM–75), Airbus Model A340 Series Airplanes.

1. Sudden Engine Stoppage.

(a) For turbine engine installations, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

(2) The maximum acceleration of the engine.

(b) For auxiliary power unit installations, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

(1) Sudden auxiliary power unit deceleration due to malfunction or structural failure.

(2) The maximum acceleration of the auxiliary power unit.

(c) For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

(1) The loss of any fan, compressor, or turbine blade.

(2) Where applicable to a specific engine design, and separately from the conditions specified in paragraph 1(c)(1), any other engine structural failure that results in higher loads.

(d) The ultimate loads developed from the conditions specified in paragraphs 1(c)(1) and 1(c)(2) above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on April 17, 2002.

**Lirio Liu-Nelson,**

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

[FR Doc. 02–10235 Filed 4–25–02; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002–NM–109–AD; Amendment 39–12727; AD 2002–08–52]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, −700, and −700C Series Airplanes

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2002–08–52, that was sent previously to all known U.S. owners and operators of all Boeing Model 737–600, −700, and −700C series airplanes by individual notices. This AD requires revising the Airplane Flight Manual (AFM) to prohibit operating the airplane at speeds in excess of 300 knots indicated airspeed (KIAS) with speedbrakes extended. This AD also provides for optional terminating action for the AFM revision. This action is prompted by a report indicating that severe vibration of the horizontal stabilizer occurred on a Boeing Model 737–700 series airplane. The actions specified by this AD are intended to prevent severe vibration of the elevator and elevator tab assembly following deployment of the speedbrakes, which, if not corrected, could result in severe damage to the horizontal stabilizer, followed by possible loss of controllability of the airplane.

**DATES:** Effective May 1, 2002, to all persons except those persons to whom it was made immediately effective by emergency AD 2002–08–52, issued April 11, 2002, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before June 25, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–109–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–109–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.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Nancy H. Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** On April 11, 2002, the FAA issued emergency AD 2002–08–52, which is applicable to all Boeing Model 737–600, −700, and −700C series airplanes.

### Background

The FAA received a report indicating that severe vibration of the horizontal stabilizer occurred on a Boeing Model 737–700 series airplane. The airplane was operating at an altitude of 19,500 feet and an airspeed of 315 knots indicated airspeed (KIAS). The high frequency vibration was initiated by deployment of the speedbrakes during descent of the airplane. The vibration continued until the airspeed was reduced to 285 KIAS, even though the speedbrakes were retracted. The airplane landed without further incident. The FAA and the manufacturer have determined that the vibration was due to a ''limit cycle oscillation'' of the elevator and elevator tab assembly attached to the horizontal stabilizer. Such oscillation was caused by a buffeting flow over the surface of the horizontal stabilizer, which occurred following deployment of the speedbrakes.

Results of post-event analysis and investigation indicate that severe vibration of the elevator and elevator tab assembly following deployment of the speedbrakes, if not corrected, could result in severe damage to the horizontal stabilizer, followed by possible loss of controllability of the airplane.

### Other Similar Models

The elevator tabs on Model 737–600 and −700C series airplanes are identical to those on Model 737–700 series airplanes. Therefore, those Model 737–600 and −700C series airplanes may be subject to the same unsafe condition revealed on Model 737–700 series airplanes.

In addition, operators should note that modified elevator tabs have already been installed on Model 737–900 series airplanes.

### Other Relevant Rulemaking

The FAA previously issued AD 2001–12–51, amendment 39–12294 (66 FR 34094, June 27, 2001), applicable to all Boeing Model 737–800 series airplanes. That AD was issued to ensure that the flight crew is advised of the potential hazard associated with extending the speedbrakes at speeds in excess of 300 KIAS. That AD requires revising the Airplane Flight Manual to prohibit operating the airplane at speeds in excess of 300 KIAS with speedbrakes extended. That AD also provides for optional terminating action for the AFM revision.

### FAA's Conclusions

In light of this information, the FAA finds that certain new limitations should be included in the FAA-approved Airplane Flight Manual (AFM) for Model 737–600, −700, and −700C series airplanes to prohibit operating the airplane at speeds in excess of 300 KIAS with speedbrakes extended. The FAA has determined that an airspeed of 300 KIAS provides an acceptable safety margin compared to the 315–KIAS airspeed at which the severe vibration occurred.

### Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this airworthiness directive is issued to require revising the AFM to prohibit operating the airplane at speeds in excess of 300 KIAS with speedbrakes extended. This AD also provides for optional terminating action for the AFM revision.

### Interim Action

This AD is considered to be interim action. The specific details of the modification discussed previously are being developed, but are not yet available for dissemination to affected operators. Once the modification of the elevator tab assembly discussed previously is developed, approved, and available, the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD

effective immediately by individual notices issued on April 11, 2002, to all known U.S. owners and operators of Boeing Model 737–600, −700, and −700C series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–109–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2002–08–52 Boeing:** Amendment 39–12727. Docket 2002–NM–109–AD.

*Applicability:* All Model 737–600, −700, −700C series airplanes, certificated in any category.

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

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

To ensure that the flight crew is advised of the potential hazard associated with extending the speedbrakes at speeds in excess of 300 knots indicated airspeed (KIAS), accomplish the following:

**Airplane Flight Manual (AFM) Revision**

(a) Within 24 clock hours after the effective date of this AD, revise the Limitations Section of the FAA-approved AFM to include the following information. This may be accomplished by inserting a copy of this AD into the Limitations Section of the AFM.

''Do not operate the airplane at speeds in excess of 300 KIAS with speedbrakes extended.

*Warning:* Use of speedbrakes at speeds in excess of 320 KIAS could result in a severe vibration, which, in turn, could cause extreme damage to the horizontal stabilizer.''

**Optional Terminating Action**

(b) Modification or retrofit of the elevator tab assembly in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, constitutes terminating action for the AFM revision required by paragraph (a) of this AD. Following such modification or retrofit, that AFM revision may be removed from the AFM.

**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 ACO. Operators shall submit their requests through an appropriate FAA Principal Operations or Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

**Effective Date**

(d) This amendment becomes effective on May 1, 2002, to all persons except those persons to whom it was made immediately effective by emergency 2002–08–52, issued on April 11, 2002, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 19, 2002.

**Lirio Liu-Nelson,**

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

[FR Doc. 02–10249 Filed 4–25–02; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2002–NM–76–AD; Amendment 39–12732; AD 2002–08–20]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, and –800 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 all Boeing Model 737–600, –700, –700C, and 800 series airplanes. This action requires inspecting the airplane following any suspected limit cycle oscillation (LCO) of the elevator tab; and revising the airplane flight manual (AFM) to limit airspeeds under certain conditions and to provide the flight crew with information regarding elevator tab LCO. This action also requires repetitive cleaning of the elevator tab and a one-time cleaning of the elevator balance bays. This action provides for the option to repetitively clean the elevator tab and balance bays following every deicing/anti-icing of the horizontal stabilizer, which would temporarily allow airspeeds exceeding those limited by the AFM revision. For certain airplanes, this action requires trimming the elevator balance panel seals, which will terminate the optional repetitive cleaning procedures for the balance bays. This action is necessary to prevent the accumulation of fluid or residue in the balance bays and foreign substances on the external surfaces of the elevator tab, which can lead to limit cycle oscillation, severe vibration, flutter, and loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 13, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 13, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 25, 2002.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–76–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. 2002–NM–76–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:** Steve O'Neal, Aerospace Engineer, Flight Test Branch, ANM–160S, telephone (425) 227–2699 (for operations-related questions); or Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, telephone (425) 227–2028 (for airframe-related questions); FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1180.

*Other Information:* Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1120, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov.* Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports of numerous incidents of severe airframe vibration, or limit cycle oscillation (LCO), in flight after the horizontal stabilizer had been deiced/anti-iced on the ground. The reported incidents occurred on Boeing Model 737–600, –700, and –800 series airplanes. The empennage structure on these, as well as Model 737–700C series airplanes, is identical; therefore, all of these airplanes are subject to the identified unsafe condition. These events have been attributed to an accumulation of deicing/anti-icing fluid or other residue in the elevator balance panel cavities and on the external surfaces of the elevator tab. The accumulation of fluid in the balance bays has been attributed to inadequate drainage provisions. Drainage provisions on Model 737–900 series airplanes are improved over those on the airplanes affected by this AD.

Preliminary results of the investigation of the incidents indicated that only Type I and Type II deicing/anti-icing fluids were susceptible to this type of accumulation; however, a recent LCO event occurred following deicing/anti-icing with Type I and Type IV fluid on one affected airplane. One operator reported finding up to 30 liters of fluid trapped in the balance bays on one airplane. Other operators have reported visible accumulations of foreign substances on the external surfaces of the elevator tab. The additional weight of accumulated residue on the tab can initiate LCO. The elevator tab is so aerodynamically sensitive that repairing and painting the subject area have been prohibited by related existing ADs. The reported airspeeds at the onset of the incidents have ranged from 276 to 325 knots.

Fluid or residue accumulated in the balance bays, or foreign substances accumulated on the external surfaces of the elevator tab, in combination with normally recommended maximum operating airspeeds, can initiate LCO or flutter and result in loss of controllability of the airplane.

### Related Rulemaking

The FAA has issued related ADs on Model 737–600, –700, and –800 series airplanes: AD 2001–04–08, amendment 39–12127 (66 FR 13229, March 5, 2001); AD 2001–08–09, amendment 39–12186 (66 FR 20194, April 20, 2001); and AD 2001–14–05, amendment 39–12315 (66 FR 36145, July 12, 2001). Those ADs prohibit painting or repairing the elevator tab because of its sensitivity to changes in mass characteristics. This action further addresses the accumulation of foreign substances on the elevator tab, and the resulting associated sensitivity to the additional mass caused by these accumulations.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1084, dated March 7, 2002, which describes procedures for modifying the elevator balance panel seals on the inboard side of the balance panels in bays 2, 3, and 4. The modification, which involves trimming the seals to specified dimensions, will reduce the possibility of fluid accumulating in the elevator balance bays. This modification is incorporated in production on airplanes having line numbers 1092 and subsequent.

The FAA has reviewed Boeing Service Letter 737–SL–12–017, dated April 10, 2002, which describes procedures for cleaning deicing/anti-icing fluid residue from the elevator balance panel cavity area.

**Explanation of the Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent the accumulation of fluid or residue in the balance bays and foreign substances on the external surfaces of the elevator tab, which can lead to LCO, severe vibration, flutter, and loss of controllability of the airplane. This AD requires inspecting the airplane following any suspected LCO of the elevator tab; and revising the airplane flight manual (AFM) to limit airspeeds following deicing/anti-icing of the horizontal stabilizer, and to provide the flight crew with information regarding elevator tab LCO. This action requires repetitive cleaning of the elevator tab and a one-time cleaning of the elevator balance bays. This action provides for the option to repetitively clean the elevator tab and balance bays following every deicing/anti-icing of the horizontal stabilizer, which would temporarily allow airspeeds exceeding those limited by the AFM revision. For certain airplanes, this action requires trimming the elevator balance panel seals, which will terminate the optional repetitive cleaning procedures for the balance bays.

**Interim Action**

This is considered to be interim action. The manufacturer has advised that it is currently developing an elevator tab with an improved design, which, when installed, would terminate the requirements of this AD. Once the redesigned elevator tab is developed, approved, and available, the FAA may consider additional rulemaking.

**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 2002–NM–76–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:

**2002–08–20 Boeing:** Amendment 39–12732. Docket 2002–NM–76–AD.

*Applicability:* All Model 737–600, –700, –700C, and –800 series airplanes; certificated in any category.

**Note 1:** The applicability of this AD includes ALL Model 737–700 series airplanes, including Model 737–700 BBJ airplanes.

**Note 2:** 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 (i) 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 accumulation of fluid or residue in the elevator balance bays, and foreign substances on the external surfaces of the elevator tab, which can lead to limit cycle oscillation, flutter, and loss of controllability of the airplane, accomplish the following:

**Revision of the Airplane Flight Manual (AFM)—Airspeed Limitations**

(a) Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved AFM to include the following procedures (this may be accomplished by inserting a copy of this AD into the AFM):

''After any ground deicing/anti-icing of the horizontal stabilizer, airspeed must be limited to 270 KIAS until the crew has been informed that applicable maintenance procedures have been accomplished that would allow exceedance of 270 KIAS. Once the applicable maintenance procedures have been accomplished, exceeding 270 KIAS is permissible only until the next deicing/anti-icing.''

**Optional Post-Deicing/Anti-Icing Cleaning**

(b) Accomplishment of the applicable cleaning procedures specified by paragraphs (b)(1) and (b)(2) of this AD allows the temporary operation of the airplane at airspeeds exceeding 270 KIAS—until the next deicing/anti-icing of the horizontal stabilizer.

(1) For all airplanes: Clean the external aerodynamic surfaces of the elevator tab to remove accumulated deicing/anti-icing fluid, residue, or other foreign substances, in accordance with the procedures for Airplane Cleaning in Section 12–40–00 (G) of Boeing 737–600/700/800/900 Maintenance Manual Document D633A101.

(2) For airplanes having line numbers 1 through 1091 inclusive: Until the actions required by paragraph (f) of this AD have been accomplished, clean the elevator balance bays in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a cleaning method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**AFM Revision—Non-Normal Procedures**

(c) Within 10 days after the effective date of this AD, revise the Non-Normal Procedures section of the FAA-approved AFM (Boeing Document D631A001) to include the following procedures (this may be accomplished by inserting a copy of this AD into the AFM):

*Elevator Tab Limit Cycle Oscillation*

An Elevator Tab Limit Cycle Oscillation (LCO) will be characterized by a high frequency, possibly severe vibration, originating in the tail of the airplane, and emanating forward through the airframe structure. LCO events have previously occurred at airspeeds greater than 275 KIAS, and in an altitude range between 10,000 and 25,000 feet following ground deicing/anti-icing of the horizontal stabilizer. This vibration may, or may not, be felt in the control column. Cabin crew may be able to confirm the source of any airframe vibrations. If LCO is suspected in flight, immediately reduce airspeed (WITHOUT use of speed brakes, or changing aircraft configuration) to 270 KIAS, or until the vibration ceases, whichever indicated airspeed is lower. DO NOT USE SPEED BRAKES FOR THE REMAINDER OF THE FLIGHT.

Use of the speed brakes in other emergencies is at the discretion of the flight crew. Remain at or below the indicated airspeed at which the vibration ceased for the remainder of the flight, but do not exceed 270 KIAS. Evaluate the need to land at the nearest practicable airport. Landing airport selection should be based upon consideration of all pertinent factors such as: weather, distance to destination, range available at the reduced airspeed, maximum landing weight, and possible airframe damage. Use of ground spoilers during landing rollout is permitted.''

**Elevator Tab Cleaning**

(d) Within 250 flight cycles or 90 days after the effective date of this AD, whichever occurs first: Clean the external aerodynamic surfaces of the elevator tab to detect accumulated deicing/anti-icing fluid, residue, or other foreign substances, in accordance with the procedures for Airplane Cleaning in Section 12–40–00 (G) of Boeing 737–600/700/800/900 Maintenance Manual Document D633A101. Thereafter, repeat the tab cleaning procedure at least every 250 flight cycles or 90 days, whichever occurs first.

**Balance Bay Cleaning**

(e) For airplanes having line numbers 1 through 1091 inclusive: Prior to or concurrently with the accomplishment of the seal trim required by paragraph (f) of this AD, clean the elevator balance bays in accordance with Boeing Service Letter 737-SL–12–017, dated April 10, 2002. If the balance bays have been cleaned at least one time in accordance with paragraph (b)(2) of this AD, and if the seal trim has been accomplished in accordance with paragraph (f) of this AD, it is not necessary to repeat this procedure.

**Seal Trim**

(f) For airplanes having line numbers 1 through 1091 inclusive: Within 90 days after the effective date of this AD, trim the elevator balance bay seals in accordance with Boeing Alert Service Bulletin 737–55A1084, dated March 7, 2002. Following accomplishment of the seal trim required by this paragraph and the balance bay cleaning required by paragraph (e) of this AD, the optional repetitive cleaning procedures specified by paragraph (b)(2) of this AD are no longer necessary.

**Post-LCO Inspection**

(g) Before the next revenue flight following any suspected limit cycle oscillation (LCO) of the elevator tab: Inspect the airplane in accordance with a method approved by the Manager, Seattle ACO, FAA. For an inspection method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

**Spare Parts**

(h) As of the effective date of this AD, no person may install on any airplane an elevator balance panel bay seal having part number 183A9140–1, –5, or –9.

**Alternative Methods of Compliance**

(i) 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, 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**

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the maximum operating airspeed is 270 knots indicated airspeed (KIAS) during the ferry flight.

**Incorporation by Reference**

(k) The modification required by paragraph (f) of this AD must be done in accordance with Boeing Alert Service Bulletin 737–55A1084, dated March 7, 2002; and Boeing Service Letter 737–SL–12–017, dated April 10, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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**

(l) This amendment becomes effective on May 13, 2002.

Issued in Renton, Washington, on April 19, 2002.

**Lirio Liu-Nelson,**

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

[FR Doc. 02–10244 Filed 4–25–02; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Chapter VII

**[Docket No. 020417087–2087–01]**

**RIN 0694–XX21**

## Industry and Security Programs; Change of Agency Name

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule; Nomenclature change.

**SUMMARY:** On April 18, 2002, the Department of Commerce, through an internal organizational order, changed the name of the ''Bureau of Export Administration'' to the ''Bureau of Industry and Security.'' Consistent with this action, this rule makes appropriate conforming changes in chapter VII of title 15 of the Code of Federal Regulations. The rule also sets forth a Savings Provision in **SUPPLEMENTARY INFORMATION** that preserves, under the new name, all actions taken under the name of the Bureau of Export Administration and provides that any references to the Bureau of Export Administration in any document or other communication shall be deemed to be references to the Bureau of Industry and Security.

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

**FOR FURTHER INFORMATION CONTACT:** Miriam Cohen, Director of Administration, Bureau of Industry and Security, Telephone: (202) 482–1900.

**SUPPLEMENTARY INFORMATION:**

## Background

This rule implements the decision by the Department of Commerce, through an internal organizational order (Amendment 3 to DOO 50–1, dated April 18, 2002), to change the name of the Bureau of Export Administration to the ''Bureau of Industry and Security.'' The new name more accurately reflects the breadth of the Bureau's activities in the spheres of national, homeland, economic, and cyber security. Consistent with this name change, this rule makes a number of changes in chapter VII of title 15 of the Code of Federal Regulations. Specifically, this rule changes all references to ''Bureau of Export Administration'' and ''BXA,'' wherever they appear in chapter VII, to ''Bureau of Industry and Security'' and ''BIS,'' respectively. In addition, this rule changes the appropriate definitions sections to conform to the new name of the bureau, and to reflect that the Under Secretary for Export Administration concurrently holds the title of Under Secretary for Industry and Security.

## Savings Provision

This rule shall constitute notice that all references to the Bureau of Export Administration or BXA in any documents, statements, or other communications, in any form or media, and whether made before, on, or after the effective date of this rule, shall be deemed to be references to the Bureau of Industry and Security. Any actions undertaken in the name of or on behalf of the Bureau of Export Administration, whether taken before, on, or after the effective date of this rule, shall be deemed to have been taken in the name of or on behalf of the Bureau of Industry and Security.

## Rulemaking Requirements

1. This final rule has been determined to be exempt from review for purposes of Executive Order 12866.

2. This rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this rule involves a rule of agency organization, procedure, or practice. 5 U.S.C. 553(b)(B). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.* ) are not applicable.

Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on a continuing basis. Comments should be submitted to Miriam Cohen, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

## List of Subjects

*15 CFR Part 710*

Chemicals, Exports, Foreign trade, Imports, Treaties.

*15 CFR Part 719*

Administrative proceedings, Exports, Imports, Penalties, Violations.

*15 CFR Part 766*

Administrative practice and procedure, Confidential business information, Exports, Foreign trade, Law enforcement, Penalties.

For the reasons set forth in the preamble, 15 CFR chapter VII is amended as set forth below:

1. Revise the heading for 15 CFR chapter VII to read as follows:

**CHAPTER VII—BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE**

## PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

2. The authority citation for part 710 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

3. In § 710.1, remove the definition of ''Bureau of Export Administration (BXA)'' and add in alphabetical order the definition of ''Bureau of Industry and Security (BIS)'' to read as follows:

### § 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

* * * * *

*Bureau of Industry and Security (BIS).* Means the Bureau of Industry and Security of the United States Department of Commerce (formerly the Bureau of Export Administration).

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## PART 719—ENFORCEMENT

4. The authority citation for part 719 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13128, 64 FR 36703.

5. In § 719.1(b), remove the definition of ''Under Secretary for Export Administration,'' and add in alphabetical order a definition of ''Under Secretary for Industry and Security'' to read as follows:

### § 719.1 Scope and definitions.

* * * * *

(b) * * *

*Under Secretary for Industry and Security.* The Under Secretary for Industry and Security, U.S. Department of Commerce, who shall concurrently hold the title of Under Secretary for Export Administration.

## PART 766—ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

6. The authority citation for part 766 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

7. In § 766.2, remove the definition of ''Bureau of Export Administration (BXA)'' and add in alphabetical order the definition of ''Bureau of Industry and Security (BIS)'' and revise the definition of ''Under Secretary'' to read as follows:

**§ 766.2 Definitions.**

* * * * *

*Bureau of Industry and Security (BIS).* Bureau of Industry and Security, U.S. Department of Commerce (formerly the Bureau of Export Administration) and all of its component units, including, in particular for purposes of this part, the Office of Antiboycott Compliance, the Office of Export Enforcement, and the Office of Exporter Services.

* * * * *

*Under Secretary.* The Under Secretary for Export Administration, United States Department of Commerce, who shall concurrently hold the title of Under Secretary for Industry and Security.

**CHAPTER VII—[AMENDED]**

8. In addition to the previous amendments, in 15 CFR chapter VII, revise all references to ''Bureau of Export Administration'' to read ''Bureau of Industry and Security''; revise all references to ''Bureau of Export Administration's'' to read ''Bureau of Industry and Security's''; revise all references to ''BXA'' to read ''BIS'; and revise all references to ''BXA's'' to read ''BIS's''.

Dated: April 19, 2002.

**Kenneth I. Juster,**

*Under Secretary for Industry and Security.*

[FR Doc. 02–10166 Filed 4–25–02; 8:45 am]

**BILLING CODE 3510–33–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8988]**

**RIN 1545–BA55**

## Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

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

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. Changes to the applicable law were made by the Taxpayer Relief Act of 1997. These temporary regulations affect corporations and are necessary to provide them with guidance needed to comply with these changes. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These temporary regulations are effective April 26, 2002.

*Applicability Date:* These temporary regulations apply to distributions occurring after April 26, 2002. For rules applicable to distributions occurring after August 3, 2001, and on or before April 26, 2002, see § 1.355–7T as in effect prior to April 26, 2002 (see 26 CFR part 1 revised April 1, 2002). Taxpayers, however, may apply these regulations in whole, but not in part, to a distribution occurring on or before April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Amber R. Cook of the Office of Associate Chief Counsel (Corporate), (202) 622–7530 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 355(e) of the Internal Revenue Code of 1986 provides that the stock of a controlled corporation will not be qualified property under section 355(c)(2) or 361(c)(2) if the stock is distributed as ''part of a plan (or series of related transactions) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or any controlled corporation.'' For this purpose, a 50-percent or greater interest means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. See I.R.C. § 355(e)(4)(A) (referring to section 355(d)(4) for the definition of 50-percent or greater interest).

On January 2, 2001, the IRS and Treasury published in the **Federal Register** (REG–107566–00, 66 FR 66 (2001–3 I.R.B. 346)) a notice of proposed rulemaking (the 2001 proposed regulations) under section 355(e). The 2001 proposed regulations provide guidance concerning the interpretation of the phrase ''plan (or series of related transactions).'' The 2001 proposed regulations generally provide that whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. The 2001 proposed regulations list a number of factors that tend to show that an acquisition and a distribution are part of a plan and a number of factors that tend to show that an acquisition and a distribution are not part of a plan. In addition, they set forth six safe harbors, the satisfaction of which confirms that a distribution and an acquisition are not part of a plan.

A public hearing regarding the 2001 proposed regulations was held on May 15, 2001. In addition, written comments were received. In response to comments that immediate guidance under section 355(e) was needed, on August 3, 2001, the IRS and Treasury published in the **Federal Register** (REG–107566–00, 66 FR 40590 (2001–34 I.R.B. 176)) the 2001 proposed regulations as temporary regulations (the original temporary regulations). The original temporary regulations were identical to the 2001 proposed regulations, except that, pending further study of the comments received regarding the 2001 proposed regulations, they reserved § 1.355–7(e)(6) (suspending the running of any time period prescribed in the 2001 proposed regulations during which there is a substantial diminution of risk of loss under the principles of section 355(d)(6)(B)) and *Example 7* of the 2001 proposed regulations (interpreting the term *similar acquisition* in the context of a situation involving multiple acquisitions).

### Explanation of Provisions

The IRS and Treasury have studied the comments received regarding the 2001 proposed regulations and have concluded that it is desirable to revise various aspects of the original temporary regulations. Accordingly, the IRS and Treasury are promulgating these regulations (the revised temporary regulations) as temporary to amend the original temporary regulations. The following sections describe a number of the most significant comments and the extent to which they have been incorporated in the revised temporary regulations. Further changes to the revised temporary regulations, however, are possible before these regulations are finalized.

*A. Facts and Circumstances Generally*

The 2001 proposed regulations identify a number of facts and circumstances that tend to show whether a distribution and an acquisition are part of a plan. While some of those facts and circumstances relating to a post-distribution acquisition focus on discussions before the distribution between the acquired corporation and the acquirer regarding the acquisition or a similar acquisition, others are unrelated to whether there were such discussions before the distribution. A number of comments suggested that the relevant facts and circumstances that evidence whether a distribution and a post-distribution acquisition are part of a plan for

purposes of section 355(e) generally should focus more heavily on whether there were bilateral discussions or even an agreement, understanding, or arrangement regarding the acquisition within a certain period of time prior to the distribution.

The IRS and Treasury agree with these comments and, accordingly, have revised the 2001 proposed regulations to reflect this emphasis. In particular, the revised temporary regulations provide that, other than in the case of an acquisition involving a public offering, a distribution and a post-distribution acquisition can be part of a plan only if there was an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition at some time during the 2-year period ending on the date of the distribution. In addition, the list of facts and circumstances in the revised temporary regulations that tend to show that a distribution and an acquisition are part of a plan has been revised to reflect this change in emphasis.

*B. Special Rules Relating to Auctions*

As set forth in the 2001 proposed regulations, the facts and circumstances tending to show whether a distribution and an acquisition are part of a plan distinguish between acquisitions other than acquisitions involving a public offering or auction, on the one hand, and acquisitions involving a public offering or auction, on the other hand. For example, while the distributing or controlled corporation's discussions with an acquirer regarding a post-distribution acquisition involving a public offering or auction are not listed as evidence that the distribution and the acquisition are part of a plan, the distributing or controlled corporation's discussions with an acquirer regarding a post-distribution acquisition not involving a public offering or auction tend to show that the distribution and the acquisition are part of a plan.

One commentator suggested that the facts that tend to indicate that a distribution and an acquisition are part of a plan should not distinguish between an acquisition (other than an acquisition involving a public offering) that results from an auction and an acquisition (other than an acquisition involving a public offering) that does not result from an auction. In particular, the commentator asserted that although the factors might be weighted differently depending on the particular type of acquisition, in the context of both of these types of acquisitions, discussions with the acquirer regarding the acquisition are relevant to the determination of whether a distribution and an acquisition are part of a plan.

The IRS and Treasury believe that it is difficult to define an auction in a manner that identifies those situations to which it is appropriate to apply the special auction rules contained in the 2001 proposed regulations. For this reason, the revised temporary regulations eliminate the distinction between acquisitions (other than acquisitions involving a public offering) that result from an auction and acquisitions (other than acquisitions involving a public offering) that do not result from an auction. Accordingly, those facts and circumstances related to negotiations with the acquirer that evidence whether a post-distribution acquisition (other than an acquisition involving a public offering) that does not result from an auction is part of a plan are relevant to whether a post-distribution acquisition that results from an auction is part of a plan.

*C. Similar Acquisition*

As described above, the 2001 proposed regulations identify a number of facts and circumstances that are relevant for purposes of determining whether a distribution and an acquisition are part of a plan. In the case of an acquisition after a distribution, certain factors focus on whether certain persons engaged in discussions regarding the acquisition or a ''similar acquisition'' before the distribution. The 2001 proposed regulations provide that an acquisition and an intended acquisition may be similar even though the identity of the person acquiring stock of the distributing or controlled corporation, the timing of the acquisition or the terms of the actual acquisition are different from the intended acquisition.

*Example 7* of the 2001 proposed regulations interprets the term *similar acquisition* in the context of multiple acquisitions following a distribution that was motivated by an acquisition business purpose. The example treats an acquisition where neither the distributing nor the controlled corporation had identified the acquirer prior to the distribution and another acquisition where the acquirer had been identified but not contacted regarding the acquisition prior to the distribution as similar to an acquisition that was in fact discussed with the acquirer prior to the distribution and that was consummated prior to these additional acquisitions. After analyzing the facts and circumstances, the example concludes that these additional acquisitions and the distribution are part of a plan.

A number of commentators asserted that the interpretation of the term plan in the 2001 proposed regulations is overly broad, principally as a result of the illustration of the scope of the term *similar acquisition* in *Example 7*. Some of these commentators suggested that the unilateral intentions of one party should not result in a distribution and an acquisition being treated as part of a plan, unless that party has the unilateral ability to control both the distribution and the acquisition. In the context of acquisitions other than public offerings, therefore, some of these commentators argued that a distribution and an acquisition should not be treated as part of a plan unless there is some objective evidence of a bilateral agreement regarding the significant economic terms of the acquisition.

In addition, while the comments generally reflected the view that an acquisition should not avoid being treated as part of a plan merely because the terms of the specific acquisition intended at the time of the distribution were modified, some comments suggested that the term similar acquisition should be narrowed. For example, certain comments suggested that where there is a change in acquirer and the new acquirer is not related to the originally intended acquirer under section 267(b) or 707(b), the new acquisition should not be treated as similar to the originally intended acquisition.

Consistent with the comments' suggestions, the revised temporary regulations set forth a definition of *similar acquisition* that is narrower than the one set forth in the 2001 proposed regulations. The revised temporary regulations provide, in general, that an actual acquisition (other than a public offering or other stock issuance for cash) is similar to another potential acquisition if the actual acquisition effects a direct or indirect combination of all or a significant portion of the same business operations as the combination that would have been effected by such other potential acquisition. Further clarification is provided in the definition of *similar acquisition, Example 6*, and *Example 7* of the revised temporary regulations. The revised definition of *similar acquisition* (and the revisions to the plan and non-plan factors) have the effect of reversing the conclusion of *Example 7* of the 2001 proposed regulations that the additional acquisitions (i.e., the Y and Z acquisitions) and the distribution are part of a plan.

*D. Substantial Negotiations*

In addition to the comments regarding the general approach of the 2001 proposed regulations, the IRS and Treasury received a number of technical comments regarding the 2001 proposed regulations. A number of commentators suggested that *substantial negotiations* be defined. The revised temporary regulations add a definition of *substantial negotiations* providing that, in the case of an acquisition other than a public offering, substantial negotiations generally require discussions of significant economic terms, *e.g.*, the exchange ratio in a reorganization, by one or more officers, directors, or controlling shareholders of the distributing or controlled corporation, or another person or persons with the implicit or explicit permission of one or more officers, directors, or controlling shareholders of the distributing or controlled corporation, with the acquirer or a person or persons with the implicit or explicit permission of the acquirer. This definition is intended to clarify that both the content of, and persons engaging in, the discussions are probative of whether discussions are properly treated as substantial negotiations.

*E. Safe Harbors I and II*

Safe Harbors I and II of the 2001 proposed regulations provide certainty that a distribution and an acquisition occurring after the distribution will not be treated as part of a plan if, among other conditions, the acquisition occurs more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition before a date that is 6 months after the distribution. Safe Harbors I and II of the 2001 proposed regulations, therefore, are not available if there was an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition at any time prior to the distribution. Commentators, however, suggested that not all pre-distribution substantial negotiations should prevent those Safe Harbors from being available. In particular, a number of commentators suggested that, even if the relevant parties engage in substantial negotiations regarding an acquisition prior to a distribution, provided that those negotiations terminate without agreement prior to the distribution and do not resume until 6 months or 1 year after the distribution, those substantial negotiations should not cause Safe Harbors I and II of the 2001 proposed regulations to be unavailable. After consideration of these comments, the IRS and Treasury have decided that an agreement, understanding, arrangement, or substantial negotiations concerning the acquisition should make Safe Harbors I and II unavailable only if such events exist or occur during the period that begins 1 year prior to the distribution and ends 6 months thereafter.

A number of commentators noted that Safe Harbors I and II of the 2001 proposed regulations would be available if there was an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition similar to another acquisition prior to the date that is 6 months after the distribution. At least one commentator suggested that these Safe Harbors should not be available in these circumstances. The IRS and Treasury agree and have modified those Safe Harbors accordingly.

Safe Harbor I of the 2001 proposed regulations states that it is only available if ''[t]he distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition of Distributing or Controlled.'' Commentators proposed that Safe Harbor I of the 2001 proposed regulations be modified so that in testing the qualification of an acquisition for the Safe Harbor, only acquisitive business purposes related to the acquired corporation should be relevant. Safe Harbor I of the revised temporary regulations reflects this comment.

Safe Harbor II of the 2001 proposed regulations is available only where (1) the amount of stock of the distributing corporation or the controlled corporation that is subject to an acquisition business purpose is not more than 33 percent of the distributing corporation or the controlled corporation; and (2) no more than 20 percent of the acquired corporation is acquired before a date that is 6 months after the distribution. Commentators suggested the elimination of one of the 2 prongs. Alternatively, they suggested increasing the percentage of stock in the second prong. One commentator also suggested that certain acquisitions that were not treated as part of a plan that includes a distribution be disregarded for purposes of the second prong.

To simplify Safe Harbor II of the 2001 proposed regulations, the revised temporary regulations eliminate the quantitative restriction of the first prong and increase the percentage of stock in the second prong to 25 percent. Furthermore, for purposes of the 25-percent test, only stock that is acquired or is the subject of an agreement, understanding, arrangement, or substantial negotiations at some time during the period that begins 1 year before the distribution and ends 6 months thereafter, other than stock that is acquired in a transaction described in Safe Harbor V, Safe Harbor VI, or new Safe Harbor VII, described below, of the revised temporary regulations, is counted.

*F. Safe Harbor V*

Subject to certain exceptions, Safe Harbor V of the 2001 proposed regulations provides that an acquisition of stock of the distributing or controlled corporation that is listed on an established market is not part of a plan if the acquisition occurs pursuant to a transfer between shareholders of the distributing corporation or the controlled corporation, neither of which is a 5–percent shareholder. Some commentators suggested that this Safe Harbor should be available for stock transfers between persons that do not actively participate in the management of the corporation, even if such persons are 5–percent shareholders. These commentators suggested that such acquisitions of stock are not part of a plan that includes a distribution. The IRS and Treasury generally agree that the trading activities of persons that do not actively participate in the management of the corporation should not cause an acquisition and a distribution to be treated as part of a plan. Accordingly, the revised temporary regulations extend the availability of Safe Harbor V to persons that are neither controlling shareholders nor 10–percent shareholders either immediately before or immediately after the transfer.

Finally, the IRS and Treasury have become aware of the proposed use of publicly-traded stock, the voting rights associated with which decrease upon certain transfers, in connection with acquisitions that are part of a plan that includes a distribution. Questions have been asked regarding whether acquisitions of stock that result from public trading between persons that are not 5–percent shareholders immediately before or immediately after the transfer are protected by Safe Harbor V, even where the transferee does not succeed to all of the voting rights exercisable by the transferor with respect to such stock.

Although the IRS and Treasury believe that Safe Harbor V may be available to prevent the acquisition of such stock that is listed on an established market from being treated as

part of a plan, the revised temporary regulations clarify that, if Safe Harbor V applies to an acquisition of stock that is listed on an established market and that acquisition results in an indirect acquisition of voting power by a person other than the acquirer of such stock, Safe Harbor V does not prevent an acquisition of stock (with the voting power such stock represents after the acquisition to which Safe Harbor V applies) by such other person from being treated as part of a plan. New *Example 5* of the revised temporary regulations illustrates the application of Safe Harbor V of the revised temporary regulations and the plan and non-plan factors in the context of the public trading of stock, the relative voting power associated with which varies as a result of the trading.

*G. Safe Harbor VI and New Safe Harbor VII*

Safe Harbor VI of the 2001 proposed regulations generally applies to acquisitions of the stock of the distributing or controlled corporation ''by an employee or director of Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A), in connection with the performance of services as an employee or director for the corporation or a person related to it under section 355(d)(7)(A).'' One commentator suggested that Safe Harbor VI of the 2001 proposed regulations should be extended to stock acquired by independent contractors in connection with the performance of services and stock acquired pursuant to certain stock compensation plans. Another commentator suggested that Safe Harbor VI of the 2001 proposed regulations should not protect management leveraged buy-outs and going private transactions that are part of a plan that includes a distribution. Safe Harbor VI of the revised temporary regulations incorporates these comments and other technical comments received.

Commentators also suggested that Safe Harbor VI of the 2001 proposed regulations be extended to acquisitions of stock by qualified plans under section 401. In response to these commentators, the revised temporary regulations add new Safe Harbor VII. Subject to certain limitations, new Safe Harbor VII provides that acquisitions of stock of the distributing or controlled corporation by a retirement plan of an employer that qualifies under section 401(a) or 403(a) will not be treated as part of a plan that includes a distribution.

*H. Operating Rules*

1. Reasonable certainty

Under the 2001 proposed regulations, the fact that the distribution was motivated by a business purpose to facilitate the acquisition or a similar acquisition of the distributing or controlled corporation tends to show that a distribution and an acquisition are part of a plan. The 2001 proposed regulations provide that evidence of a business purpose to facilitate an acquisition after a distribution exists if, at the time of the distribution, there was ''reasonable certainty'' that, within six months after the distribution, an acquisition would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding an acquisition. In addition, the 2001 proposed regulations provide that in the case of an acquisition before a distribution, if at the time of the acquisition, it was reasonably certain that before a date that is 6 months after the acquisition the distribution would occur, an agreement, understanding, or arrangement would exist, or substantial negotiations would occur regarding the distribution, the reasonable certainty is evidence of a business purpose to facilitate an acquisition. The IRS and Treasury received a number of comments regarding the reasonable certainty rule. The revised temporary regulations delete the reasonable certainty operating rules in light of the emphasis in the revised temporary regulations on discussions or an agreement, understanding, arrangement, or substantial negotiations regarding the first step before the second step.

2. Substantial diminution of risk

The 2001 proposed regulations contain an operating rule that suspends the running of any time period prescribed in the regulations during which risk of loss is diminished under the principles of section 355(d)(6)(B). Commentators questioned the proper application of this rule. In light of these comments, as stated above, the original temporary regulations reserve as to the substantial diminution of risk rule pending IRS and Treasury consideration of its proper application. Although the revised temporary regulations have eliminated the substantial diminution of risk rule, the IRS and Treasury continue to consider its proper application.

*I. Options*

The 2001 proposed regulations provide that under certain circumstances, the acquisition of stock upon the exercise of an option, as that term is defined in the 2001 proposed regulations, may be treated as an agreement to acquire stock on the date the option was written, unless the distributing corporation establishes that on the later of the date of the stock distribution or the writing of the option, the option was not more likely than not to be exercised. Commentators suggested that, because an option may become more likely than not to be exercised for reasons other than the distribution, the date of the distribution should not be relevant in testing for the existence of a plan. Instead, the date the option is written, transferred or modified in a manner that materially increases the likelihood of exercise should be the relevant dates for purposes of determining whether an option is properly treated as an agreement to acquire stock. The revised temporary regulations modify the rule for determining whether and when an option will be treated as an agreement, understanding, or arrangement to acquire stock in a manner consistent with these comments and certain other technical comments received.

*J. Effective Date*

The revised temporary regulations are effective for distributions occurring after April 26, 2002. A number of commentators requested that taxpayers be permitted to rely on the 2001 proposed regulations for distributions occurring after April 16, 1997. In response to these comments, the revised temporary regulations permit taxpayers to apply the revised temporary regulations in whole, but not in part, to distributions occurring after April 16, 1997, and on or before April 26, 2002.

**Special Analyses**

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations, and, because no preceding notice of proposed rulemaking is required for these temporary regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these temporary regulations is Amber R. Cook. However, other personnel from the IRS and Treasury Department participated in their development.

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

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.355–7T also issued under 26 U.S.C. 355(e)(5). * * *

**Par. 2.** Section 1.355–0 is amended by revising the heading and the entry for § 1.355–7T to read as follows:

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* * * * *

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**Par. 3.** Section 1.355–7T is revised to read as follows:

### § 1.355–7T Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) *In general.* Except as provided in section 355(e) and in this section, section 355(e) applies to any distribution—

(1) To which section 355 (or so much of section 356 as relates to section 355) applies; and

(2) That is part of a plan (or series of related transactions) (hereinafter, plan) pursuant to which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation (Distributing) or any controlled corporation (Controlled).

(b) *Plan*—(1) *In general.* Whether a distribution and an acquisition are part of a plan is determined based on all the facts and circumstances. The facts and circumstances to be considered in demonstrating whether a distribution and an acquisition are part of a plan include, but are not limited to, the facts and circumstances set forth in paragraphs (b)(3) and (4) of this section. In general, the weight to be given each of the facts and circumstances depends on the particular case. Whether a distribution and an acquisition are part of a plan does not depend on the relative number of facts and circumstances set forth in paragraph (b)(3) that evidence that a distribution and an acquisition are part of a plan as compared to the relative number of facts and circumstances set forth in paragraph (b)(4) that evidence that a distribution and an acquisition are not part of a plan.

(2) *Certain post-distribution acquisitions.* In the case of an acquisition (other than involving a public offering) after a distribution, the distribution and the acquisition can be part of a plan only if there was an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition at some time during the 2-year period ending on the date of the distribution. In the case of an acquisition (other than involving a public offering) after a distribution, the existence of an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition at some time during the 2-year period ending on the date of the distribution tends to show that the distribution and the acquisition are part of a plan. See paragraph (b)(3)(i) of this section. However, all facts and circumstances must be considered to determine whether the distribution and the acquisition are part of a plan. For example, in the case of an acquisition (other than involving a public offering) after a distribution, if the distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition of Distributing or Controlled (see paragraph (b)(4)(v) of this section) and would have occurred at approximately the same time and in similar form regardless of whether the acquisition or a similar acquisition was effected (see paragraph (b)(4)(vi) of this section), the taxpayer may be able to establish that the distribution and the acquisition are not part of a plan.

(3) *Plan factors.* Among the facts and circumstances tending to show that a distribution and an acquisition are part of a plan are the following:

(i) In the case of an acquisition (other than involving a public offering) after a distribution, at some time during the 2-year period ending on the date of the distribution, there was an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition. The weight to be accorded this fact depends on the nature, extent, and timing of the agreement, understanding, arrangement, or substantial negotiations. The existence of an agreement, understanding, or arrangement at the time of the distribution is given substantial weight.

(ii) In the case of an acquisition involving a public offering after a distribution, at some time during the 2-year period ending on the date of the distribution, there were discussions by

Distributing or Controlled with an investment banker regarding the acquisition or a similar acquisition. The weight to be accorded this fact depends on the nature, extent, and timing of the discussions.

(iii) In the case of an acquisition (other than involving a public offering) before a distribution, at some time during the 2-year period ending on the date of the acquisition, there were discussions by Distributing or Controlled with the acquirer regarding a distribution. The weight to be accorded this fact depends on the nature, extent, and timing of the discussions. In addition, in the case of an acquisition (other than involving a public offering) before a distribution where a person other than Distributing or Controlled intends to cause a distribution and, as a result of the acquisition, can meaningfully participate in the decision regarding whether to make a distribution.

(iv) In the case of an acquisition involving a public offering before a distribution, at some time during the 2-year period ending on the date of the acquisition, there were discussions by Distributing or Controlled with an investment banker regarding a distribution. The weight to be accorded this fact depends on the nature, extent, and timing of the discussions.

(v) In the case of an acquisition either before or after a distribution, the distribution was motivated by a business purpose to facilitate the acquisition or a similar acquisition.

(4) *Non-plan factors.* Among the facts and circumstances tending to show that a distribution and an acquisition are not part of a plan are the following:

(i) In the case of an acquisition involving a public offering after a distribution, during the 2-year period ending on the date of the distribution, there were no discussions by Distributing or Controlled with an investment banker regarding the acquisition or a similar acquisition.

(ii) In the case of an acquisition after a distribution, there was an identifiable, unexpected change in market or business conditions occurring after the distribution that resulted in the acquisition that was otherwise unexpected at the time of the distribution.

(iii) In the case of an acquisition (other than involving a public offering) before a distribution, during the 2-year period ending on the date of the acquisition, there were no discussions by Distributing or Controlled with the acquirer regarding a distribution. This paragraph (b)(4)(iii) does not apply if the acquisition occurred after the date of the public announcement of the planned distribution. In addition, this paragraph (b)(4)(iii) does not apply in the case of an acquisition where a person other than Distributing or Controlled intends to cause a distribution and, as a result of the acquisition, can meaningfully participate in the decision regarding whether to make a distribution.

(iv) In the case of an acquisition before a distribution, there was an identifiable, unexpected change in market or business conditions occurring after the acquisition that resulted in a distribution that was otherwise unexpected.

(v) In the case of an acquisition either before or after a distribution, the distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition.

(vi) In the case of an acquisition either before or after a distribution, the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition or a similar acquisition.

(c) *Operating rules.* The operating rules contained in this paragraph (c) apply for all purposes of this section.

(1) *Internal discussions and discussions with outside advisors evidence of business purpose.* Internal discussions and discussions with outside advisors by or on behalf of officers or directors of Distributing or Controlled may be indicative of one or more business purposes for the distribution and the relative importance of such purposes.

(2) *Takeover defense.* If Distributing engages in discussions with a potential acquirer regarding an acquisition of Distributing or Controlled and distributes Controlled stock intending, in whole or substantial part, to decrease the likelihood of the acquisition of Distributing or Controlled by separating it from another corporation that is likely to be acquired, Distributing will be treated as having a business purpose to facilitate the acquisition of the corporation that was likely to be acquired.

(3) *Effect of distribution on trading in stock.* The fact that the distribution made all or a part of the stock of Controlled available for trading or made Distributing's or Controlled's stock trade more actively is not taken into account in determining whether the distribution and an acquisition of Distributing or Controlled stock were part of a plan.

(4) *Consequences of section 355(e) disregarded for certain purposes.* For purposes of determining the intentions of the relevant parties under this section, the consequences of the application of section 355(e), and the existence of any contractual indemnity by Controlled for tax resulting from the application of section 355(e) caused by an acquisition of Controlled, are disregarded.

(5) *Multiple acquisitions.* All acquisitions of stock of Distributing or Controlled that are considered to be part of a plan with a distribution pursuant to paragraph (b) of this section will be aggregated for purposes of the 50-percent test of paragraph (a)(2) of this section.

(d) *Safe harbors*—(1) *Safe Harbor I.* A distribution and an acquisition occurring after the distribution will not be considered part of a plan if—

(i) The distribution was motivated in whole or substantial part by a corporate business purpose (within the meaning of § 1.355–2(b)), other than a business purpose to facilitate an acquisition of the acquired corporation (Distributing or Controlled); and

(ii) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition or a similar acquisition during the period that begins 1 year before the distribution and ends 6 months thereafter.

(2) *Safe Harbor II.* (i) A distribution and an acquisition occurring after the distribution will not be considered part of a plan if—

(A) The distribution was not motivated by a business purpose to facilitate the acquisition or a similar acquisition;

(B) The acquisition occurred more than 6 months after the distribution and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition or a similar acquisition during the period that begins 1 year before the distribution and ends 6 months thereafter; and

(C) No more than 25 percent of the stock of the acquired corporation (Distributing or Controlled) was either acquired or the subject of an agreement, understanding, arrangement, or substantial negotiations during the period that begins 1 year before the distribution and ends 6 months thereafter.

(ii) For purposes of paragraph (d)(2)(i)(C) of this section, acquisitions of stock that are treated as not part of a plan pursuant to Safe Harbor V, Safe Harbor VI, or Safe Harbor VII are disregarded.

(3) *Safe Harbor III.* If an acquisition occurs after a distribution, there was no

agreement, understanding, or arrangement concerning the acquisition or a similar acquisition at the time of the distribution, and there was no agreement, understanding, arrangement, or substantial negotiations concerning the acquisition or a similar acquisition within 1 year after the distribution, the acquisition and the distribution will not be considered part of a plan.

(4) *Safe Harbor IV.* If a distribution occurs more than 2 years after an acquisition, and there was no agreement, understanding, arrangement, or substantial negotiations concerning the distribution at the time of the acquisition or within 6 months thereafter, the acquisition and the distribution will not be considered part of a plan.

(5) *Safe Harbor V*—(i) *In general.* An acquisition of Distributing or Controlled stock that is listed on an established market is not part of a plan if, immediately before or immediately after the transfer, none of the transferor, the transferee, and any coordinating group of which either the transferor or the transferee is a member is—

(A) The acquired corporation (Distributing or Controlled);

(B) A corporation that the acquired corporation (Distributing or Controlled) controls within the meaning of section 368(c);

(C) A member of a controlled group of corporations within the meaning of section 1563 of which the acquired corporation (Distributing or Controlled) is a member;

(D) An underwriter with respect to such acquisition;

(E) A controlling shareholder of the acquired corporation (Distributing or Controlled); or

(F) A 10-percent shareholder of the acquired corporation (Distributing or Controlled).

(ii) *Special rules.* (A) This paragraph (d)(5) does not apply to a transfer of stock by or to a person if the corporation the stock of which is being transferred knows, or has reason to know, that the person or a coordinating group of which such person is a member intends to become a controlling shareholder or a 10-percent shareholder of the acquired corporation (Distributing or Controlled) at any time after the acquisition and before the date that is 2 years after the distribution.

(B) If a transfer of stock to which this paragraph (d)(5) applies results immediately, or upon a subsequent event or the passage of time, in an indirect acquisition of voting power by a person other than the transferee, this paragraph (d)(5) does not prevent an acquisition of stock (with the voting power such stock represents after the transfer to which this paragraph (d)(5) applies) by such other person from being treated as part of a plan.

(6) *Safe Harbor VI*—(i) *In general.* If stock of Distributing or Controlled is acquired by a person in connection with such person's performance of services as an employee, director, or independent contractor for Distributing, Controlled, or a person related to Distributing or Controlled under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) in a transaction to which section 83 or section 421(a) applies, the acquisition and the distribution will not be considered part of a plan.

(ii) *Special rule.* This paragraph (d)(6) does not apply to a stock acquisition described in (d)(6)(i) if the acquirer or a coordinating group of which the acquirer is a member is a controlling shareholder or a 10-percent shareholder of the acquired corporation (Distributing or Controlled) immediately after the acquisition.

(7) *Safe Harbor VII*—(i) *In general.* If stock of Distributing or Controlled is acquired by a retirement plan of an employer that qualifies under section 401(a) or 403(a), the acquisition and the distribution will not be considered part of a plan.

(ii) *Special rule.* This paragraph (d)(7) does not apply to stock acquisitions described in (d)(7)(i) of this section to the extent that the stock acquired pursuant to such acquisitions by all of the qualified plans of the employer described in paragraph (d)(7)(i) of this section, and any other person treated as the same employer as that described in paragraph (d)(7)(i) of this section under section 414(b), (c), (m), or (o), during the 4-year period beginning 2 years before the distribution, in the aggregate, represents 10 percent or more of the total combined voting power of all classes of stock entitled to vote, or 10 percent or more of the total value of shares of all classes of stock, of the acquired corporation (Distributing or Controlled).

(e) *Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests*—(1) *Treatment of options*—(i) *General rule.* For purposes of this section, if stock of Distributing or Controlled is acquired pursuant to an option, the option will be treated as an agreement, understanding, or arrangement to acquire the stock on the earliest of the following dates: the date that the option is written, if the option was more likely than not to be exercised as of such date; the date that the option is transferred, if the option was more likely than not to be exercised as of such date; and the date that the option is modified in a manner that materially increases the likelihood of exercise, if the option was more likely than not to be exercised as of such date; provided, however, if the writing, transfer, or modification had a principal purpose of avoiding section 355(e), the option will be treated as an agreement, understanding, arrangement, or substantial negotiations to acquire the stock on the date of the distribution. The determination of whether an option was more likely than not to be exercised is based on all the facts and circumstances, taking control premiums and minority and blockage discounts into account in determining the fair market value of stock underlying an option.

(ii) *Agreement, understanding, or arrangement to write an option.* If there is an agreement, understanding, or arrangement to write an option, the option will be treated as written on the date of the agreement, understanding, or arrangement.

(iii) *Substantial negotiations related to options.* If an option is treated as an agreement, understanding, or arrangement to acquire the stock on the date that the option is written, substantial negotiations to acquire the option will be treated as substantial negotiations to acquire the stock subject to such option. If an option is treated as an agreement, understanding, or arrangement to acquire the stock on the date that the option is transferred, substantial negotiations regarding the transfer of the option will be treated as substantial negotiations to acquire the stock subject to such option. If an option is treated as an agreement, understanding, or arrangement to acquire the stock on the date that the option is modified in a manner that materially increases the likelihood of exercise, substantial negotiations regarding such modifications to the option will be treated as substantial negotiations to acquire the stock subject to such option.

(2) *Instruments treated as options.* For purposes of this paragraph (e), except to the extent provided in paragraph (e)(3) of this section, call options, warrants, convertible obligations, the conversion feature of convertible stock, put options, redemption agreements (including rights to cause the redemption of stock), any other instruments that provide for the right or possibility to issue, redeem, or transfer stock (including an option on an option), or any other similar interests are treated as options.

(3) *Instruments generally not treated as options.* For purposes of this

paragraph (e), the following are not treated as options unless (in the case of paragraphs (e)(3)(i), (iii), and (iv) of this section) written, transferred (directly or indirectly), modified, or listed with a principal purpose of avoiding the application of section 355(e) or this section.

(i) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(ii) *Compensatory options.* An option to acquire stock in Distributing or Controlled with customary terms and conditions provided to a person in connection with such person's performance of services as an employee, director, or independent contractor for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), provided that—

(A) The transfer of stock pursuant to such option is described in section 421(a); or

(B) The option is nontransferable within the meaning of § 1.83–3(d) and does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

(iii) *Options exercisable only upon death, disability, mental incompetency, or separation from service.* Any option entered into between shareholders of a corporation (or a shareholder and the corporation) that is exercisable only upon the death, disability, or mental incompetency of the shareholder, or, in the case of stock acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the shareholder's separation from service.

(iv) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between shareholders of a corporation (or between the corporation and a shareholder).

(v) *Other enumerated instruments.* Any other instrument the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(f) *Multiple controlled corporations.* Only the stock or securities of a controlled corporation in which 1 or more persons acquire directly or indirectly stock representing a 50-percent or greater interest as part of a plan involving the distribution of that corporation will be treated as not qualified property under section 355(e)(1) if—

(1) The stock or securities of more than 1 controlled corporation are distributed in distributions to which section 355 (or so much of section 356 as relates to section 355) applies; and

(2) One or more persons do not acquire, directly or indirectly, stock representing a 50-percent or greater interest in Distributing pursuant to a plan involving any of those distributions.

(g) *Valuation.* Except as provided in paragraph (e)(1)(i) of this section, for purposes of section 355(e) and this section, all shares of stock within a single class are considered to have the same value. Thus, control premiums and minority and blockage discounts within a single class are not taken into account.

(h) *Definitions*—(1) *Agreement, understanding, arrangement, or substantial negotiations.* (i) Whether an agreement, understanding, or arrangement exists depends on the facts and circumstances. The parties do not necessarily have to have entered into a binding contract or have reached agreement on all significant economic terms to have an agreement, understanding, or arrangement. However, an agreement, understanding, or arrangement clearly exists if a binding contract to acquire stock exists.

(ii) Substantial negotiations in the case of an acquisition (other than involving a public offering) generally require discussions of significant economic terms, e.g., the exchange ratio in a reorganization, by one or more officers, directors, or controlling shareholders of Distributing or Controlled, or another person or persons with the implicit or explicit permission of one or more officers, directors, or controlling shareholders of Distributing or Controlled, with the acquirer or a person or persons with the implicit or explicit permission of the acquirer.

(iii) In the case of an acquisition involving a public offering by Distributing or Controlled, the existence of an agreement, understanding, arrangement, or substantial negotiations will be based on discussions by one or more officers, directors, or controlling shareholders of Distributing or Controlled, or another person or persons with the implicit or explicit permission of one or more officers, directors, or controlling shareholders of Distributing or Controlled, with an investment banker.

(2) *Controlled corporation.* For purposes of this section, a controlled corporation is a corporation the stock of which is distributed in a distribution to which section 355 (or so much of section 356 as relates to section 355) applies.

(3) *Controlling shareholder.* (i) A controlling shareholder of a corporation the stock of which is listed on an established market is a 5-percent shareholder who actively participates in the management or operation of the corporation. For purposes of this paragraph (h)(3)(i), a corporate director will be treated as actively participating in the management of the corporation.

(ii) A controlling shareholder of a corporation the stock of which is not listed on an established market is any person that owns, actually or constructively under the rules of section 318, stock possessing voting power representing a meaningful voice in the governance of the corporation.

(iii) For purposes of this section, a person is a controlling shareholder if that person meets the definition of controlling shareholder in this paragraph (h)(3) immediately before or immediately after the acquisition being tested.

(iv) If a distribution precedes an acquisition, Controlled's controlling shareholders immediately after the distribution and Distributing are included among Controlled's controlling shareholders at the time of the distribution.

(4) *Coordinating group.* A coordinating group includes 2 or more persons that, pursuant to a formal or informal understanding, join in one or more coordinated acquisitions or dispositions of stock of Distributing or Controlled. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of one or more other existing or prospective shareholders. A coordinating group is treated as a single shareholder for purposes of determining whether the coordinating group is treated as a controlling shareholder or a 10-percent shareholder.

(5) *Discussions.* Discussions by Distributing or Controlled generally require discussions by one or more officers, directors, or controlling shareholders of Distributing or Controlled, or another person or persons with the implicit or explicit permission of one or more officers, directors, or

controlling shareholders of Distributing or Controlled. Discussions with the acquirer generally require discussions with the acquirer or a person or persons with the implicit or explicit permission of the acquirer.

(6) *Established market.* An established market is—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Act of 1934 (15 U.S.C. 78o-3); or

(iii) Any additional market that the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(7) *Five-percent shareholder.* A person will be considered a 5-percent shareholder of a corporation the stock of which is listed on an established market if the person owns, actually or constructively under the rules of section 318, 5 percent or more of any class of stock of the corporation whose stock is transferred. A person is a 5-percent shareholder if the person meets the requirements described above immediately before or immediately after the transfer. All options owned by a person are treated as exercised for the purpose of determining whether such person is a 5-percent shareholder. Absent actual knowledge that a person is a 5-percent shareholder, a corporation can rely on Schedules 13D and 13G (or any similar schedules) filed with the Securities and Exchange Commission to identify its 5-percent shareholders.

(8) *Similar acquisition.* In general, an actual acquisition (other than a public offering or other stock issuance for cash) is similar to another potential acquisition if the actual acquisition effects a direct or indirect combination of all or a significant portion of the same business operations as the combination that would have been effected by such other potential acquisition. Thus, an actual acquisition may be similar to another acquisition even if the timing or terms of the actual acquisition are different from the timing or terms of the other acquisition. For example, an actual acquisition of Distributing by shareholders of another corporation in connection with a merger of such other corporation with and into Distributing is similar to another acquisition of Distributing by merger into such other corporation or into a subsidiary of such other corporation. However, in general, an actual acquisition (other than a public offering or other stock issuance for cash) is not similar to another acquisition if the ultimate owners of the business operations with which Distributing or Controlled is combined in the actual acquisition are substantially different from the ultimate owners of the business operations with which Distributing or Controlled was to be combined in such other acquisition. In the case of a public offering or other stock issuance for cash, an actual acquisition may be similar to another acquisition, even though there are changes in the terms of the stock, the class of stock being offered, the size of the offering, the timing of the offering, the price of the stock, or the participants in the offering.

(9) *Ten-percent shareholder.* A person will be considered a 10-percent shareholder of a corporation the stock of which is listed on an established market if the person owns, actually or constructively under the rules of section 318, 10 percent or more of any class of stock of the corporation whose stock is transferred. A person will be considered a 10-percent shareholder of a corporation the stock of which is not listed on an established market if the person owns, actually or constructively under the rules of section 318, stock possessing 10 percent or more of the total voting power of the stock of the corporation whose stock is transferred or stock having a value equal to 10 percent or more of the total value of the stock of the corporation whose stock is transferred. A person is a 10-percent shareholder if the person meets the requirements described above immediately before or immediately after the transfer. All options owned by a person are treated as exercised for the purpose of determining whether such person is a 10-percent shareholder. Absent actual knowledge that a person is a 10-percent shareholder, a corporation the stock of which is listed on an established market can rely on Schedules 13D and 13G (or any similar schedules) filed with the Securities and Exchange Commission to identify its 10-percent shareholders.

(i) [Reserved]

(j) *Examples.* The following examples illustrate paragraphs (a) through (h) of this section. Throughout these examples, assume that Distributing (D) owns all of the stock of Controlled (C). Assume further that D distributes the stock of C in a distribution to which section 355 applies and to which section 355(d) does not apply. Unless otherwise stated, assume the corporations do not have controlling shareholders. No inference should be drawn from any example concerning whether any requirements of section 355 other than those of section 355(e) are satisfied. The examples are as follows:

*Example 1. Unwanted assets.* (i) D is in business 1. C is in business 2. D is relatively small in its industry. D wants to combine with X, a larger corporation also engaged in business 1. X and D begin negotiating for X to acquire D, but X does not want to acquire C. To facilitate the acquisition of D by X, D agrees to distribute all the stock of C pro rata before the acquisition. Prior to the distribution, D and X enter into a contract for D to merge into X subject to several conditions. One month after D and X enter into the contract, D distributes C and, on the day after the distribution, D merges into X. As a result of the merger, D's former shareholders own less than 50 percent of the stock of X.

(ii) The issue is whether the distribution of C and the merger of D into X are part of a plan. No Safe Harbor applies to this acquisition. To determine whether the distribution of C and the merger of D into X are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (b) of this section.

(iii) The following tends to show that the distribution of C and the merger of D into X are part of a plan: X and D had an agreement regarding the acquisition during the 2-year period ending on the date of the distribution (paragraph (b)(3)(i) of this section), and the distribution was motivated by a business purpose to facilitate the merger (paragraph (b)(3)(v) of this section). Because the merger was agreed to at the time of the distribution, the fact described in paragraph (b)(3)(i) of this section is given substantial weight.

(iv) None of the facts and circumstances listed in paragraph (b)(4) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(v) The distribution of C and the merger of D into X are part of a plan under paragraph (b) of this section.

*Example 2. Public offering.* (i) D's managers, directors, and investment banker discuss the possibility of offering D stock to the public. They decide a public offering of 20 percent of D's stock with D as a stand alone corporation would be in D's best interest. One month later, to facilitate a stock offering by D of 20 percent of its stock, D distributes all the stock of C pro rata to D's shareholders. D issues new shares amounting to 20 percent of its stock to the public in a public offering 7 months after the distribution.

(ii) The issue is whether the distribution of C and the public offering by D are part of a plan. No Safe Harbor applies to this acquisition. Safe Harbor V, relating to public trading, does not apply to public offerings (see paragraph (d)(5)(i)(A) of this section). To determine whether the distribution of C and the public offering by D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (b) of this section.

(iii) The following tends to show that the distribution of C and the public offering by

D are part of a plan: D discussed the public offering with its investment banker during the 2-year period ending on the date of the distribution (paragraph (b)(3)(ii) of this section), and the distribution was motivated by a business purpose to facilitate the public offering (paragraph (b)(3)(v) of this section).

(iv) None of the facts and circumstances listed in paragraph (b)(4) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(v) The distribution of C and the public offering by D are part of a plan under paragraph (b) of this section.

*Example 3. Hot market.* (i) D is a widely-held corporation the stock of which is listed on an established market. D announces a distribution of C and distributes C pro rata to D's shareholders. By contract, C agrees to indemnify D for any imposition of tax under section 355(e) caused by the acts of C. The distribution is motivated by a desire to improve D's access to financing at preferred customer interest rates, which will be more readily available if D separates from C. At the time of the distribution, although neither D nor C has been approached by any potential acquirer of C, it is reasonably certain that soon after the distribution either an acquisition of C will occur or there will be an agreement, understanding, arrangement, or substantial negotiations regarding an acquisition of C. Corporation Y acquires C in a merger described in section 368(a)(2)(E) within 6 months after the distribution. The C shareholders receive less than 50 percent of the stock of Y in the exchange.

(ii) The issue is whether the distribution of C and the acquisition of C by Y are part of a plan. No Safe Harbor applies to this acquisition. Under paragraph (b)(2) of this section, because prior to the distribution neither D nor C and Y had an agreement, understanding, arrangement, or substantial negotiations regarding the acquisition or a similar acquisition, the distribution of C by D and the acquisition of C by Y are not part of a plan under paragraph (b) of this section.

*Example 4. Unexpected opportunity.* (i) D, the stock of which is listed on an established market, announces that it will distribute all the stock of C pro rata to D's shareholders. At the time of the announcement, the distribution is motivated wholly by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate an acquisition. After the announcement but before the distribution, widely-held X becomes available as an acquisition target. There were no discussions between D or C and X before the announcement. D negotiates with and acquires X before the distribution. After the acquisition, X's former shareholders own 55 percent of D's stock. D distributes the stock of C pro rata within 6 months after the acquisition of X.

(ii) The issue is whether the acquisition of X by D and the distribution of C are part of a plan. No Safe Harbor applies to this acquisition. To determine whether the acquisition of X by D and the distribution of C are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (b) of this section.

(iii) Depending on whether a person other than D or C intends to cause a distribution and, as a result of the acquisition, can meaningfully participate in the decision regarding whether to cause a distribution, the fact described in (b)(3)(iii) of this section, tending to show that a distribution and an acquisition are part of a plan, may exist in this case.

(iv) Under paragraph (b)(4) of this section, D would assert that the following tends to show that the distribution of C and the acquisition of X by D are not part of a plan: the distribution was motivated by a corporate business purpose (within the meaning of § 1.355–2(b)) other than a business purpose to facilitate the acquisition or a similar acquisition (paragraph (b)(4)(v) of this section), and the distribution would have occurred at approximately the same time and in similar form regardless of the acquisition or a similar acquisition (paragraph (b)(4)(vi) of this section). That D decided to distribute C and announced that decision before it became aware of the opportunity to acquire X suggests that the distribution would have occurred at approximately the same time and in similar form regardless of D's acquisition of X or a similar acquisition. X's lack of participation in the decision to distribute C, even though the X shareholders may have been able to prevent a distribution of C, also helps establish that fact.

(v) In determining whether the distribution of C and acquisition of X by D are part of a plan, one should consider the importance of D's business purpose for the distribution in light of D's opportunity to acquire X. If D can establish that the distribution continued to be motivated by the stated business purpose, and if D would have distributed C regardless of D's acquisition of X, then D's acquisition of X and D's distribution of C are not part of a plan under paragraph (b) of this section.

*Example 5. Vote shifting transaction.* (i) D is in business 1. C is in business 2. D wants to combine with X, a larger corporation also engaged in business 1. The stock of X is closely held. X and D begin negotiating for D to acquire X, but the X shareholders do not want to acquire an indirect interest in C. To facilitate the acquisition of X by D, D agrees to distribute all the stock of C pro rata before the acquisition of X. D and X enter into a contract for X to merge into D subject to several conditions. Among those conditions is that D will amend its corporate charter to provide for 2 classes of stock: Class A and Class B. Under all circumstances, each share of Class A stock will be entitled to 10 votes in the election of each director on D's board of directors. Upon issuance, each share of Class B stock will be entitled to 10 votes in the election of each director on D's board of directors; however, a disposition of such share by its original holder will result in such share being entitled to only 1 vote, rather than 10 votes, in the election of each director. Immediately after the merger, the Class B shares will be listed on an established market. One month after D and X enter into the contract, D distributes C. Immediately after the distribution, the shareholders of D exchange their D stock for the new Class B shares. On the day after the distribution, X merges into D. In the merger, the former shareholders of X exchange their X stock for Class A shares of D. Immediately after the merger, D's historic shareholders own stock of D representing 51 percent of the total combined voting power of all classes of stock of D entitled to vote. During the 30-day period following the merger, none of the Class A shares are transferred, but a number of D's historic shareholders sell their Class B stock of D in public trading with the result that, at the end of that 30-day period, the Class A shares owned by the former X shareholders represent 52 percent of the total combined voting power of all classes of stock of D entitled to vote.

(ii) *X acquisition.* (A) The issue is whether the distribution of C and the merger of X into D are part of a plan. No Safe Harbor applies to this acquisition. To determine whether the distribution of C and the merger of X into D are part of a plan, D must consider all the facts and circumstances, including those described in paragraph (b) of this section.

(B) The following tends to show that the distribution of C and the merger of X into D are part of a plan: X and D had an agreement regarding the acquisition during the 2-year period ending on the date of the distribution (paragraph (b)(3)(i) of this section), and the distribution was motivated by a business purpose to facilitate the merger (paragraph (b)(3)(v) of this section). Because the merger was agreed to at the time of the distribution, the fact described in paragraph (b)(3)(i) of this section is given substantial weight.

(C) None of the facts and circumstances listed in paragraph (b)(4) of this section, tending to show that a distribution and an acquisition are not part of a plan, exist in this case.

(D) The distribution of C and the merger of X into D are part of a plan under paragraph (b) of this section.

(iii) *Public trading of Class B shares.* (A) Assuming that each of the transferors and the transferees of the Class B stock of D in public trading is not one of the prohibited transferors or transferees listed in paragraph (d)(5)(i), Safe Harbor V will apply to the acquisitions of the Class B stock during the 30-day period following the merger such that the distribution and those acquisitions will not be treated as part of the plan. However, to the extent that those acquisitions result in an indirect acquisition of voting power by a person other than the acquirer of the transferred stock, Safe Harbor V does not prevent the acquisition of the D stock (with the voting power such stock represents after those acquisitions) by the former X shareholders from being treated as part of a plan.

(B) To the extent that the transfer of the Class B shares causes the voting power of D to shift to the Class A stock acquired by the former X shareholders, such shifted voting power will be treated as attributable to the stock acquired by the former X shareholders as part of the plan that includes the distribution and the X acquisition.

*Example 6. Acquisition that is not similar.* (i) D, X, and Y are each corporations the stock of which is publicly traded and widely held. Each of D, X, and Y are engaged in the manufacture and sale of trucks. C is engaged in the manufacture and sale of buses. D and

X engage in substantial negotiations concerning X's acquisition of the stock of D from the D shareholders in exchange for stock of X. D and X do not reach an agreement regarding that acquisition. Three months after D and X first began negotiations regarding that acquisition, D distributes the stock of C pro rata to its shareholders. Three months after the distribution, Y acquires the stock of D from the D shareholders in exchange for stock of Y.

(ii) Although both X and Y engage in the manufacture and sale of trucks, X's truck business and Y's truck business are not the same business operations. Therefore, because Y's acquisition of D does not effect a combination of the same business operations as X's acquisition of D would have effected, Y's acquisition of D is not similar to X's potential acquisition of D that was the subject of earlier negotiations.

*Example 7. Acquisition that is similar.* (i) D is engaged in the business of writing custom software for several industries (industries 1 through 6). The software business of D related to industries 4, 5, and 6 is significant relative to the software business of D related to industries 3, 4, 5, and 6. X, an unrelated corporation, is engaged in the business of writing software and the business of manufacturing and selling hardware devices. X's business of writing software is significant relative to its total businesses. X and D engage in substantial negotiations regarding X's acquisition of D stock from the D shareholders in exchange for stock of X. Because X does not want to acquire the software businesses related to industries 1 and 2, these negotiations relate to an acquisition of D stock where D owns the software businesses related only to industries 3, 4, 5, and 6. Thereafter, D concludes that the intellectual property licenses central to the software business related to industries 1 and 2 are not transferable and that a separation of the software business related to industry 3 from the software business related to industry 2 is not desirable. One month after D begins negotiating with X, D contributes the software businesses related to industries 4, 5, and 6 to C, and distributes the stock of C pro rata to its shareholders. In addition, X sells its hardware businesses for cash. After the distribution, C and X negotiate for X's acquisition of the C stock from the C shareholders in exchange for X stock, and X acquires the stock of C.

(ii) Although D and C are different corporations, C does not own the custom software business related to industry 3, and X sold its hardware business prior to the acquisition of C, because X's acquisition of C involves a combination of a significant portion of the same business operations as the combination that would have been effected by the acquisition of D that was the subject of negotiations between D and X, X's acquisition of C is the same as or similar to X's potential acquisition of D that was the subject of earlier negotiations.

(k) *Effective dates.* This section applies to distributions occurring after April 26, 2002. Taxpayers, however, may apply these regulations in whole, but not in part, to a distribution occurring after April 16, 1997, and on or before April 26, 2002. For distributions occurring after August 3, 2001, and on or before April 26, 2002 with respect to which a taxpayer chooses not to apply these regulations, see § 1.355–7T as in effect prior to April 26, 2002 (see 26 CFR part 1 revised April 1, 2002).

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: April 15, 2002.

**Mark Weinberger,**

*Assistant Secretary of the Treasury.*

[FR Doc. 02–9817 Filed 4–23–02; 12:14 pm]

BILLING CODE 4830–01–P

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

## CGD01–01–214

**RIN 2115–AA97**

## Safety and Security Zones; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone and Captain of the Port Zone

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; change in effective period.

**SUMMARY:** The Coast Guard is extending the effective period of the temporary safety and security zones for Liquefied Natural Gas Carrier (LNGC) vessels within the Boston Marine Inspection Zone and Captain of the Port Zone until August 15, 2002, to provide necessary protection and allow adequate time for a notice and comment period to develop a permanent rule. Entry into or movement within waters within a 500-yard radius of all LNGC vessels anchored in Broad Sound or moored at the Distrigas waterfront facility in the Mystic River, Everett, Massachusetts, or two miles ahead and one mile astern, and 1000-yards on each side of any LNGC vessel in navigable waters and internal waters of the United States within the Boston Marine Inspection Zone and Captain of the Port Zone, is prohibited without prior authorization from the Captain of the Port.

**DATES:** The amendment to § 165.T01–214 is effective April 26, 2002. Section 165.T01–214, added at 66 FR 59698, November 30, 2001, effective November 13, 2001, until June 15, 2002, is extended in effect until August 15, 2002. The suspension of § 165.110 at 66 FR 59698, November 13, 2001, is extended through August 15, 2002.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Dave Sherry, Maritime Security Operations, Marine Safety Office Boston, Waterways Safety & Response Division, at (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On October 22, 2001, we issued a temporary final rule (TFR) (Docket # CGD01–01–191, 67 FR 9194, 9197; February 28, 2002) that remained in effect until November 13, 2001 when, because of the delay of the mail delivery of the rule to Washington, D.C. for publication in the **Federal Register**, it was replaced by a second TFR entitled ''Safety and Security Zone; Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Marine Inspection Zone''. (66 FR 59696, November 30, 2001). That rule is scheduled to remain in effect until June 15, 2002.

This rule was published without a notice of proposed rulemaking (NPRM). Under 5 U.S.C. 553, the Coast Guard found that good cause existed for not publishing an NPRM for this rule extension. Due to the flammable nature of the LNGC vessel cargo, the earlier TFR was required to prevent possible terrorist strikes against LNGC vessels within and adjacent to waters within the Boston Marine Inspection Zone and Captain of the Port Zone. It was anticipated that we would assess the security environment towards the end of the effective period to determine whether continued LNG related security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop permanent regulations tailored to the present and foreseeable security environment within the Port of Boston.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and making this rule change effective less than 30 days after publication in the **Federal Register**. The measures contemplated by the rule are intended to prevent possible terrorist attacks against LNGC vessels,

and to protect other vessels, waterfront facilities, the public and the port of Boston from potential sabotage or other subversive acts, accidents or other causes of a similar nature. The Coast Guard intends to publish an NPRM proposing to make the measures of this temporary regulation permanent. This extension preserves current security measures during the rulemaking process, and that NPRM will invite public comment regarding the proposed revisions to the permanent regulations.

**Background and Purpose**

In light of the terrorist attacks in New York City and Washington, D.C. on September 11, 2001, safety and security zones were established to safeguard the LNGC vessels, the public and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel. These safety and security zones prohibited entry into or movement within the specified areas.

As we mentioned in the original TFR, these regulations were designed to provide the Captain of the Port of Boston with maximum flexibility to respond to emergent threats to LNG vessels. When less stringent security measures are required, the Captain of the Port communicates relaxed enforcement policies to the public. As a result, the full scope of these regulations is rarely imposed. Nevertheless, the flexibility to utilize those measures permitted by the TFR and required by the circumstances is vital to ensure port security in the present environment.

The temporary rule in effect currently is only effective until June 15, 2002. The Coast Guard is extending the effective date of this rule until August 15, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking.

**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).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the areas, there is ample room for vessels to navigate around the zones in Broad Sound and, in most portions of the navigable waters of the United States, vessels can transit ahead, behind, and after passage of LNGC vessels, and advance notifications will be made to the local maritime community by marine information broadcasts. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and the maritime community from further devastating consequences of the aforementioned acts of terrorism.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Broad Sound or Boston Harbor. For the reasons enumerated in the Regulatory Evaluation section above, these safety and security zones will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization would be affected by this rule and you have questions concerning its provisions or options for compliance, please call Lieutenant Dave Sherry, telephone (617) 223–3000. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888REGFAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

The Coast Guard analyzed this rule 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 having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

**Taking of Private Property**

This 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 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**

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Security Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to security 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. A rule with tribal implications has 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**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

**Energy Effects**

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

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

Harbors, Marine security, 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.

### § 165.110 [Suspended]

2. Section 165.110, which was suspended at 66 FR 59698, November 30, 2001, from November 13, 2001 until June 15, 2002, will continue to be suspended through August 15, 2002.

3. Revise temporary § 165.T01–214(b) to read as follows:

### § 165.T01–214 Safety and Security Zone: Liquefied Natural Gas Carrier Transits and Anchorage Operations, Boston, Massachusetts.

* * * * *

(b) *Effective date.* This section is effective from October 22, 2001, until August 15, 2002.

* * * * *

Dated: April 11, 2002.

**B.M. Salerno,**

*Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.*

[FR Doc. 02–10174 Filed 4–25–02; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL SERVICE

## 39 CFR Part 111

## Domestic Mail Manual Changes To Clarify the Method Used To Determine Postal Zones

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Domestic Mail Manual (DMM) G030 to clarify the language describing the method used by the Postal Service to determine postal zones. This final rule is effective with the implementation date of the Docket No. R2001–1 omnibus rate case on June 30, 2002. On that date, the Postal Service will update zone chart coordinates for all 3-digit ZIP Code prefixes in L005, Column A, that do not match the corresponding coordinates for L005, Column B.

**EFFECTIVE DATE:** This final rule is effective at 12:01 a.m. on June 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Boyce, 901–681–4525.

**SUPPLEMENTARY INFORMATION:** On March 7, 2002, the Postal Service published a proposed rule in the **Federal Register** (67 FR 10340) for the purpose of clarifying the language in DMM G030 which describes the method used to determine postal zones 1 through 8. This clarification would not change the method used to calculate postal zones.

As information, postal rates for certain subclasses of mail are based on the weight of the individual piece and the distance that the piece travels from origin to destination (*i.e.*, the number of postal zones crossed). For the administration of the system of postal zones, the sphere of the earth is geometrically divided into units of area 30 minutes square, identical with a quarter of the area formed by the intersecting parallels of latitude and meridians of longitude. Postal zones are based on the distance between these units of area. The distance is measured from the center of the unit of area containing the sectional center facility (SCF) serving the origin Post Office to the SCF serving the destination Post Office. The SCF serving the origin and destination Post Offices are determined by the appropriate SCF in L005, Column B.

In the March 7, 2002, proposed rule, the Postal Service solicited comments on the implementation date for this revision. During the 30-day comment period, the Postal Service received no comments on the proposed rulemaking.

Therefore, effective June 30, 2002, the longitude and latitude of 130 3-digit ZIP Code prefixes for SCF coordinates in L005, Column A, will be updated to reflect the parent SCF in L005, Column B. This update will align the 3-digit ZIP Code prefixes with current postal processing and distribution networks. To accommodate the small number of 3-digit ZIP Code prefixes for military post offices (MPOs) that are not listed in L005, the Postal Service will add a new table to DMM G030.1.2. The information in DMM G030.1.3 regarding the available formats in which zone chart data may be obtained from the Postal Service will be updated to reflect current distribution methods. Additionally, DMM G030.3.0 will be deleted because it repeats eligibility information for intra-BMC, inter-BMC, SCF, and delivery unit rates contained in other portions of the DMM.

The Postal Service Official National Zone Chart Data Program is administered from the National Customer Support Center (NCSC) in Memphis, TN. Single-page zone charts for originating mail are available online through Postal Explorer at *http://pe.usps.gov.* Zone chart data for the entire nation can be purchased in a CD–ROM format. For more information, or to purchase zone charts, call the Zone Chart program administrator at 800–238–3150. The single-page zone chart program available online through Postal Explorer has a link (click on ''what's new'') to the updated zone chart data effective on June 30, 2002.

For the reasons stated, the Postal Service adopts the following amendments to the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations (CFR). *See* 39 CFR part 111.

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

Postal Service.

## PART 111—[AMENDED]

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

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

2. Amend the following sections of the Domestic Mail Manual as set forth below:

**Domestic Mail Manual (DMM)**

* * * * *

**G General Information**

*G000 The USPS and Mailing Standards*

* * * * *

*G030 Postal Zones*

**Summary**

[Amend Summary text by removing the references to BMCs, SCF, and delivery unit zones to read as follows:]

G030 describes how postal zones are used to compute postage for zoned mail. It also defines local and nonlocal zones.

1.0 BASIC INFORMATION

**2.1 Basis**

[Amend 1.1 by removing the last sentence and adding the following two sentences to read as follows:]

* * * The distance is measured from the center of the unit of area containing the SCF serving the origin post office to the SCF serving the destination post office. The SCFs serving the origin and destination post offices are determined by using L005, Column B.

**1.2 Application**

[Amend 1.2 by redesignating 1.2a and 1.2b as 1.2b and 1.2c, and inserting new item 1.2a to read as follows:]

Zones are used to compute postage on zoned mail sent between USPS facilities, including military post offices (MPOs), wherever located, as follows:

a. For the purposes of computing postal zone information, except for items 1.2b or 1.2c, the following table applies to MPOs not listed in L005.

| 3-Digit ZIP Code prefix group | SCF Serving the destination office |
|---|---|
| 090–098 .... | SCF New York NY 100. |
| 340 ..... | SCF Miami FL 331. |
| 962–966 .... | SCF San Francisco CA 940. |

* * * * *

**1.3 Zone Charts**

[Amend 1.3 to include updated information on the format of zone chart data available for purchase to read as follows:]

The USPS Official National Zone Chart Data Program is administered from the National Customer Support Center (NCSC) in Memphis, TN. Single-page zone charts for originating mail are available at no cost from local post offices or online at *http://pe.usps.gov.* Zone chart data for the entire nation can be purchased in a CD–-ROM format. For more information or to purchase zone charts, call the Zone Chart program administrator at 800–238–3150 or write to the NCSC (see G043 for address).

* * * * *

2.0 SPECIFIC ZONES

* * * * *

**2.1 Nonlocal Zones**

Nonlocal zones are defined as follows:

[Amend item 2.2a to read as follows:]

a. The zone 1 rate applies to pieces not eligible for the local zone in 2.1 that are mailed between two post offices with the same 3-digit ZIP Code prefix identified in L005, Column A. Zone 1 includes all units of area outside the local zone lying in whole or in part within a radius of about 50 miles from the center of a given unit of area.

* * * * *

[Remove 3.0 in its entirety.]

* * * * *

This change will be published in a future issue of the Domestic Mail Manual. An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–10363 Filed 4–25–02; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 191–0340; FRL–7170–5]**

## Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District and South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the Ventura County Air Pollution Control District (VCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 12, 2002 and concerns volatile organic compound (VOC) emissions from adhesives and sealants. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on May 28, 2002.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Fl., Ventura, CA 93003.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

**I. Proposed Action**

On February 12, 2002 (67 FR 6456), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| VCAPCD ..... | 74.20 | Adhesives and Sealants ..... | 01/14/97 | 03/03/97 |
| SCAQMD ..... | 1168 | Adhesive and Sealant Applications ..... | 09/15/00 | 03/14/01 |

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act.

Provisions of Rule 74.20 that conflict with section 110 and part D of the Act and prevent full approval of the SIP revision include:

1. The VOC limits in Sections B1–2 for certain adhesives and sealants do not meet RACT.

2. An inappropriate test method is cited in Section E3.

The provision of Rule 1168 that conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision is an exemption for light curable products.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittals.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments on our proposed rulemaking for either VCAPCD Rule 74.20 or SCAQMD Rule 1168.

## III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the VCAPCD and the SCAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

### *B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

### *D. Executive Order 13175*

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 final 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. Thus, Executive Order 13175 does not apply to this rule.

### *E. Executive Order 13211*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

### *F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*G. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

*I. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*J. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: March 26, 2002.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(244)(i)(G)(2) and (c)(286)(i)(A)(2) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(244) * * *

(i) * * *

(G) * * *

(*2*) Rule 74.20, revised on January 14, 1997.

* * * * *

(286) * * *

(i) * * *

(A) * * *

(*2*) Rule 1168, amended on September 15, 2000.

* * * * *

[FR Doc. 02–10168 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[SC–039; 043–200222(a); FRL–7202–4]**

## Approval and Promulgation of Implementation Plans South Carolina: Approval of Revisions to the 1-Hour Ozone Maintenance State Implementation Plan for the Cherokee County

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Cherokee County 1-hour ozone maintenance area portion of the South Carolina Air Quality State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on January 31, 2002. This SIP revision satisfies the requirement of section 175A(b) of the Clean Air Act (CAA) for the second 10-year update for the Cherokee County maintenance plan. Additionally, this submittal explicitly identifies the motor vehicle emission budgets ('budgets') for oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC). In this action, EPA is also approving and finding adequate Cherokee County's 'budgets' for $NO_X$ and VOC supplied in this updated maintenance plan. These budgets,

identified for the year 2012, will be used for the purposes of conducting transportation conformity analyses for Cherokee County, in accordance with the requirements of the CAA amendments of 1990 and the Transportation Conformity rule.

**DATES:** This direct final rule is effective on June 25, 2002 without further notice, unless EPA receives adverse written comment by May 28, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the action will not take effect. EPA will subsequently respond to submitted comments and take final action on the parallel proposed rule published elsewhere in the proposed rules section of this **Federal Register**.

**ADDRESSES:** All comments should be addressed to: Sean Lakeman or Lynorae Benjamin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file number SC–039; 043–200222. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), EPA, 401 M Street, SW, Washington, DC 20460.

SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Planning Section, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Mr. Lakeman's telephone number is (404) 562–9043. He can also be reached via electronic mail at *lakeman.sean@epa.gov.*

Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The following provides additional information and EPA's rationale for approving the revisions to the 1-hour ozone maintenance plan for the Cherokee County portion of the South Carolina SIP.

## A. What Is the Background for This Action?

On November 6, 1991, Cherokee County, South Carolina was designated by EPA as a marginal nonattainment area because of multiple exceedances in 1988 of the National Ambient Air Quality Standard (NAAQS) for ozone at the air quality monitor located in the Cowpens National Battle Field. After three consecutive years of satisfactory air quality data, Cherokee County was redesignated to attainment for the 1-hour ozone standard on December 15, 1992 (57 FR 59300). A ten-year maintenance plan for Cherokee County was submitted to and approved by EPA to help assure continued attainment of the 1-hour ozone standard. The mobile emission model, MOBILE 4.1 (the current model at that time), was used to estimate the emissions inventory for VOC, $NO_X$, and carbon monoxide (CO) for the maintenance plan. The last year for the maintenance plan is 2002.

Through direct final rulemaking, published in the **Federal Register** on December 18, 1998, EPA approved revisions to the 1-hour ozone maintenance plan for the Cherokee County portion of the South Carolina SIP submitted on June 27, 1998, by the State of South Carolina (63 FR 70019). The primary purpose of that action was to incorporate revised motor vehicle emissions budgets for $NO_X$ and VOC for Cherokee County, South Carolina, into the SIP. Specifically, that approval action updated emission projections previously developed with the MOBILE 4.1 emissions model with emission projections developed with the MOBILE 5a emissions model. Further, that action specified that the emission projections for the on-road emissions source category combined with the available safety margin, were being considered as ''budgets'' to be used for demonstration of conformity of transportation plans, programs, and projects with the South Carolina SIP for the Cherokee County 1-hour ozone maintenance area. The safety margin was made possible by emission reductions in the area source category for $NO_X$ and VOC emissions from residential wood burning. The previous SIP submittal overestimated emissions from residential wood burning. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The budget years that resulted from that action were 2000 and 2002, the last year of the maintenance plan.

## B. What Did the State Submit?

On February 21, 2001, SC DHEC submitted a SIP revision updating emission projections for the ten-year maintenance period immediately following the last year (i.e., 2002) of the initial maintenance plan submitted for Cherokee County, South Carolina. On January 31, 2002, SC DHEC submitted a revision to the February 21, 2001, submittal that removed the Tier 2/Low Sulfur credit from its earlier revision and recalculated the emissions budget accordingly. These SIP revisions were submitted to satisfy the requirement of section 175A(b) of the CAA and contains comprehensive inventories for VOC, $NO_X$, and CO emissions for the Cherokee County maintenance area. The inventories include point sources, area sources, on-road mobile, non-road mobile, biogenic sources, and in some cases, a safety margin. The emission projections for area and non-road sources applied growth factors of 10.4 percent for 2000 and 12.5 percent for 2002 to the base line 1990 emissions based on the *1995 South Carolina Statistical Abstracts.* The 1990 data was taken from the ''1990 Base Year Ozone Emissions Inventory for Cherokee County, South Carolina Nonattainment Area,'' March 1995. Based on more recent data from the *1998 South Carolina Statistical Abstracts,* the State used a growth rate of 21.4 percent for the 2012 emissions projections. The on-road mobile source projections are based on MOBILE 5a modeling. The following tables list a summary of the CO, $NO_X$, and VOC emissions for 1990 and 2000, as well as a projection of these emissions for 2002 and 2012.

CHEROKEE COUNTY MAINTENANCE AREA—SUMMARY: DAILY AND ANNUAL EMISSION PROJECTIONS FOR 1990 THROUGH 2012

| Pollutant | Tons/Day | | | | Tons/Year | | | |
|---|---|---|---|---|---|---|---|---|
| | 1990 | 2000 | 2002 | 2012 | 1990 | 2000 | 2002 | 2012 |
| VOC | 43.47 | 42.32 | 42.41 | 43.28 | 10,148.40 | 9,739.86 | 9,772.63 | 10,104.83 |
| $NO_X$ | 9.37 | 9.23 | 9.16 | 8.36 | 3,439.30 | 3,388.29 | 3,357.74 | 3,068.34 |
| CO | 74.22 | 46.67 | 44.23 | 40.04 | 30,096.10 | 20,338.54 | 19,527.32 | 18,299.39 |

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL VOC EMISSION PROJECTIONS FOR 1990 THROUGH 2012

| VOC Emissions | Tons/Day | | | | Tons/Year | | | |
|---|---|---|---|---|---|---|---|---|
| | 1990 | 2000 | 2002 | 2012 | 1990 | 2000 | 2002 | 2012 |
| Point Sources | 2.02 | 2.23 | 2.27 | 2.51 | 614.10 | 677.97 | 690.86 | 763.14 |
| Area Sources | 3.79 | 4.19 | 4.27 | 4.61 | 1,596.40 | 1,762.43 | 1,795.95 | 1,938.03 |
| On-road Mobile | 6.11 | 4.32 | 4.28 | 4.59 | 2,229.20 | 1,578.37 | 1,563.23 | 1,674.74 |
| Non-road Mobile | 0.23 | 0.25 | 0.26 | 0.24 | 71.10 | 78.49 | 79.99 | 86.32 |
| Biogenic Sources | 31.32 | 31.32 | 31.32 | 31.32 | 5,637.60 | 5,637.60 | 5,637.60 | 5,637.60 |
| Safety Margin | NA | 0.01 | 0.01 | 0.01 | NA | 5.00 | 5.00 | 5.00 |
| Total | 43.47 | 42.32 | 42.41 | 43.28 | 10,148.40 | 9,739.86 | 9,772.63 | 10,104.83 |

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL $NO_X$ EMISSION PROJECTIONS FOR 1990 THROUGH 2012

| $NO_X$ Emissions | Tons/Day | | | | Tons/Year | | | |
|---|---|---|---|---|---|---|---|---|
| | 1990 | 2000 | 2002 | 2012 | 1990 | 2000 | 2002 | 2012 |
| Point Sources | 0.82 | 0.91 | 0.93 | 1.02 | 270.20 | 298.30 | 303.98 | 335.78 |
| Area Sources | 0.21 | 0.23 | 0.24 | 0.26 | 147.10 | 162.40 | 165.49 | 178.58 |
| On-road Mobile | 7.79 | 7.45 | 7.34 | 6.38 | 2,843.90 | 2.720.97 | 2,677.91 | 2,327.77 |
| Non-road Mobile | 0.55 | 0.61 | 0.62 | 0.67 | 178.10 | 196.62 | 200.36 | 216.21 |
| Biogenic Sources | NA | NA | NA | NA | NA | NA | NA | NA |
| Safety Margin | NA | 0.03 | 0.03 | 0.03 | NA | 10.00 | 10.00 | 10.00 |
| Total | 9.37 | 9.23 | 9.16 | 8.36 | 3,439.30 | 3,388.29 | 3,357.74 | 3,068.34 |

CHEROKEE COUNTY MAINTENANCE AREA—DAILY AND ANNUAL CO EMISSION PROJECTIONS FOR 1990 THROUGH 2012

| CO Emissions | Tons/Day | | | | Tons/Year | | | |
|---|---|---|---|---|---|---|---|---|
| | 1990 | 2000 | 2002 | 2012 | 1990 | 2000 | 2002 | 2012 |
| Point Sources | 0.26 | 0.29 | 0.29 | 0.32 | 83.20 | 91.85 | 93.60 | 104.43 |
| Area Sources | 5.84 | 6.45 | 6.57 | 7.0 | 5,319.70 | 5,872.95 | 5,984.66 | 6,458.12 |
| On-road Mobile | 64.92 | 36.40 | 33.77 | 28.84 | 23,695.80 | 13,272.61 | 12,326.98 | 10,526.00 |
| Non-road Mobile | 3.20 | 3.53 | 3.60 | 3.88 | 997.40 | 1,101.13 | 1,122.08 | 1,210.84 |
| Biogenic Sources | NA | NA | NA | NA | NA | NA | NA | NA |
| Total | 74.22 | 46.67 | 44.23 | 40.04 | 30,096.10 | 20,338.54 | 19,527.32 | 18,299.39 |

In addition to the updated emission projections and in accordance with the requirements of the Transportation Conformity rule and its subsequent amendments (i.e., 40 CFR part 93), the State explicitly identifies the motor vehicle emission budgets for $NO_X$ and VOC for 2012, and beyond. Until 2012, the applicable budgets for the purposes of conducting transportation conformity analyses for Cherokee County will continue to be the 2002 motor vehicle emissions budgets. Transportation conformity means that the level of emissions from the transportation sector (cars, trucks and buses) must be consistent with the requirements in the SIP to attain and maintain the air quality standards. Section 176(c) of Clean Air Act, 42 U.S.C. 7506(c), states that transportation plans, programs and projects conform to an effective implementation plan. The Transportation Conformity Rule and its subsequent amendments require an ozone maintenance area, such as Cherokee County, to compare the actual projected emissions from cars, trucks and buses on the highway network, to the motor vehicle emission budgets established by a maintenance plan. Our approval of this maintenance plan establishes the motor vehicle emission budgets for transportation conformity purposes. See section entitled, What are the motor vehicle emissions budgets for Cherokee County, South Carolina?, of this rulemaking for more details.

**C. Does the State Submittal Meet the SIP Approval Requirements Under Section 110?**

This SIP submittal meets the requirements outlined in section 110 and Part D of Title I of the CAA amendments and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of

Implementation Plans). Further, the SIP submittal meets the requirements of the Transportation Conformity Rule and its subsequent amendments (i.e., 40 CFR part 93).

**D. What Are the Motor Vehicle Emissions Budgets for Cherokee County, South Carolina?**

The CAA, as amended in 1990, defines conformity to an implementation plan as conformity to the plan's purpose of reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Specifically, the CAA requires that projects, transportation improvement programs (TIP) and long range transportation plans that are federally funded or approved not cause or contribute to any new violation, increase the frequency or severity of any existing violation, or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Therefore, the emissions expected from implementation of such transportation projects, plans and programs must be consistent with estimates of emissions from a maintenance plan. As such, SC DHEC has specifically identified emission budgets for VOC and $NO_X$ for the Cherokee County maintenance area.

Section 2.5, Motor Vehicle Emissions Budget, of the State's submittal explicitly defines the on-road mobile sources portion of the emissions inventory for VOC and $NO_X$ as the motor vehicle emission budgets to be used by the South Carolina Department of Transportation and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long-term maintenance of the 1-hour ozone standard in Cherokee County. An emissions budget is the level of controlled emissions from the transportation sector (mobile sources) projected by the state and included in the SIP. The SIP controls emissions through regulation, for example, of fuels and exhaust levels for cars. The emissions budget concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how states establish the motor vehicle emission budgets in the SIP and revise the emissions budget. The following table highlights the motor vehicle emission budgets for $NO_X$ and VOC for the Cherokee County maintenance area in South Carolina.

2012 MOTOR VEHICLE EMISSIONS BUDGETS FOR CHEROKEE COUNTY

| VOC (tons per day) | $NO_X$ (tons per day) |
|---|---|
| 4.59 | 6.38 |

Through this action, EPA is notifying the public that we believe the ''budgets'' for VOC and $NO_X$ identified in the Cherokee County 1-hour ozone maintenance plan update are adequate for conformity purposes and approvable as part of the maintenance plan for this area, because in addition to meeting the requirements of section 175A and 107(d), adequate opportunity for public comment on these ''budgets'' was provided through the State public comment process and the adequacy process (posted February 12, 2002). As of March 14, 2002, the close of the public notice period, there were no requests for copies of the State's submittal for public review or comment.

**E. What is the Process for EPA Approval of This Action?**

EPA is publishing approval for this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve this action should adverse written comments be filed. This action will be effective on June 25, 2002 without further notice unless EPA receives adverse comment by May 28, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the clarification for this rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**Final Action**

EPA is approving revisions to the 1-hour ozone maintenance plan to update emission projections for the next ten-year maintenance period for the Cherokee County, South Carolina maintenance area. Additionally, EPA is deeming adequate and approving the motor vehicle emission budgets for the Cherokee County maintenance area for VOC and $NO_X$ for the year 2012, and beyond.

**Administrative Requirements**

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

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

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

to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

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

Dated: April 18, 2002.

**Winston A. Smith,**

*Acting for Regional Administrator, Region 4.*

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart PP—South Carolina

2. Revise § 52.2120(e) to read as follows:

**§ 52.2120 Identification of plan.**

* * * * *

(e) EPA-approved South Carolina non-regulatory provisions.

| Provision | State effective date | EPA approval date | Explanation |
|---|---|---|---|
| Cherokee County Ozone Ten Year Maintenance Plan ..... | 01/31/02 | April 26, 2002. | |

[FR Doc. 02–10334 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 55

**[Alaska 001; FRL–7201–8]**

## Outer Continental Shelf Air Regulations Consistency Update for Alaska; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error in the ''effective date'' language of a final rule pertaining to the update of the Outer Continental Shelf (OCS) Air Regulations as they apply to OCS sources off the coast of Alaska.

**DATES:** This correction is effective on April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 553–4150.

**SUPPLEMENTARY INFORMATION:**

**Correction**

In rule document No. 02–6612, on page 14646, in the issue of March 27, 2002, in the first column, the effective date is corrected to read:

**EFFECTIVE DATE:** This rule is effective on April 26, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 26, 20002.

**Administrative Requirements**

*A. Executive Order 12866*

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

*B. Executive Order 13045*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13132*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed

regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*D. Executive Order 13175*

This final 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. Thus, Executive Order 13175 does not apply to this rule.

*E. Executive Order 13211*

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*F. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

*G. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*H. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 28, 2002.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*J. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: April 8, 2002.

**L. John Iani,**

*Regional Administrator, Region 10.*

[FR Doc. 02–10336 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 60 and 61

**[AZ, CA, HI, NV, GU–075–NSPS; FRL–7201–2]**

## Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for Guam and the States of Arizona, California, Hawaii, and Nevada

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing updates for delegation of certain federal standards to state and local agencies in Region IX. This document is addressing general authorities mentioned in the regulations for New Source Performance Standards

and National Emission Standards for Hazardous Air Pollutants, updating the delegations tables and clarifying those authorities that are retained by EPA. These revisions were proposed in the **Federal Register** on January 14, 2002.

**EFFECTIVE DATE:** This rule is effective on May 28, 2002.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Please contact Cynthia G. Allen at (415) 947–4120 to arrange a time if inspection of the supporting information is desired.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen at (415) 947–4120 or Mae Wang at (415) 947–4124, U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), 75 Hawthorne Street, San Francisco, California 94105.

**SUPPLEMENTARY INFORMATION:** The supplementary information is organized in the following order:

What Is the Purpose of This Document?
Who Is Authorized to Delegate These Authorities?
What Does Delegation Accomplish?
What Authorities Are Not Delegated By EPA?
Does EPA Keep Some Authority?
Public Comments
Changes from Proposal
Administrative Requirements

## What Is the Purpose of This Document?

Through this document, EPA is accomplishing the following objectives:

(1) update the delegations tables in the Code of Federal Regulations, Title 40 (40 CFR), parts 60 and 61, to provide an accurate listing of the delegated standards; and

(2) clarify those authorities that are retained by EPA and not granted to state or local agencies as part of delegation. These actions were proposed on January 14, 2002, (67 FR 1676) and are described below.

### *Update of Tables in the CFR*

Today's action will update the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables will include the delegations approved in response to recent requests, as well as those previously granted. The tables are shown at the end of this document. EPA is also updating the addresses for state and local agencies within the jurisdiction of EPA Region IX.

Recent requests for delegation that will be incorporated into the updated CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAPs for which delegation was requested. Some of these requests have already been approved and simply need to be included in the CFR. For requests listed below that have not yet been approved, EPA will consider these delegation requests as approved on the effective date of this final rule.

| Agency | Date of request |
|---|---|
| Arizona Department of Environmental Quality. | May 29, 1998, and October 6, 1999. |
| Kern County Air Pollution Control District. | February 8, 1995, January 20, 2000, and May 18, 2001. |
| Lake County Air Quality Management District. | February 24, 1997. |
| Mendocino County Air Quality Management District. | May 21, 1999. |
| Sacramento Metropolitan Air Quality Management District. | August 7, 1995, April 24, 1997, and July 7, 1998. |
| San Diego Air Pollution Control District. | June 23 and December 24, 1999. |
| San Joaquin Valley Unified Air Pollution Control District. | May 27, 1999, and June 26, 2000. |
| Santa Barbara County Air Pollution Control District. | August 6, 1996. |
| South Coast Air Quality Management District. | February 20, 2002. |
| Ventura County Air Pollution Control District. | February 9, 1995. |
| Yolo-Solano Air Quality Management District. | October 20, 1998. |

Today's action is also updating the names and addresses of local air pollution control districts (APCDs) as listed in the CFR. The addresses and delegation tables will reflect the following changes:

- The San Joaquin Valley Unified APCD assumed the authority and duties of Fresno County APCD, Kings County APCD, the San Joaquin Valley Air Basin portion of Kern County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. The Kern County Air Pollution Control District still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.
- The North Coast Unified APCD assumed the authorities and duties of Del Norte County APCD, Humboldt County APCD, and Trinity County APCD.
- The Mojave Desert Air Quality Management District assumed the authorities and duties of the San Bernadino County APCD, and includes all of the County of San Bernadino that is not included within the boundaries of the South Coast Air Quality Management District.
- The Antelope Valley APCD was created and has responsibility over the Los Angeles County portion of the Mojave Desert Air Basin.

In the future, EPA Region IX may establish a new procedural option for state and local agencies to receive delegation of 40 CFR parts 60 and 61 standards. If an agency has delegation of a standard, then the new procedure may allow that agency to receive delegation of any amendments to that standard as they are adopted by reference. The details of any new procedure will be described in a future rulemaking action before it is implemented. It is being mentioned here for informational purposes only.

### *Clarification of Non-Delegable Authorities*

In February 1999, EPA released a guidance document entitled, ''How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring—NSPS & NESHAPS, (EPA 305-B–99–004).'' In accordance with this guidance, today's action clarifies the NSPS and NESHAP authorities that are not delegated to state and local agencies under Clean Air Act Sections 111 and 112. These clarifications will be codified at 40 CFR 60.4(d) and 61.04(c)(9). Today's action also requests that state and local agencies exclude the non-delegable subsections from future delegation requests, and informs the public of our intention to appropriately revise future delegation letter approvals and **Federal Register** announcements.

## Who Is Authorized To Delegate These Authorities?

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate his or her authority for implementing and enforcing standards in 40 CFR parts 60 and 61.

## What Does Delegation Accomplish?

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and reports should be sent to the delegated state or local agency, as appropriate, with a copy to EPA Region IX.

Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR parts 60 and 61, and EPA's test methods and continuous monitoring procedures.

**What Authorities Are Not Delegated By EPA?**

In general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standards. For a more detailed description of the authorities in 40 CFR parts 60 and 61 that are retained by EPA, please see the proposed rule published on January 14, 2002 (67 FR 1676).

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Air Division's Enforcement Office Chief a copy of any written decisions made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- Approvals or determination of construction, reconstruction or modification;
- Minor or intermediate site-specific changes to test methods or monitoring requirements; or
- Site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

**Does EPA Keep Some Authority?**

EPA retains independent authority to enforce the standards and regulations of 40 CFR parts 60 and 61.

**Public Comments**

EPA received one comment in response to the proposed rulemaking published on January 14, 2002, (67 FR 1676). This comment points out discrepancies in the delegations tables, but does not affect the overall action of this rule. The comment was sent from the South Coast Air Quality Management District (SCAQMD), and notes that the delegation of 40 CFR part 60, subpart RRR, was omitted from the tables. This has been corrected in today's action. The SCAQMD also requested delegation for 40 CFR part 60, subparts Eb, Ec, and WWW. A request for delegation for these standards was received on February 20, 2002, and is being approved in today's rule.

**Changes From Proposal**

EPA has made changes to the delegations tables that were proposed on January 14, 2002 (67 FR 1676).These changes are a result of the public comments received, as well as corrections to the headings and delegation status for various local agencies. The NESHAP delegations table for Nevada was omitted in the proposed rulemaking and has been added to this final rule. None of the changes affect the overall action that was proposed.

**Administrative Requirements**

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

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

In reviewing delegation requests, 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 delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a request for delegation, to use VCS in place of a submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 25, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Parts 60 and 61**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2002.

**Amy Zimpfer,**

*Acting Director, Air Division, Region IX.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

## Subpart A—General Provisions

2. Section 60.4 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By revising paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (d).

The revisions and additions read as follows:

### § 60.4 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600.

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034.

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249.

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County Air Pollution Control District (Southeast Desert), 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405.

Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.

Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338.

Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511.

Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915.

Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.

Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509.

Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.

Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726.

San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117–3027.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038.

Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618.

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417.

Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(M) Hawaii:

Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu, HI 96814.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DD) Nevada:

Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710.

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776.

Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(d) The following tables list the specific Part 60 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 60.4(b), 60.8(b), 60.9, 60.11(b), 60.11(e), 60.13(a), 60.13(d)(2), 60.13(g), 60.13(i).

(1) *Arizona.* The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Arizona DEQ | Maricopa County | Pima County | Pinal County |
| A | General Provisions | X | X | X | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | X | X | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X | X | X | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | X | X | X | X |
| Dc | Small Industrial Steam Generating Units | X | X | X | X |
| E | Incinerators | X | X | X | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | X | X | ..... | X |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | X | ..... | ..... | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | ..... | ..... |
| F | Portland Cement Plants | X | X | X | X |
| G | Nitric Acid Plants | X | X | X | X |
| H | Sulfuric Acid Plant | X | X | X | X |
| I | Hot Mix Asphalt Facilities | X | X | X | X |
| J | Petroleum Refineries | X | X | X | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X | X | X | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X | X | X | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X | X | X | X |
| L | Secondary Lead Smelters | X | X | X | X |
| M | Secondary Brass and Bronze Production Plants | X | X | X | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | X | X | X | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | X | X | ..... | X |
| O | Sewage Treatment Plants | X | X | X | X |
| P | Primary Copper Smelters | X | X | X | X |
| Q | Primary Zinc Smelters | X | X | X | X |
| R | Primary Lead Smelters | X | X | X | X |
| S | Primary Aluminum Reduction Plants | X | X | X | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | X | X | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | X | X | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | X | X | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | X | X | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | X | X | X | X |
| Y | Coal Preparation Plants | X | X | X | X |
| Z | Ferroalloy Production Facilities | X | X | X | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | X | X | X | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | X | X | X | X |
| BB | Kraft pulp Mills | X | X | X | X |
| CC | Glass Manufacturing Plants | X | X | X | X |
| DD | Grain Elevators | X | X | X | X |
| EE | Surface Coating of Metal Furniture | X | X | X | X |
| FF | (Reserved) | ..... | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | X | X | X | X |
| HH | Lime Manufacturing Plants | X | X | X | X |
| KK | Lead-Acid Battery Manufacturing Plants | X | X | X | X |
| LL | Metallic Mineral Processing Plants | X | X | X | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | X | X | X | X |
| NN | Phosphate Rock Plants | X | X | X | X |
| PP | Ammonium Sulfate Manufacture | X | X | X | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | X | X | X | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | X | X | X | X |
| SS | Industrial Surface Coating: Large Appliances | X | X | X | X |
| TT | Metal Coil Surface Coating | X | X | X | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR ARIZONA—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Arizona DEQ | Maricopa County | Pima County | Pinal County |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | X | X | X | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | X | X | X | X |
| WW | Beverage Can Surface Coating Industry | X | X | X | X |
| XX | Bulk Gasoline Terminals | X | X | X | X |
| AAA | New Residential Wool Heaters | X | X | X | X |
| BBB | Rubber Tire Manufacturing Industry | X | X | X | X |
| CCC | (Reserved) | | | | |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | X | X | X | X |
| EEE | (Reserved) | | | | |
| FFF | Flexible Vinyl and Urethane Coating and Printing | X | X | X | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X | X | X | X |
| HHH | Synthetic Fiber Production Facilities | X | X | X | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | X | X | X | X |
| JJJ | Petroleum Dry Cleaners | X | X | X | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | X | X | X | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | X | X | | X |
| MMM | (Reserved) | X | X | X | X |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | X | X | X | X |
| OOO | Nonmetallic Mineral Processing Plants | X | X | X | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | X | X | X | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | X | X | X | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | | | | |
| SSS | Magnetic Tape Coating Facilities | X | X | X | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | X | X | X | X |
| UUU | Calciners and Dryers in Mineral Industries | X | | | |
| VVV | Polymeric Coating of Supporting Substrates Facilities | X | X | X | X |
| WWW | Municipal Solid Waste Landfills | X | | | |

(2) *California.* The following tables identify delegations for each of the local air pollution control agencies of California.

(i) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Amador County APCD | Antelope Valley APCD | Bay Area AQMD | Butte County APCD |
| A | General Provisions | | | X | |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | | | X | |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | | | X | |
| Db | Industrial-Commercial-Institutional Steam Generating Units | | | X | |
| Dc | Small Industrial Steam Generating Units | | | X | |
| E | Incinerators | | | X | |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | | | X | |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | | | | |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | | | | |
| F | Portland Cement Plants | | | X | |
| G | Nitric Acid Plants | | | X | |
| H | Sulfuric Acid Plants | | | X | |
| I | Hot Mix Asphalt Facilities | | | X | |
| J | Petroleum Refineries | | | X | |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | | | X | |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | | | X | |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | | | X | |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Amador County APCD | Antelope Valley APCD | Bay Area AQMD | Butte County APCD |
| L | Secondary Lead Smelters | | | X | |
| M | Secondary Brass and Bronze Production Plants | | | X | |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | | | X | |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | | | X | |
| O | Sewage Treatment Plants | | | X | |
| P | Primary Copper Smelters | | | X | |
| Q | Primary Zinc Smelters | | | X | |
| R | Primary Lead Smelters | | | X | |
| S | Primary Aluminum Reduction Plants | | | X | |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants. | | | | |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | | | X | |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | | | X | |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | | | X | |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | | | X | |
| Y | Coal Preparation Plants | | | X | |
| Z | Ferroalloy Production Facilities | | | X | |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | | | X | |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | | | X | |
| BB | Kraft pulp Mills | | | X | |
| CC | Glass Manufacturing Plants | | | X | |
| DD | Grain Elevators | | | X | |
| EE | Surface Coating of Metal Furniture | | | X | |
| FF | (Reserved) | | | | |
| GG | Stationary Gas Turbines | | | X | |
| HH | Lime Manufacturing Plants | | | X | |
| KK | Lead-Acid Battery Manufacturing Plants | | | X | |
| LL | Metallic Mineral Processing Plants | | | X | |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | | | X | |
| NN | Phosphate Rock Plants | | | X | |
| PP | Ammonium Sulfate Manufacture | | | X | |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | | | X | |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | | | X | |
| SS | Industrial Surface Coating: Large Appliances | | | X | |
| TT | Metal Coil Surface Coating | | | X | |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | | | X | |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | | | X | |
| WW | Beverage Can Surface Coating Industry | | | X | |
| XX | Bulk Gasoline Terminals | | | | |
| AAA | New Residential Wool Heaters | | | X | |
| BBB | Rubber Tire Manufacturing Industry | | | X | |
| CCC | (Reserved) | | | | |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | | | X | |
| EEE | (Reserved) | | | | |
| FFF | Flexible Vinyl and Urethane Coating and Printing | | | X | |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | | | X | |
| HHH | Synthetic Fiber Production Facilities | | | X | |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | | | | |
| JJJ | Petroleum Dry Cleaners | | | X | |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | | | X | |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | | | | |
| MMM | (Reserved) | | | | |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | | | X | |
| OOO | Nonmetallic Mineral Processing Plants | | | X | |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | | | X | |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | | | X | |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | | | | |
| SSS | Magnetic Tape Coating Facilities | | | X | |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | | | X | |
| UUU | Calciners and Dryers in Mineral Industries | | | X | |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Amador County APCD | Antelope Valley APCD | Bay Area AQMD | Butte County APCD |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | ..... | X | ..... |
| WWW | Municipal Solid Waste Landfills | ..... | ..... | ..... | ..... |

(ii) [Reserved]

(iii) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Glenn County APCD | Great Basin Unified APCD | Imperial County APCD | Kern County APCD |
| A | General Provisions | ..... | X | ..... | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | ..... | X | ..... | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | ..... | X | ..... | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | ..... | X | ..... | X |
| Dc | Small Industrial Steam Generating Units | ..... | X | ..... | X |
| E | Incinerators | ..... | X | ..... | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | ..... | X | ..... | ..... |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... | ..... | ..... | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | ..... | ..... |
| F | Portland Cement Plants | ..... | X | ..... | X |
| G | Nitric Acid Plants | ..... | X | ..... | X |
| H | Sulfuric Acid Plants | ..... | X | ..... | ..... |
| I | Hot Mix Asphalt Facilities | ..... | X | ..... | X |
| J | Petroleum Refineries | ..... | X | ..... | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | ..... | X | ..... | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | ..... | X | ..... | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | ..... | X | ..... | X |
| L | Secondary Lead Smelters | ..... | X | ..... | X |
| M | Secondary Brass and Bronze Production Plants | ..... | X | ..... | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | ..... | X | ..... | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | ..... | X | ..... | X |
| O | Sewage Treatment Plants | ..... | X | ..... | X |
| P | Primary Copper Smelters | ..... | X | ..... | X |
| Q | Primary Zinc Smelters | ..... | X | ..... | X |
| R | Primary Lead Smelters | ..... | X | ..... | X |
| S | Primary Aluminum Reduction Plants | ..... | X | ..... | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | ..... | X | ..... | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | ..... | X | ..... | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | ..... | X | ..... | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | ..... | X | ..... | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | ..... | X | ..... | X |
| Y | Coal Preparation Plants | ..... | X | ..... | X |
| Z | Ferroalloy Production Facilities | ..... | X | ..... | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | ..... | X | ..... | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | ..... | X | ..... | X |
| BB | Kraft pulp Mills | ..... | X | ..... | X |
| CC | Glass Manufacturing Plants | ..... | X | ..... | X |
| DD | Grain Elevators | ..... | X | ..... | X |
| EE | Surface Coating of Metal Furniture | ..... | X | ..... | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Glenn County APCD | Great Basin Unified APCD | Imperial County APCD | Kern County APCD |
| FF | (Reserved) | | | | |
| GG | Stationary Gas Turbines | | X | | X |
| HH | Lime Manufacturing Plants | | X | | X |
| KK | Lead-Acid Battery Manufacturing Plants | | X | | X |
| LL | Metallic Mineral Processing Plants | | X | | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | | X | | X |
| NN | Phosphate Rock Plants | | X | | X |
| PP | Ammonium Sulfate Manufacture | | X | | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | | X | | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | | X | | X |
| SS | Industrial Surface Coating: Large Appliances | | X | | X |
| TT | Metal Coil Surface Coating | | X | | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | | X | | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | | X | | X |
| WW | Beverage Can Surface Coating Industry | | X | | X |
| XX | Bulk Gasoline Terminals | | | | |
| AAA | New Residential Wool Heaters | | X | | X |
| BBB | Rubber Tire Manufacturing Industry | | X | | X |
| CCC | (Reserved) | | | | |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | | X | | X |
| EEE | (Reserved) | | | | |
| FFF | Flexible Vinyl and Urethane Coating and Printing | | X | | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | | X | | X |
| HHH | Synthetic Fiber Production Facilities | | X | | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | | X | | X |
| JJJ | Petroleum Dry Cleaners | | X | | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | | X | | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | | | | X |
| MMM | (Reserved) | | | | |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | | X | | X |
| OOO | Nonmetallic Mineral Processing Plants | | X | | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | | X | | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | | X | | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | | | | X |
| SSS | Magnetic Tape Coating Facilities | | X | | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | | X | | X |
| UUU | Calciners and Dryers in Mineral Industries | | X | | X |
| VVV | Polymeric Coating of Supporting Substrates Facilities | | X | | X |
| WWW | Municipal Solid Waste Landfills | | | | X |

(iv) Delegations for Lake County Air Quality Management District, Lassen County Air Pollution Control District, Mariposa County Air Pollution Control District, and Mendocino County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Lake County AQMD | Lassen County APCD | Mariposa County AQMD | Mendocino County AQMD |
| A | General Provisions | X | | | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | | | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X | | | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | X | | | |
| Dc | Small Industrial Steam Generating Units | X | | | X |
| E | Incinerators | X | | | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | X | | | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Lake County AQMD | Lassen County APCD | Mariposa County AQMD | Mendocino County AQMD |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... | ..... | ..... | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | ..... | ..... |
| F | Portland Cement Plants | X | ..... | ..... | X |
| G | Nitric Acid Plants | X | ..... | ..... | X |
| H | Sulfuric Acid Plants | X | ..... | ..... | X |
| I | Hot Mix Asphalt Facilities | X | ..... | ..... | X |
| J | Petroleum Refineries | X | ..... | ..... | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X | ..... | ..... | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X | ..... | ..... | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X | ..... | ..... | X |
| L | Secondary Lead Smelters | X | ..... | ..... | X |
| M | Secondary Brass and Bronze Production Plants | X | ..... | ..... | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | X | ..... | ..... | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | X | ..... | ..... | X |
| O | Sewage Treatment Plants | X | ..... | ..... | X |
| P | Primary Copper Smelters | X | ..... | ..... | X |
| Q | Primary Zinc Smelters | X | ..... | ..... | X |
| R | Primary Lead Smelters | X | ..... | ..... | X |
| S | Primary Aluminum Reduction Plants | X | ..... | ..... | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | ..... | ..... | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | ..... | ..... | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | ..... | ..... | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | ..... | ..... | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | X | ..... | ..... | X |
| Y | Coal Preparation Plants | X | ..... | ..... | X |
| Z | Ferroalloy Production Facilities | X | ..... | ..... | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | X | ..... | ..... | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | X | ..... | ..... | X |
| BB | Kraft Pulp Mills | X | ..... | ..... | X |
| CC | Glass Manufacturing Plants | X | ..... | ..... | X |
| DD | Grain Elevators | X | ..... | ..... | X |
| EE | Surface Coating of Metal Furniture | X | ..... | ..... | X |
| FF | (Reserved) | ..... | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | X | ..... | ..... | X |
| HH | Lime Manufacturing Plants | X | ..... | ..... | X |
| KK | Lead-Acid Battery Manufacturing Plants | X | ..... | ..... | X |
| LL | Metallic Mineral Processing Plants | X | ..... | ..... | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | X | ..... | ..... | X |
| NN | Phosphate Rock Plants | X | ..... | ..... | X |
| PP | Ammonium Sulfate Manufacture | X | ..... | ..... | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | X | ..... | ..... | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | X | ..... | ..... | X |
| SS | Industrial Surface Coating: Large Appliances | X | ..... | ..... | X |
| TT | Metal Coil Surface Coating | X | ..... | ..... | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | X | ..... | ..... | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | X | ..... | ..... | X |
| WW | Beverage Can Surface Coating Industry | X | ..... | ..... | X |
| XX | Bulk Gasoline Terminals | ..... | ..... | ..... | ..... |
| AAA | New Residential Wool Heaters | X | ..... | ..... | X |
| BBB | Rubber Tire Manufacturing Industry | X | ..... | ..... | X |
| CCC | (Reserved) | ..... | ..... | ..... | ..... |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | X | ..... | ..... | X |
| EEE | (Reserved) | ..... | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | X | ..... | ..... | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X | ..... | ..... | X |
| HHH | Synthetic Fiber Production Facilities | X | ..... | ..... | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Lake County AQMD | Lassen County APCD | Mariposa County AQMD | Mendocino County AQMD |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | X | ..... | ..... | X |
| JJJ | Petroleum Dry Cleaners | X | ..... | ..... | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | X | ..... | ..... | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | X | ..... | ..... | X |
| MMM | (Reserve) | ..... | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI)Distillation Operations. | X | ..... | ..... | X |
| OOO | Nonmetallic Mineral Processing Plants | X | ..... | ..... | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | X | ..... | ..... | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | X | ..... | ..... | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | X | ..... | ..... | ..... |
| SSS | Magnetic Tape Coating Facilities | X | ..... | ..... | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines. | | | | |
| UUU | Calciners and Dryers in Mineral Industries | X | ..... | ..... | X |
| VVV | Polymeric Coating of Supporting Substrates Facilities | X | ..... | ..... | X |
| WWW | Municipal Solid Waste Landfills | X | ..... | ..... | ..... |

(v) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Modoc County APCD | Mojave Desert AQMD | Monterey Bay Unified APCD | North Coast Unified AQMD |
| A | General Provisions | X | ..... | X | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | X | X | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X | ..... | X | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | X | ..... | X | X |
| Dc | Small Industrial Steam Generating Units | ..... | ..... | X | ..... |
| E | Incinerators | X | X | X | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | ..... | ..... | ..... | ..... |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... | ..... | ..... | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | ..... | ..... |
| F | Portland Cement Plants | X | X | X | X |
| G | Nitric Acid Plants | X | X | X | X |
| H | Sulfuric Acid Plants | X | X | X | X |
| I | Hot Mix Asphalt Facilities | X | X | X | X |
| J | Petroleum Refineries | X | X | X | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X | X | X | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X | ..... | X | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X | ..... | X | X |
| L | Secondary Lead Smelters | X | X | X | X |
| M | Secondary Brass and Bronze Production Plants | X | X | X | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | X | X | X | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | X | ..... | X | X |
| O | Sewage Treatment Plants | X | X | X | X |
| P | Primary Copper Smelters | X | ..... | X | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Modoc County APCD | Mojave Desert AQMD | Monterey Bay Unified APCD | North Coast Unified AQMD |
| Q | Primary Zinc Smelters | X | ..... | X | X |
| R | Primary Lead Smelters | X | ..... | X | X |
| S | Primary Aluminum Reduction Plants | X | ..... | X | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | X | X | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | X | X | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | X | X | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | X | X | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | X | X | X | X |
| Y | Coal Preparation Plants | X | X | X | X |
| Z | Ferroalloy Production Facilities | X | ..... | X | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | X | X | X | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | X | ..... | X | X |
| BB | Kraft pulp Mills | X | ..... | X | X |
| CC | Glass Manufacturing Plants | X | ..... | X | X |
| DD | Grain Elevators | X | ..... | X | X |
| EE | Surface Coating of Metal Furniture | X | ..... | X | X |
| FF | (Reserved) | ..... | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | X | ..... | X | X |
| HH | Lime Manufacturing Plants | X | ..... | X | X |
| KK | Lead-Acid Battery Manufacturing Plants | X | ..... | X | X |
| LL | Metallic Mineral Processing Plants | X | ..... | X | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | X | ..... | X | X |
| NN | Phosphate Rock Plants | X | ..... | X | X |
| PP | Ammonium Sulfate Manufacture | X | ..... | X | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | X | ..... | X | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | X | ..... | X | X |
| SS | Industrial Surface Coating: Large Appliances | X | ..... | X | X |
| TT | Metal Coil Surface Coating | X | ..... | X | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | X | ..... | X | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | X | ..... | X | X |
| WW | Beverage Can Surface Coating Industry | X | ..... | X | X |
| XX | Bulk Gasoline Terminals | ..... | ..... | ..... | ..... |
| AAA | New Residential Wool Heaters | X | ..... | X | X |
| BBB | Rubber Tire Manufacturing Industry | X | ..... | X | X |
| CCC | (Reserved) | ..... | ..... | ..... | ..... |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer manufacturing Industry. | X | ..... | X | ..... |
| EEE | (Reserved) | ..... | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | X | ..... | X | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X | ..... | X | X |
| HHH | Synthetic Fiber Production Facilities | X | ..... | X | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | ..... | ..... | ..... | ..... |
| JJJ | Petroleum Dry Cleaners | X | ..... | X | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | X | ..... | X | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | X | ..... | X | X |
| MMM | (Reserved) | ..... | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | X | ..... | X | ..... |
| OOO | Nonmetallic Mineral Processing Plants | X | ..... | X | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | X | ..... | X | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | X | ..... | X | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | ..... | ..... | ..... | ..... |
| SSS | Magnetic Tape Coating Facilities | X | ..... | X | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | X | ..... | X | X |
| UUU | Calciners and Dryers in Mineral Industries | ..... | ..... | X | ..... |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | ..... | X | X |
| WWW | Municipal Solid Waste Landfills | ..... | ..... | ..... | ..... |

(vi) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Northern Sierra AQMD | Northern Sonoma County APCD | Placer County APCD | Sacramento Metropolitan AQMD |
| A | General Provisions | | X | | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | | X | | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | | X | | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | | | | X |
| Dc | Small Industrial Steam Generating Units | | | | X |
| E | Incinerators | | X | | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | | | | X |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | | | | X |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | | | | X |
| F | Portland Cement Plants | | X | | X |
| G | Nitric Acid Plants | | X | | X |
| H | Sulfuric Acid Plants | | X | | X |
| I | Hot Mix Asphalt Facilities | | X | | X |
| J | Petroleum Refineries | | X | | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | | X | | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | | X | | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | | | | X |
| L | Secondary Lead Smelters | | X | | X |
| M | Secondary Brass and Bronze Production Plants | | X | | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | | X | | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | | | | X |
| O | Sewage Treatment Plants | | X | | X |
| P | Primary Copper Smelters | | X | | X |
| Q | Primary Zinc Smelters | | X | | X |
| R | Primary Lead Smelters | | X | | X |
| S | Primary Aluminum Reduction Plants | | X | | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | | X | | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | | X | | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | | X | | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | | X | | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | | X | | X |
| Y | Coal Preparation Plants | | X | | X |
| Z | Ferroalloy Production Facilities | | X | | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | | X | | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | | | | X |
| BB | Kraft pulp Mills | | X | | X |
| CC | Glass Manufacturing Plants | | X | | X |
| DD | Grain Elevators | | X | | X |
| EE | Surface Coating of Metal Furniture | | | | X |
| FF | (Reserved) | | | | |
| GG | Stationary Gas Turbines | | X | | X |
| HH | Lime Manufacturing Plants | | X | | X |
| KK | Lead-Acid Battery Manufacturing Plants | | | | X |
| LL | Metallic Mineral Processing Plants | | | | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | | X | | X |
| NN | Phosphate Rock Plants | | | | X |
| PP | Ammonium Sulfate Manufacture | | X | | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | | | | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | | | | X |
| SS | Industrial Surface Coating: Large Appliances | | | | X |
| TT | Metal Coil Surface Coating | | | | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | | | | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | | | | X |
| WW | Beverage Can Surface Coating Industry | | | | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Northern Sierra AQMD | Northern Sonoma County APCD | Placer County APCD | Sacramento Metropolitan AQMD |
| XX | Bulk Gasoline Terminals | .... | ..... | ..... | ..... |
| AAA | New Residential Wool Heaters | ..... | ..... | ..... | X |
| BBB | Rubber Tire Manufacturing Industry | ..... | ..... | ..... | X |
| CCC | (Reserved) | ..... | ..... | ..... | ..... |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | ..... | ..... | ..... | X |
| EEE | (Reserved) | ..... | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | ..... | ..... | ..... | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | ..... | ..... | ..... | X |
| HHH | Synthetic Fiber Production Facilities | ..... | ..... | ..... | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | ..... | ..... | ..... | X |
| JJJ | Petroleum Dry Cleaners | ..... | ..... | ..... | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | ..... | ..... | ..... | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | ..... | ..... | ..... | X |
| MMM | (Reserved) | ..... | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | ..... | ..... | ..... | X |
| OOO | Nonmetallic Mineral Processing Plants | ..... | ..... | ..... | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | ..... | ..... | ..... | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | ..... | ..... | ..... | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | ..... | ..... | ..... | X |
| SSS | Magnetic Tape Coating Facilities | ..... | ..... | ..... | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | ..... | ..... | ..... | X |
| UUU | Calciners and Dryers in Mineral Industries | ..... | ..... | ..... | X |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | ..... | ..... | X |
| WWW | Municipal Solid Waste Landfills | ..... | ..... | ..... | X |

(vii) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | San Diego County APCD | San Joaquin Valley United APCD | San Luis Obispo County APCD | Santa Barbara County APCD |
| A | General Provisions | X | X | X | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | X | X | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X | X | X | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | ..... | X | X | X |
| Dc | Small Industrial Steam Generating Units | X | X | ..... | X |
| E | Incinerators | X | X | X | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | ..... | X | X | X |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... | ..... | X | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | ..... | ..... |
| F | Portland Cement Plants | ..... | X | X | X |
| G | Nitric Acid Plants | ..... | X | X | X |
| H | Sulfuric Acid Plants | ..... | X | X | X |
| I | Hot Mix Asphalt Facilities | X | X | X | X |
| J | Petroleum Refineries | X | X | X | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced Ater June 11, 1973, and Prior to May 19, 1978. | X | X | X | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X | X | X | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | San Diego County APCD | San Joaquin Valley United APCD | San Luis Obispo County APCD | Santa Barbara County APCD |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X | X | X | X |
| L | Secondary Lead Smelters | X | X | X | X |
| M | Secondary Brass and Bronze Production Plants | X | X | X | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | ..... | X | X | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | ..... | X | X | X |
| O | Sewage Treatment Plants | X | X | X | X |
| P | Primary Copper Smelters | ..... | X | X | X |
| Q | Primary Zinc Smelters | ..... | X | X | X |
| R | Primary Lead Smelters | ..... | X | X | X |
| S | Primary Aluminum Reduction Plants | ..... | X | X | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | ..... | X | X | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | ..... | X | X | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | ..... | X | X | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | ..... | X | X | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | ..... | X | X | X |
| Y | Coal Preparation Plants | ..... | X | X | X |
| Z | Ferroalloy Production Facilities | ..... | X | X | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | ..... | X | X | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | ..... | X | X | X |
| BB | Kraft pulp Mills | ..... | X | X | X |
| CC | Glass Manufacturing Plants | X | X | X | X |
| DD | Grain Elevators | X | X | X | X |
| EE | Surface Coating of Metal Furniture | ..... | X | X | X |
| FF | (Reserved) | ..... | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | X | X | X | X |
| HH | Lime Manufacturing Plants | ..... | X | X | X |
| KK | Lead-Acid Battery Manufacturing Plants | ..... | X | X | X |
| LL | Metallic Mineral Processing Plants | ..... | X | X | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | ..... | X | X | X |
| NN | Phosphate Rock Plants | ..... | X | X | X |
| PP | Ammonium Sulfate Manufacture | ..... | X | X | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | ..... | X | X | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | ..... | X | X | X |
| SS | Industrial Surface Coating: Large Appliances | ..... | X | X | X |
| TT | Metal Coil Surface Coating | ..... | X | X | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | ..... | X | X | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | ..... | X | X | X |
| WW | Beverage Can Surface Coating Industry | ..... | X | X | X |
| XX | Bulk Gasoline Terminals | ..... | ..... | ..... | ..... |
| AAA | New Residential Wool Heaters | ..... | X | X | X |
| BBB | Rubber Tire Manufacturing Industry | ..... | X | X | X |
| CCC | (Reserved) | ..... | ..... | ..... | ..... |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | ..... | X | ..... | X |
| EEE | (Reserved) | ..... | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | ..... | X | X | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | ..... | X | X | X |
| HHH | Synthetic Fiber Production Facilities | ..... | X | X | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | ..... | X | ..... | X |
| JJJ | Petroleum Dry Cleaners | ..... | X | X | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | ..... | X | X | X |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | ..... | X | X | X |
| MMM | (Reserved) | ..... | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | ..... | X | ..... | X |
| OOO | Nonmetallic Mineral Processing Plants | X | X | X | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | ..... | X | X | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | ..... | X | X | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | San Diego County APCD | San Joaquin Valley United APCD | San Luis Obispo County APCD | Santa Barbara County APCD |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | ..... | X | X | X |
| SSS | Magnetic Tape Coating Facilities | ..... | X | X | X |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | ..... | X | X | X |
| UUU | Calciners and Dryers in Mineral Industries | X | X | X | X |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | X | X | X |
| WWW | Municipal Solid Waste Landfills | X | X | X | X |

(viii) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Shasta County AQMD | Siskiyou County APCD | South Coast AQMD | Tehama County APCD |
| A | General Provisions | X | X | X | ..... |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | ..... | X | ..... |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | ..... | ..... | X | ..... |
| Db | Industrial-Commercial-Institutional Steam Generating Units | ..... | ..... | X | ..... |
| Dc | Small Industrial Steam Generating Units | ..... | ..... | X | ..... |
| E | Incinerators | X | ..... | X | ..... |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | ..... | ..... | X | ..... |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... | ..... | X | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... | ..... | X | ..... |
| F | Portland Cement Plants | X | ..... | X | ..... |
| G | Nitric Acid Plants | X | ..... | X | ..... |
| H | Sulfuric Acid Plants | X | ..... | X | ..... |
| I | Hot Mix Asphalt Facilities | X | ..... | X | ..... |
| J | Petroleum Refineries | X | ..... | X | ..... |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X | ..... | X | ..... |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | ..... | ..... | X | ..... |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | ..... | ..... | X | ..... |
| L | Secondary Lead Smelters | X | ..... | X | ..... |
| M | Secondary Brass and Bronze Production Plants | X | ..... | X | ..... |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | X | ..... | X | ..... |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | ..... | ..... | X | ..... |
| O | Sewage Treatment Plants | X | ..... | X | ..... |
| P | Primary Copper Smelters | X | ..... | X | ..... |
| Q | Primary Zinc Smelters | X | ..... | X | ..... |
| R | Primary Lead Smelters | X | ..... | X | ..... |
| S | Primary Aluminum Reduction Plants | X | ..... | X | ..... |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | ..... | X | ..... |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | ..... | X | ..... |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | ..... | X | ..... |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | ..... | X | ..... |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | X | ..... | X | ..... |
| Y | Coal Preparation Plants | X | ..... | X | ..... |
| Z | Ferroalloy Production Facilities | X | ..... | X | ..... |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | X | ..... | X | ..... |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Shasta County AQMD | Siskiyou County APCD | South Coast AQMD | Tehama County APCD |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | ..... | ..... | X | ..... |
| BB | Kraft pulp Mills | X | ..... | X | ..... |
| CC | Glass Manufacturing Plants | ..... | ..... | X | ..... |
| DD | Grain Elevators | X | ..... | X | ..... |
| EE | Surface Coating of Metal Furniture | ..... | ..... | X | ..... |
| FF | (Reserved) | ..... | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | ..... | ..... | X | ..... |
| HH | Lime Manufacturing Plants | X | ..... | X | ..... |
| KK | Lead-Acid Battery Manufacturing Plants | ..... | ..... | X | ..... |
| LL | Metallic Mineral Processing Plants | ..... | ..... | X | ..... |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | ..... | ..... | X | ..... |
| NN | Phosphate Rock Plants | ..... | ..... | X | ..... |
| PP | Ammonium Sulfate Manufacture | ..... | ..... | X | ..... |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | ..... | ..... | X | ..... |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | ..... | ..... | X | ..... |
| SS | Industrial Surface Coating: Large Appliances | ..... | ..... | X | ..... |
| TT | Metal Coil Surface Coating | ..... | ..... | X | ..... |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | ..... | ..... | X | ..... |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | ..... | ..... | X | ..... |
| WW | Beverage Can Surface Coating Industry | ..... | ..... | X | ..... |
| XX | Bulk Gasoline Terminals | ..... | ..... | ..... | ..... |
| AAA | New Residential Wool Heaters | ..... | X | X | ..... |
| BBB | Rubber Tire Manufacturing Industry | ..... | X | X | ..... |
| CCC | (Reserved). | | | | |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | ..... | ..... | X | ..... |
| EEE | (Reserved) | ..... | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | ..... | ..... | X | ..... |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | ..... | ..... | X | ..... |
| HHH | Synthetic Fiber Production Facilities | ..... | ..... | X | ..... |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | ..... | ..... | X | ..... |
| JJJ | Petroleum Dry Cleaners | ..... | ..... | X | ..... |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | ..... | ..... | X | ..... |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | ..... | ..... | X | ..... |
| MMM | (Reserved) | ..... | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | ..... | ..... | X | ..... |
| OOO | Nonmetallic Mineral Processing Plants | ..... | ..... | X | ..... |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | ..... | ..... | X | ..... |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | ..... | X | X | ..... |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | ..... | ..... | X | ..... |
| SSS | Magnetic Tape Coating Facilities | ..... | X | X | ..... |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | ..... | X | X | ..... |
| UUU | Calciners and Dryers in Mineral Industries | ..... | ..... | X | ..... |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | ..... | X | ..... |
| WWW | Municipal Solid Waste Landfills | ..... | ..... | X | ..... |

(ix) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Tuolumne County APCD | Ventura County APCD | Yolo-Solano AQMD |
| A | General Provisions | ..... | X | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | ..... | X | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | ..... | X | ..... |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Tuolumne County APCD | Ventura County APCD | Yolo-Solano AQMD |
| Db | Industrial-Commercial-Institutional Steam Generating Units | | X | X |
| Dc | Small Industrial Steam Generating Units | | X | |
| E | Incinerators | | X | |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | | X | |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | | | |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | | | |
| F | Portland Cement Plants | | X | |
| G | Nitric Acid Plants | | X | |
| H | Sulfuric Acid Plants | | X | |
| I | Hot Mix Asphalt Facilities | | X | X |
| J | Petroleum Refineries | | X | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | | X | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | | X | |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | | X | |
| L | Secondary Lead Smelters | | X | |
| M | Secondary Brass and Bronze Production Plants | | X | |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | | X | |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | | X | |
| O | Sewage Treatment Plants | | X | |
| P | Primary Copper Smelters | | X | |
| Q | Primary Zinc Smelters | | X | |
| R | Primary Lead Smelters | | X | |
| S | Primary Aluminum Reduction Plants | | X | |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | | X | |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | | X | |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | | X | |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | | X | |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | | X | |
| Y | Coal Preparation Plants | | X | |
| Z | Ferroalloy Production Facilities | | X | |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | | X | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | | X | |
| BB | Kraft pulp Mills | | X | |
| CC | Glass Manufacturing Plants | | X | |
| DD | Grain Elevators | | X | |
| EE | Surface Coating of Metal Furniture | | X | |
| FF | (Reserved) | | | |
| GG | Stationary Gas Turbines | | X | |
| HH | Lime Manufacturing Plants | | X | |
| KK | Lead-Acid Battery Manufacturing Plants | | X | |
| LL | Metallic Mineral Processing Plants | | X | |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | | X | |
| NN | Phosphate Rock Plants | | X | |
| PP | Ammonium Sulfate Manufacture | | X | |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | | X | |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | | X | |
| SS | Industrial Surface Coating: Large Appliances | | X | |
| TT | Metal Coil Surface Coating | | X | |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | | X | |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry. | | X | |
| WW | Beverage Can Surface Coating Industry | | X | |
| XX | Bulk Gasoline Terminals | | | |
| AAA | New Residential Wool Heaters | | X | |
| BBB | Rubber Tire Manufacturing Industry | | X | |
| CCC | (Reserved) | | | |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Tuolumne County APCD | Ventura County APCD | Yolo-Solano AQMD |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry. | | X | |
| EEE | (Reserved) | | | |
| FFF | Flexible Vinyl and Urethane Coating and Printing | | X | |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | | X | |
| HHH | Synthetic Fiber Production Facilities | | X | |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | | X | |
| JJJ | Petroleum Dry Cleaners | | X | |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | | X | |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | | X | |
| MMM | (Reserved) | | | |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | | X | |
| OOO | Nonmetallic Mineral Processing Plants | | X | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | | X | |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | | X | |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | | X | |
| SSS | Magnetic Tape Coating Facilities | | X | |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | | X | |
| UUU | Calciners and Dryers in Mineral Industries | | X | |
| VVV | Polymeric Coating of Supporting Substrates Facilities | | X | |
| WWW | Municipal Solid Waste Landfills | | X | X |

(3) *Hawaii*. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

| | Subpart | Hawaii |
|---|---|---|
| A | General Provisions | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | X |
| Dc | Small Industrial Steam Generating Units | X |
| E | Incinerators | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994 | X |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | X |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996 | |
| F | Portland Cement Plants | X |
| G | Nitric Acid Plants | |
| H | Sulfuric Acid Plants | |
| I | Hot Mix Asphalt Facilities | X |
| J | Petroleum Refineries | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X |
| L | Secondary Lead Smelters | |
| M | Secondary Brass and Bronze Production Plants | |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973 | |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | |
| O | Sewage Treatment Plants | X |
| P | Primary Copper Smelters | |
| Q | Primary Zinc Smelters | |
| R | Primary Lead Smelters | |
| S | Primary Aluminum Reduction Plants | |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

| | Subpart | Hawaii |
|---|---|---|
| Y | Coal Preparation Plants | X |
| Z | Ferroalloy Production Facilities | |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983 | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983 | X |
| BB | Kraft pulp Mills | |
| CC | Glass Manufacturing Plants | |
| DD | Grain Elevators | |
| EE | Surface Coating of Metal Furniture | |
| FF | (Reserved) | |
| GG | Stationary Gas Turbines | X |
| HH | Lime Manufacturing Plants | |
| KK | Lead-Acid Battery Manufacturing Plants | |
| LL | Metallic Mineral Processing Plants | |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | |
| NN | Phosphate Rock Plants | |
| PP | Ammonium Sulfate Manufacture | |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | |
| SS | Industrial Surface Coating: Large Appliances | |
| TT | Metal Coil Surface Coating | |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | X |
| WW | Beverage Can Surface Coating Industry | X |
| XX | Bulk Gasoline Terminals | X |
| AAA | New Residential Wool Heaters | |
| BBB | Rubber Tire Manufacturing Industry | |
| CCC | (Reserved) | |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry | |
| EEE | (Reserved) | |
| FFF | Flexible Vinyl and Urethane Coating and Printing | |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X |
| HHH | Synthetic Fiber Production Facilities | |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | |
| JJJ | Petroleum Dry Cleaners | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | |
| MMM | (Reserved) | |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | X |
| OOO | Nonmetallic Mineral Processing Plants | X |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | X |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | |
| SSS | Magnetic Tape Coating Facilities | |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | |
| UUU | Calciners and Dryers in Mineral Industries | X |
| VVV | Polymeric Coating of Supporting Substrates Facilities | X |
| WWW | Municipal Solid Waste Landfills | |

(4) *Nevada*. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Nevada DEP | Clark County | Washoe County |
| A | General Provisions | X | X | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X | X | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978 | X | | |
| Db | Industrial-Commercial-Institutional Steam Generating Units | | | |
| Dc | Small Industrial Steam Generating Units | | | |
| E | Incinerators | X | X | X |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | | | |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | | | |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | | | |
| F | Portland Cement Plants | X | X | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Nevada DEP | Clark County | Washoe County |
| G | Nitric Acid Plants | X | ..... | X |
| H | Sulfuric Acid Plants | X | ..... | X |
| I | Hot Mix Asphalt Facilities | X | X | X |
| J | Petroleum Refineries | X | ..... | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X | X | X |
| Ka | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984. | X | X | X |
| Kb | Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984. | X | ..... | ..... |
| L | Secondary Lead Smelters | X | X | X |
| M | Secondary Brass and Bronze Production Plants | X | ..... | X |
| N | Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973. | X | ..... | X |
| Na | Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983. | X | ..... | ..... |
| O | Sewage Treatment Plants | X | X | X |
| P | Primary Copper Smelters | X | X | X |
| Q | Primary Zinc Smelters | X | X | X |
| R | Primary Lead Smelters | X | X | X |
| S | Primary Aluminum Reduction Plants | X | ..... | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | ..... | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | ..... | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | ..... | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | ..... | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities | X | ..... | X |
| Y | Coal Preparation Plants | X | X | X |
| Z | Ferroalloy Production Facilities | X | ..... | X |
| AA | Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983. | X | ..... | X |
| AAa | Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983. | X | ..... | ..... |
| BB | Kraft pulp Mills | X | ..... | X |
| CC | Glass Manufacturing Plants | X | ..... | X |
| DD | Grain Elevators | X | X | X |
| EE | Surface Coating of Metal Furniture | X | X | X |
| FF | (Reserved) | ..... | ..... | ..... |
| GG | Stationary Gas Turbines | X | X | X |
| HH | Lime Manufacturing Plants | X | X | X |
| KK | Lead-Acid Battery Manufacturing Plants | X | X | X |
| LL | Metallic Mineral Processing Plants | X | X | X |
| MM | Automobile and Light Duty Trucks Surface Coating Operations | X | X | X |
| NN | Phosphate Rock Plants | X | X | X |
| PP | Ammonium Sulfate Manufacture | X | ..... | X |
| QQ | Graphic Arts Industry: Publication Rotogravure Printing | X | X | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | X | ..... | X |
| SS | Industrial Surface Coating: Large Appliances | X | X | X |
| TT | Metal Coil Surface Coating | X | X | X |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | X | X | X |
| VV | Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry | X | X | X |
| WW | Beverage Can Surface Coating Industry | X | ..... | X |
| XX | Bulk Gasoline Terminals | X | ..... | X |
| AAA | New Residential Wool Heaters | ..... | ..... | ..... |
| BBB | Rubber Tire Manufacturing Industry | ..... | ..... | ..... |
| CCC | (Reserved) | ..... | ..... | ..... |
| DDD | Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry | ..... | ..... | ..... |
| EEE | (Reserved) | ..... | ..... | ..... |
| FFF | Flexible Vinyl and Urethane Coating and Printing | X | ..... | X |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X | ..... | X |
| HHH | Synthetic Fiber Production Facilities | X | ..... | X |
| III | Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes. | ..... | ..... | ..... |
| JJJ | Petroleum Dry Cleaners | X | X | X |
| KKK | Equipment Leaks of VOC From Onshore Natural Gas Processing Plants | X | ..... | ..... |
| LLL | Onshore Natural Gas Processing: SO2 Emissions | X | ..... | ..... |
| MMM | (Reserved) | ..... | ..... | ..... |
| NNN | Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations. | ..... | ..... | ..... |
| OOO | Nonmetallic Mineral Processing Plants | X | ..... | X |

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Nevada DEP | Clark County | Washoe County |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | X | ..... | X |
| QQQ | VOC Emissions From Petroleum Refinery Wastewater Systems | ..... | ..... | ..... |
| RRR | Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes. | ..... | ..... | ..... |
| SSS | Magnetic Tape Coating Facilities | ..... | ..... | ..... |
| TTT | Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines | ..... | ..... | ..... |
| UUU | Calciners and Dryers in Mineral Industries | ..... | ..... | ..... |
| VVV | Polymeric Coating of Supporting Substrates Facilities | ..... | ..... | ..... |
| WWW | Municipal Solid Waste Landfills | ..... | ..... | ..... |

(5) Guam. The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR GUAM

| | Subpart | Guam |
|---|---|---|
| A | General Provisions | X |
| D | Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971 | X |
| Da | Electric Utility Steam Generating Units Constructed After September 18, 1978. | ..... |
| Db | Industrial-Commercial-Institutional Steam Generating Units | ..... |
| Dc | Small Industrial Steam Generating Units | ..... |
| E | Incinerators | ..... |
| Ea | Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994. | ..... |
| Eb | Municipal Waste Combustors Constructed After September 20, 1994 | ..... |
| Ec | Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996. | ..... |
| F | Portland Cement Plants | X |
| G | Nitric Acid Plants | ..... |
| H | Sulfuric Acid Plants | ..... |
| I | Hot Mix Asphalt Facilities | X |
| J | Petroleum Refineries | X |
| K | Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978. | X |

## PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

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

## Subpart A—General Provisions

2. Section 61.04 is amended:

a. In paragraph (a) by revising the address for ''Region IX''.

b. By revising paragraph (b)(D).

c. By revising paragraph (b)(F).

d. By revising paragraph (b)(M).

e. By revising paragraph (b)(DD).

f. By adding paragraph (b)(AAA).

g. By adding paragraph (b)(DDD).

h. By adding paragraph (b)(EEE).

i. By adding paragraph (c)(9).

The revisions read as follows:

### § 61.04 Address.

(a) * * *

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

* * * * *

(b) * * *

(D) Arizona:

Arizona Department of Environmental Quality, Office of Air Quality, P.O. Box 600, Phoenix, AZ 85001–0600.

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034.

Pima County Department of Environmental Quality, 130 West Congress Street, 3rd Floor, Tucson, AZ 85701–1317.

Pinal County Air Quality Control District, Building F, 31 North Pinal Street, Florence, AZ 85232.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(F) California:

Amador County Air Pollution Control District, 500 Argonaut Lane, Jackson, CA 95642.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, P.O. Box 4409, Lancaster, CA 93539–4409.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Pollution Control District, 2525 Dominic Drive, Suite J, Chico, CA 95928–7184.

Calaveras County Air Pollution Control District, 891 Mountain Ranch Rd., San Andreas, CA 95249.

Colusa County Air Pollution Control District, 100 Sunrise Blvd., Suite F, Colusa, CA 95932–3246.

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Bldg. C, Placerville, CA 95667–4100.

Feather River Air Quality Management District, 938 14th Street, Marysville, CA 95901–4149.

Glenn County Air Pollution Control District, 720 N. Colusa Street, P.O. Box 351, Willows, CA 95988–0351.

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514–3537.

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801.

Kern County Air Pollution Control District (Southeast Desert), 2700 M. Street, Suite 302, Bakersfield, CA 93301–2370.

Lake County Air Quality Management District, 885 Lakeport Blvd., Lakeport, CA 95453–5405.
Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, CA 96130–4215.
Mariposa County Air Pollution Control District, P.O. Box 5, Mariposa, CA 95338.
Mendocino County Air Pollution Control District, 306 E. Gobbi Street, Ukiah, CA 95482–5511.
Modoc County Air Pollution Control District, 202 W. 4th Street, Alturas, CA 96101–3915.
Mojave Desert Air Quality Management District, 14306 Part Avenue, Victorville, CA 92392–2310.
Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.
North Coast Unified Air Pollution Control District, 2300 Myrtle Avenue, Eureka, CA 95501–3327.
Northern Sierra Air Quality Management District, 200 Litton Drive, P.O. Box 2509, Grass Valley, CA 95945–2509.
Northern Sonoma County Air Pollution Control District, 150 Matheson Street, Healdsburg, CA 95448–4908.
Placer County Air Pollution Control District, DeWitt Center, 11464 ''B'' Avenue, Auburn, CA 95603–2603.
Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814–1908.
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.
San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, 1990 E. Gettysburg, Fresno, CA 93726.
San Luis Obispo County Air Pollution Control District, 3433 Roberto Court, San Luis Obispo, CA 93401–7126.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117–3027.
Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.
Siskiyou County Air Pollution Control District, 525 So. Foothill Drive, Yreka, CA 96097–3036.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.
Tehama County Air Pollution Control District, P.O. Box 38 (1750 Walnut Street), Red Bluff, CA 96080–0038.
Tuolumne County Air Pollution Control District, 2 South Green Street, Sonora, CA 95370–4618.
Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417.
Yolo-Solano Air Quality Management District, 1947 Galileo Ct., Suite 103, Davis, CA 95616–4882.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(M) Hawaii:
Hawaii State Agency, Clean Air Branch, 919 Ala Moana Blvd., 3rd Floor, Post Office Box 3378, Honolulu HI 96814.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DD) Nevada:
Nevada State Agency, Air Pollution Control, Bureau of Air Quality/Division of Environmental Protection, 333 West Nye Lane, Carson City, NV 89710.
Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, First floor, Las Vegas, NV 89155–1776.
Washoe County Air Pollution Control, Washoe County District Air Quality Management, P.O. Box 11130, 1001 E. Ninth Street, Reno, NV 89520.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(AAA) Territory of Guam: Guam Environmental Protection Agency, Post Office Box 2999, Agana, Guam 96910.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (c)(9) of this section.

* * * * *

(DDD) American Samoa Environmental Protection Agency, Pago Pago, American Samoa 96799.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

(EEE) Commonwealth of the Northern Mariana Islands, Division of Environmental Quality, P.O. Box 1304, Saipan, MP 96950.

**Note:** For tables listing the delegation status of agencies in Region IX, see paragraph (d) of this section.

* * * * *

(c) * * *

(9) The following tables list the specific Part 61 standards that have been delegated unchanged to the air pollution control agencies in Region IX. The (X) symbol is used to indicate each standard that has been delegated. The following provisions of this subpart are not delegated: §§ 61.04(b), 61.04(c), 61.05(c), 61.11, 61.12(d), 61.13(h)(1)(ii), 61.14(d), 61.14(g)(1)(ii), and 61.16.

(i) *Arizona.* The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Arizona DEQ | Maricopa County | Pima County | Pinal County |
| A | General Provisions | X | X | X | X |
| B | Radon Emissions From Underground Uranium | ..... | ..... | ..... | ..... |
| C | Beryllium | X | X | X | X |
| D | Beryllium Rocket Motor Firing | X | X | X | X |
| E | Mercury | X | X | X | X |
| F | Vinyl Chloride | X | X | X | X |
| G | (Reserved) | ..... | ..... | ..... | ..... |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | ..... | ..... | ..... | ..... |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | ..... | ..... | ..... | ..... |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | X | X | X | X |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | ..... | ..... | ..... | ..... |
| L | Benzene Emissions from Coke By-Product Recovery Plants | X | X | X | X |
| M | Asbestos | X | X | X | X |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | X | X | ..... | X |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | X | X | ..... | X |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | X | X | ..... | ..... |
| Q | Radon Emissions From Department of Energy Facilities | ..... | ..... | ..... | ..... |
| R | Radon Emissions From Phosphogypsum Stacks | ..... | ..... | ..... | ..... |
| S | (Reserved) | ..... | ..... | ..... | ..... |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | ..... | ..... | ..... | ..... |
| U | (Reserved) | ..... | ..... | ..... | ..... |

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA mdash;Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Arizona DEQ | Maricopa County | Pima County | Pinal County |
| V | Equipment Leaks (Fugitive Emission Sources) | X | X | X | X |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | X | X | X | X |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | X | X | X | X |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | X | X | X | X |

(ii) *California.* The following tables identify delegations for each of the local air pollution control agencies of California.

(A) Delegations for Amador County Air Pollution Control District, Antelope Valley Air Pollution Control District, Bay Area Air Quality Management District, and Butte County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AMADOR COUNTY APCD, ANTELOPE VALLEY APCD, BAY AREA AQMD, AND BUTTE COUNTY AQMD

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Amador County APCD | Antelope Valley APCD | Bay Area AQMD | Butte County AQMD |
| A | General Provisions | | | X | |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | | | X | |
| D | Beryllium Rocket Motor Firing | | | X | |
| E | Mercury | | | X | |
| F | Vinyl Chloride | | | X | |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | | | |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | X | |
| M | Asbestos | | | X | |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | | | |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | | | | |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | | | | |
| Q | Radon Emissions From Department of Energy Facilities | | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | | |
| S | (Reserved) | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | | |
| U | (Reserved) | | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | | | | |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | | X | |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | | X | |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | | | X | |

(B) [Reserved]

(C) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Glenn County APCD | Great Basin Unified APCD | Imperial County APCD | Kern County APCD |
| A | General Provisions | | X | | X |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | | X | | X |
| D | Beryllium Rocket Motor Firing | | X | | X |
| E | Mercury | | X | | X |
| F | Vinyl Chloride | | | | X |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities. | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | | | X |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | | X |
| M | Asbestos | | X | | X |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | | | X |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | | | | X |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | | | | X |
| Q | Radon Emissions From Department of Energy Facilities | | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | | |
| S | (Reserved) | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | | |
| U | (Reserved) | | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | | | | X |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | | | X |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | | | X |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | | | | X |

(D) Delegations for Lake County Air Quality Management District, Lassen County Air Pollution Control District, Mariposa County Air Pollution Control District, and Mendocino County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR LAKE COUNTY AIR QUALITY MANAGEMENT DISTRICT, LASSEN COUNTY AIR POLLUTION CONTROL DISTRICT, MARIPOSA COUNTY AIR POLLUTION CONTROL DISTRICT, AND MENDOCINO COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Lake County AQMD | Lassen County APCD | Mariposa County AQMD | Mendocino County AQMD |
| A | General Provisions | X | | X | |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | X | | | X |
| D | Beryllium Rocket Motor Firing | X | | | X |
| E | Mercury | X | | | X |
| F | Vinyl Chloride | | | | X |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities. | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benze | | | | |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | | |
| M | Asbestos | X | | | X |

(E) Delegations for Modoc County Air Pollution Control District, Mojave Desert Air Quality Management District, Monterey Bay Unified Air Pollution Control District, and North Coast Unified Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR MODOC COUNTY AIR POLLUTION CONTROL DISTRICT, MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT, MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT, AND NORTH COAST UNIFIED AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Modoc County APCD | Mojave Desert AQMD | Monterey Bay Unified APCD | North Coast Unified AQMD |
| A | General Provisions | X | X | X | X |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | X | X | X | X |
| D | Beryllium Rocket Motor Firing | X | X | X | X |
| E | Mercury | X | X | X | X |
| F | Vinyl Chloride | X | | X | X |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities. | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | X | | X | X |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | X | X |
| M | Asbestos | X | X | X | X |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | | X | |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | X | | X | |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | X | | X | |
| Q | Radon Emissions From Department of Energy Facilities | | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | | |
| S | (Reserved) | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | | |
| U | (Reserved) | | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | X | | X | X |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | | X | X |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | | X | |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | | | X | |

(F) Delegations for Northern Sierra Air Quality Management District, Northern Sonoma County Air Pollution Control District, Placer County Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT, NORTHERN SONOMA COUNTY AIR POLLUTION CONTROL DISTRICT, PLACER COUNTY AIR POLLUTION CONTROL DISTRICT, AND SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Northern Sierra AQMD | Northern Sonoma County APCD | Placer County APCD | Sacramento Metro AQMD |
| A | General Provisions | | X | | |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | | X | | |
| D | Beryllium Rocket Motor Firing | | X | | |
| E | Mercury | | X | | |
| F | Vinyl Chloride | | X | | X |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | | | |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | | |
| M | Asbestos | | X | | X |

(G) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | San Diego County APCD | San Joaquin Valley APCD | San Luis Obispo County APCD | Santa Barbara County APCD |
| A | General Provisions | X | X | X | X |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | X | X | X | X |
| D | Beryllium Rocket Motor Firing | X | X | X | X |
| E | Mercury | X | X | X | X |
| F | Vinyl Chloride | X | X | X | X |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities. | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | X | X | X |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | X | X |
| M | Asbestos | X | X | X | X |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | X | X | X |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | | X | X | X |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | | X | X | X |
| Q | Radon Emissions From Department of Energy Facilities | | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | | |
| S | (Reserved) | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | | |
| U | (Reserved) | | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | | X | X | X |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | | X | X |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | | X | X |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | | X | X | X |

(H) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Shasta County AQMD | Siskiyou County APCD | South Coast AQMD | Tehama County APCD |
| A | General Provisions | | | X | |
| B | Radon Emissions From Underground Uranium | | | | |
| C | Beryllium | X | | X | |
| D | Beryllium Rocket Motor Firing | X | | X | |
| E | Mercury | X | | X | |
| F | Vinyl Chloride | X | | X | |
| G | (Reserved) | | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | | X | |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | | |

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

| | Subpart | Air pollution control agency | | | |
|---|---|---|---|---|---|
| | | Shasta County AQMD | Siskiyou County APCD | South Coast AQMD | Tehama County APCD |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | | X | |
| M | Asbestos | X | | X | |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | | X | |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | | | X | |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | | | X | |
| Q | Radon Emissions From Department of Energy Facilities | | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | | |
| S | (Reserved) | | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | | |
| U | (Reserved) | | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | | | X | |
| W | Radon Emissions From Operating Mill Tailings | | | | |
| X | (Reserved) | | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | | X | |
| Z–AA | (Reserved) | | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | | X | |
| CC–EE | (Reserved) | | | | |
| FF | Benzene Waste Operations | | | X | |

(I) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

| | Subpart | Air pollution control agency | | |
|---|---|---|---|---|
| | | Tuolumne County APCD | Ventura County APCD | Yolo-Solano AQMD |
| A | General Provisions | | X | |
| B | Radon Emissions From Underground Uranium | | | |
| C | Beryllium | | X | |
| D | Beryllium Rocket Motor Firing | | X | |
| E | Mercury | | X | X |
| F | Vinyl Chloride | | X | |
| G | (Reserved) | | | |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | | | |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | | | |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | | X | |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | | | |
| L | Benzene Emissions from Coke By-Product Recovery Plants | | X | |
| M | Asbestos | | X | X |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | | X | |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | | X | |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities. | | X | |
| Q | Radon Emissions From Department of Energy Facilities | | | |
| R | Radon Emissions From Phosphogypsum Stacks | | | |
| S | (Reserved) | | | |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | | | |
| U | (Reserved) | | | |
| V | Equipment Leaks (Fugitive Emission Sources) | | X | |
| W | Radon Emissions From Operating Mill Tailings | | | |
| X | (Reserved) | | | |
| Y | Benzene Emissions From Benzene Storage Vessels | | X | |
| Z–AA | (Reserved) | | | |
| BB | Benzene Emissions From Benzene Transfer Operations | | X | |
| CC–EE | (Reserved) | | | |
| FF | Benzene Waste Operations | | X | |

(iii) *Hawaii.* The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAWAII

| | Subpart | Hawaii |
|---|---|---|
| A | General Provisions | X |
| B | Radon Emissions From Underground Uranium | ..... |
| C | Beryllium | ..... |
| D | Beryllium Rocket Motor Firing | ..... |
| E | Mercury | X |
| F | Vinyl Chloride | ..... |
| G | (Reserved) | ..... |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | ..... |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | ..... |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | X |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | ..... |
| L | Benzene Emissions from Coke By-Product Recovery Plants | ..... |
| M | Asbestos | ..... |
| N | Inorganic Arsenic Emissions From Glass Manufacturing Plants | ..... |
| O | Inorganic Arsenic Emissions From Primary Copper Smelters | ..... |
| P | Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities | ..... |
| Q | Radon Emissions From Department of Energy Facilities | ..... |
| R | Radon Emissions From Phosphogypsum Stacks | ..... |
| S | (Reserved) | ..... |
| T | Radon Emissions From the Disposal of Uranium Mill Tailings | ..... |
| U | (Reserved) | ..... |
| V | Equipment Leaks (Fugitive Emission Sources) | X |
| W | Radon Emissions From Operating Mill Tailings | ..... |
| X | (Reserved) | ..... |
| Y | Benzene Emissions From Benzene Storage Vessels | ..... |
| Z–AA | (Reserved) | ..... |
| BB | Benzene Emissions From Benzene Transfer Operations | X |
| CC–EE | (Reserved) | ..... |
| FF | Benzene Waste Operations | X |

(iv) *Nevada.* The following table identifies delegations as of June 15, 2001:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR NEVADA

| | Subpart | Air Pollution Control Agency | | |
|---|---|---|---|---|
| | | Nevada DEP | Clark County | Washoe County |
| A | General Provisions | ..... | X | ..... |
| B | Radon Emissions From Underground Uranium | ..... | ..... | ..... |
| C | Beryllium | X | X | X |
| D | Beryllium Rocket Motor Firing | X | X | ..... |
| E | Mercury | X | X | X |
| F | Vinyl Chloride | X | X | ..... |
| G | (Reserved) | ..... | ..... | ..... |
| H | Emissions of Radionuclides Other Than Radon From Department of Energy Facilities | ..... | ..... | ..... |
| I | Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H. | ..... | ..... | ..... |
| J | Equipment Leaks (Fugitive Emission Sources) of Benzene | ..... | ..... | ..... |
| K | Radionuclide Emissions From Elemental Phosphorus Plants | ..... | ..... | ..... |
| L | Benzene Emissions from Coke By-Product Recovery Plants | ..... | ..... | ..... |
| M | Asbestos | X | X | X |

* * * * *

[FR Doc. 02–10170 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 405, 410, 411, 414, and 415**

**[CMS–1169–CN]**

**RIN 0938–AK57**

# Medicare Program; Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002; Correction

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of final rule with comment period.

**SUMMARY:** This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 1, 2001 entitled ''Revisions to Payment Policies and Five-Year Review of and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 2002.''

**EFFECTIVE DATE:** January 1, 2002, except for the provisions updating the list of codes used to define certain ''designated health services'' under the physician self-referral prohibition set forth in section 1877 of the Social Security Act (42 U.S.C. section 1395nn). Those provisions are effective January 4, 2002.

**FOR FURTHER INFORMATION CONTACT:** Diane Milstead, (410) 786–3355.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In FR Doc. 01–27275 of November 1, 2001 (67 FR 55246), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. Additionally there are various revisions to Addenda B, C and E. The provisions in this correction notice are effective as if they had been included in the document published November 1, 2001. Accordingly, the corrections regarding the update for the list of codes used to define certain ''designated health services'' under the physician self-referral prohibition set forth in section 1877 of the Social Security Act (42 U.S.C. section 1395nn) are effective January 4, 2002. All other corrections are effective January 1, 2002.

## II. Discussion of Addenda B, C, and E

1. In Addendum B, we assigned incorrect status indicators for the following codes:

- Page 55334 for CPT codes 10021–26, 10021–TC, 10022–26, and 10022–TC.
- Page 55456 for CPT codes 93613–26 and 93613–TC;
- Page 55468 for HCPCS codes A4263 and A4329.
- Page 55469 for HCPCS code A4550.
- Page 55471 for HCPCS codes A5064, A5074, and A5075.
- Page 55480 for HCPCS code G0025.
- Page 55482 for HCPCS codes G0126, G0126–26, G0126–TC, G0163, G0163–26, G0163–TC, G0164, G0164–26, G0164–TC, G0165, G0165–26, and G0165–TC.
- Page 55483 for HCPCS codes G0203, G0205, G0205–26, G0205–TC, G0207, G0207–26, G0207–TC;
- Page 55489 for HCPCS codes J7193, J7195, J7198, and J7199.
- Page 55492 for HCPCS code Q0187.
- Page 55493 for HCPCS codes Q3014 and Q3017.

These corrections are reflected in correction number 18 to follow.

2. The following CPT codes were inadvertently excluded from addendum B:

- On page 55454, CPT codes 92597 and 92598.
- On page 55466, CPT codes 99375 and 99378.

Correction number 19, which follows, lists these codes and their corresponding RVUs.

3. We also used the incorrect status indicator and included RVUs for CPT codes 76390, 76390–26 and 76390–TC on page 55420, and CPT code 90887 on page 55450 although these services are not covered under Medicare. These corrections are reflected in correction number 20 to follow.

4. On page 55257 of the November 1, 2001 rule we indicated we were adding a catheter to the supply list for CPT code 36533 however, we erroneously omitted this supply from the CPEP data. The corrected practice expense RVUs that reflect the addition of this supply are shown in correction number 21 to follow.

5. On page 55419 of Addendum B and 55498 of Addendum C, we assigned incorrect practice expense RVUs to CPT codes 76085 and 76085–TC. In addition, the global period for 76085–TC was listed incorrectly. Corrections are reflected in correction number 22 to follow.

6. In addendum B on page 55454 we failed to list the professional and technical components for CPT code 93025 and also assigned incorrect practice expense RVUs to 93025. The corrected practice expense RVUs as well as the values for the professional and technical components of this CPT code are listed in correction number 23 to follow.

7. On pages 55456, 55457 and 55461 we indicated the incorrect global period for CPT codes 93613, 93662–TC, 95824 and 95824–TC. The global period is corrected in number 24 to follow.

8. In Addenda B and C, incorrect practice expense RVUs were assigned for CPT codes 76092 and 76092–TC, 92136, 92136–26, 92136–TC, 95250, 95808, 95808–26, 95808–TC, 95810, 95810–26, 95810–TC, 95811, 95811–26, 95811–TC, 95903, 95903–26, 95903–TC, 95951, 95951–TC, 95956, 95956–TC and HCPCS codes G0108, G0109 G0236 and G0236–TC. Entries on the pages listed below are corrected as follows:

- Pages 55420 and 55499 for CPT codes 76092 and 76092–TC.
- Pages 55451 and 55452 for CPT codes 92136, 92136–26, 92136–TC.
- Page 55461 for CPT codes 95250, 95808, 95808–26, 95808–TC, 95810, 95810–26, 95810–TC, 95811, 95811–26, and 95811–TC.
- Page 55462 for CPT codes 95903, 95903–26, 95903–TC, 95951, and 95951–TC.
- Page 55463 for CPT codes 95956 and 95956–TC.
- Page 55481 for HCPCS G0108 and G0109.
- Pages 55484 and 55499 for HCPCS codes G0236 and G0236–TC.

Corrections are reflected in correction number 25 to follow.

9. On page 55464 of the November 1, 2001 rule we erroneously included the high-pressure water jet gun and disposable water jet tip in supplies used with code 97601. These supplies should be omitted from the CPEP data. The corrected practice expense RVUs, which reflect the deletion of these supplies, are shown in correction number 26 to follow.

10. On page 55498 of Addendum C, we failed to include the following G codes for respiratory therapy: G0237, G0238, and G0239. These G codes are reflected in correction number 27 to follow.

11. In Addendum E, concerning the physician self-referral prohibition, we mistakenly included three codes and omitted five codes. On page 55502, in the first column, CPT code ''76390 MR spectroscopy'' is removed. This service is not covered by Medicare (see section 50–13, ''Magnetic Resonance Imaging,'' of the Coverage Issues Manual (HCFA Pub. 6)) and was mistakenly included.

On page 55502, in the second column, HCPCS code ''*G0188 Xray lwr extrmty-full lngth*'' is removed from the listing under ''Radiology.'' This code was discontinued under HCPCS effective December 31, 2001. On page 55502, in the third column under the heading ''Radiation Therapy Services and Supplies,'' the subheading that reads ''INCLUDE CPT codes for radiation therapy classified elsewhere'' is amended by adding the words ''HCPCS and'' after ''INCLUDE''. Following the last entry under the revised subheading, the following codes are added: ''*G0242 Multisource photon ster plan*'' and ''*G0243 Multisour photon stero treat*''.

These codes were inadvertently omitted from the November 1, 2001 rule. On page 55502, in the third column under the heading ''Preventive Screening Tests, Immunizations and Vaccines,'' HCPCS code ''*Q3018 Hepatitis B vaccine*'' is removed. This code was never incorporated under HCPCS. Also on page 55502, in the third column under the heading ''Preventive Screening Tests, Immunizations and Vaccines,'' CPT codes ''*90744 Hepb vacc ped/adol 3 dose im*'', ''*90746 Hep b vaccine, adult, im*'', and ''*90747 Hepb vacc, ill pat 4 dose im*'' are added in numerical order. These three codes were mistakenly removed. The additions and deletions to Addendum E are shown in correction number 28 and 29 to follow.

**Note:** To view the updated list of codes in its entirety, refer to our physician self-referral website at www.hcfa.gov/medlearn/refphys.htm.

## III. Correction of Errors

In FR Doc. 01–27275 of November 1, 2001 (67 FR 55246), make the following corrections:

1. On page 55246, in column two, the ''Effective date'' section is corrected to read as follows:

''*Effective date:* This rule is effective January 1, 2002 except for the provisions updating the list of codes used to define certain ''designated health services'' under the physician self-referral prohibition set forth in section 1877 of the Social Security Act (42 U.S.C. section 1395nn). Those provisions appear in Addendum E and are effective January 4, 2002.''

As we explained in the preamble to the November 1, 2001 rule (66 FR 55311), the updated list of codes regarding certain designated health services under the physician self-referral prohibition would become effective on January 4, 2002 because that is the effective date for the relevant provisions of the physician self-referral final rule that was published on January 4, 2001. We inadvertently omitted the January 4, 2002 effective date from the *Effective date* section of the November 1, 2001 rule.

2. On page 55256, we failed to specify that we were not including certain supplies for CPT code 97601. Add the following at the top of the third column on this page:

''• For CPT code 97601, *Wound(s), care selective,* we deleted the hi pressure water jet gun and the disposable water jet tip from the supplies as these are not typically used in this procedure.''

3. On page 55269, column one in the table of codes the ASA base unit value for code 01916 should be ''5'' rather than ''6''. Also under the discussion concerning anesthesia base units in the Result of Evaluation of Comments replace the word ''proposed'' in lines 11 and 16 with the word ''assigned as interim values''.

4. On page 55272, the following corrections are made to Table 3.—2002 MAMMOGRAPHY PAYMENTS

| CPT [1]/HCPCS | MOD | Descriptor | Work RVU | Practice expense RVU | Malpractice RVU | Total |
|---|---|---|---|---|---|---|
| 76092 | | Mammogram, screening | 0.70 | 1.47 | 0.09 | 2.26 |
| 76092 | 26 | Mammogram, screening | 0.70 | 0.25 | 0.03 | 0.98 |
| 76092 | TC | Mammogram, screening | 0.00 | 1.22 | 0.06 | 1.28 |
| G0236 | | Computer aided detect, diag | 0.06 | 0.41 | 0.02 | 0.49 |
| G0236 | 26 | Computer aided detect, diag | 0.06 | 0.02 | 0.01 | 0.09 |
| G0236 | TC | Computer aided detect, diag | 0.00 | 0.39 | 0.01 | 0.40 |
| 76085 | | Computer aided detection | 0.06 | 0.41 | 0.02 | 0.49 |
| 76085 | 26 | Computer aided detection | 0.06 | 0.02 | 0.01 | 0.09 |
| 76085 | TC | Computer aided detection | 0.00 | 0.39 | 0.01 | 0.40 |

[1] CPT codes and descriptions only are copyright 2001 American Medical Association.

5. On page 55274, column two, in the second sentence of the response replace ''compared to the key components of a level III evaluation and management (CPT code 99213)'' with the following ''compared to the key components of an evaluation and management service (CPT code 99213).

6. On page 55287, the footnote for table 4 is revised to reference the correct copyright date and should read as follows ''CPT codes and descriptions only are copyright 2001 American Medical Association.''

7. On page 55291 in column one and column two after the discussions summarizing what was in the proposed notice and before the Comment discussion for CPT codes 43259 and 43263, 43265, and 43269 add the following sentence ''We disagreed and proposed to maintain the current RVUs.''

8. On page 55295, the footnote for table 5 is revised to reference the correct copyright date and should read as follows ''CPT codes and descriptions only are copyright 2001 American Medical Association.''

9. On page 55304, add the following information concerning CPT code 90474 in Table 6 between CPT code 90473 and CPT code 90939:

| *CPT Code | Mod | Description | RUC recommendation | HCPAC recommendation | CMS Decision | 2002 work RVU |
|---|---|---|---|---|---|---|
| 90474# | | Immune admin oral/nasal addl | 0.15 | | Disagree | 0.00 |

10. On page 55305, the last footnote for table 6 and the two footnotes for table 7 are revised to reference the correct copyright date and should read as follows ''CPT codes and descriptions

only are copyright 2001 American Medical Association.''

11. On page 55307, in the discussion of new and revised codes, language was inadvertently omitted from our discussion of CPT code 53853. Replace existing language beginning at first paragraph in column three (''We note * * *'') and the table in the middle of the page with the following:

We note that although the intraservice time for CPT code 53853 is sixty minutes, most of that time is spent monitoring the flow of hot water through a catheter and balloon and checking the water's temperature. We estimate that the maximum amount of time spent on activities other than monitoring is 20 minutes. This means that the work intensity for the intraservice portion of this procedure is significantly less than it is for most other surgical procedures and, specifically, the reference codes examined by the RUC. Therefore we compared CPT code 53853 to 90-day global procedures with less than 30 minutes of intraservice time and to zero-day globals involving insertion of catheters with similar intraservice times. For these reasons we compared CPT code 58350 to the following procedures:

| CPT [1] Code | Global period | Work RVU | Intraservice time (minutes) | Pre/post service time |
|---|---|---|---|---|
| 53853 Transurethral destruction of prostate tissue; by water induced thermotherapy. | 90 | RUC–6.41 | 60 | 113 (see below) |
| | | CMS assigned RVU–4.14. | | |
| 30130 Excision turbinate, partial or complete, any method. | 90 | 3.38 | 27 | 78 |
| 36520 Therapeutic Apheresis; plasma and/or cell exchange. | 000 | 1.74 | 60 | 40 |
| 42826 Tonsillectomy, primary or secondary; age 12 or over. | 90 | 3.38 | 28 | 82 |
| 46045 Incision and drainage of intramural, intramuscular, or submucosal abscess, transanal, under anesthesia. | 90 | 4.32 | 25 | 206 |
| 49420 intraperitoneal cannula or catheter for drainage or dialysis; temporary. | 000 | 2.22 | 48 | 39 |
| 46946 Ligation of internal hemorrhoids; multiple procedures. | 90 | 3.0 | 25 | 75 |
| 53675 Catheterization, urethra; complicated (may include difficult removal of balloon catheter). | 000 | 1.47 | 30 | 26 |
| 58800 Drainage of ovarian cyst(s), unilateral or bilateral, (separate procedure); vaginal approach. | 90 | 4.14 | 23 | 100 |
| 61105 Twist burr hole for subdural or ventricular puncture. | 90 | 5.14 | 27 | 97 |
| 65810 Paracentesis of anterior chamber of eye (separate procedure); with removal of vitreous and/or discussion of anterior hyaloid membrane, with or without air injection. | 90 | 4.87 | 28 | 104 |
| 67031 Severing of vitreous strands, vitreous face adhesions, sheets, membranes, or opacities, laser surgery (one or more stages). | 90 | 3.67 | 26 | 79 |

[1] CPT codes and descriptions only are copyright 2001 American Medical Association.

**Additions and Deletions to the Physician Self-Referral Codes**

12. On page 55312, Table 8—''Additions and Deletions to the Physician Self-Referral Codes'' is amended as follows and is shown below:

a. Under the subheading ''Additions,'' by removing the periods after every entry; by removing spaces between words in the description of HCPCS codes G0202, G0204 and G0206; by adding in alphanumeric order the codes ''G0242 Multisource photon ster plan'' and ''G0243 Multisour photon stero treat''; and by removing code ''Q3018 Hepatitis B vaccine.''

b. Under the subheading ''Deletions,'' by removing the three entries under the subheading; and by adding the codes ''76390 MR spectroscopy'' and ''G0188 Xray lwr extrmty-full lngth.''

c. By revising the footnote to read ''CPT codes and descriptions only are copyright 2001 American Medical Association. All rights are reserved and applicable FARS/DFARS clauses apply.''

TABLE 8.—ADDITIONS AND DELETIONS TO THE PHYSICIAN SELF-REFERRAL CODES

| Codes | Description |
|---|---|
| **Additions CPT [1] or HCPCS Codes:** | |
| 76085 .. | Computer mammogram add-on |
| 77301 .. | Radioltherapy dos plan, imrt |
| 77418 .. | Radiation tx delivery, imrt |
| 92974 .. | Cath place, cardio brachytx |
| 96000 .. | Motion analysis, video/3d |
| 96001 .. | Motion test w/ft press meas |
| 96002 .. | Dynamic surface emg |
| 96003 .. | Dynamic fine wire emg |
| G0202 | Screeningmammographydigital |
| G0204 | Diagnosticmammographydigital |
| G0206 | Diagnosticmammographydigital |
| G0236 | Digital film convert diag ma |
| G0242 | Multisource photon ster plan |
| G0243 | Multisour photon stero treat |
| J1270 .. | Injection, doxercalciferol |
| J1755 .. | Injection, iron sucrose |
| **Deletions: CPT [1] or HCPCS Codes:** | |
| 76390 .. | MR spectroscopy |
| G0188 | Xray lwr extrmty-full lngth |

[1] CPT codes and descriptions only are copyright 2001 American Medical Association. All rights are reserved and applicable FARS/DFARS clauses apply.

13. On page 55312 in the second column, the first paragraph is amended by revising the third sentence to read as follows: ''Table 8 also includes 2 codes

(G0202 and 76085) that we have identified as screening tests.''

14. On page 55329, 42 CFR 410.26(a)(3) is revised to read:

(a) * * *

(3) Independent contractor means an individual (or an entity that has hired such an individual) who performs part-time or full-time work for which the individual (or the entity that has hired such an individual) receives an IRS–1099 form.

* * * * *

15. On page 55331, 42 CFR 410.134(d)(ii) the word ''dietician'' is revised to read ''dietitian''.

16. On page 55333 in Addendum B, in column three add the following after the entry for status indicator ''E'':

* * * * *

F = Deleted/discontinued codes. (Code not subject to a 90-day grace period).

* * * * *

17. On page 55334 in Addendum B, in the first and second columns of the key describing Addenda B and C descriptions for the columns for practice expense RVUs (items 6 and 7) and totals (items 9 and 10) do not agree with the layout of the addenda. These descriptions are corrected as follows:

* * * * *

6. *Non-facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for non-facility settings.

7. *Facility practice expense RVUs.* These are the fully implemented resource-based practice expense RVUs for facility settings.

* * * * *

9. *Non-facility total.* This is the sum of the work, fully implemented non-facility practice expense, and malpractice expense RVUs.

10. *Facility total.* This is the sum of the work, fully implemented facility practice expense, and malpractice expense RVUs.

* * * * *

## IV. Addenda B and C [Corrected]

In the Tables of Addenda B and C the following HCPCS codes are corrected to read as follows:

INSERT EXCEL TABLES HERE FOR ADDENDA B and C corrections FILE: CN1169rev130.xls

18. In the Table of Addendum B the following HCPCS codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 10021 | 26 | H | Fna w/o image | 1.27 | 0.55 | 0.55 | 0.07 | 1.89 | 1.89 | XXX |
| 10021 | TC | H | Fna w/o image | 0.00 | 0.47 | NA | 0.03 | 0.50 | NA | XXX |
| 10022 | 26 | H | Fna w/ image | 1.27 | 0.48 | 0.48 | 0.05 | 1.80 | 1.80 | XXX |
| 10022 | TC | H | Fna w/ image | 0.00 | 0.63 | NA | 0.03 | 0.66 | NA | XXX |
| 93613 | 26 | H | Electrophys map, 3d, add-on | 7.00 | 2.79 | 2.79 | 0.52 | 10.31 | 10.31 | XXX |
| 93613 | TC | H | Electrophys map, 3d, add-on | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A4263 | | B | Permanent tear duct plug | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A4329 | | F | External catheter start set | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A4550 | | B | Surgical trays | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A5064 | | F | Drain ostomy pouch w/fceplte | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A5074 | | F | Urinary pouch w/faceplate | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| A5075 | | F | Urinary pouch on faceplate | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0025 | | B | Collagen skin test kit | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0126 | | F | Lung image (PET) staging | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0126 | 26 | F | Lung image (PET) staging | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0126 | TC | F | Lung image (PET) staging | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0163 | | F | Pet for rec of colorectal ca | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0163 | 26 | F | Pet for rec of colorectal ca | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0163 | TC | F | Pet for rec of colorectal ca | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0164 | | F | Pet for lymphoma staging | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0164 | 26 | F | Pet for lymphoma staging | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0164 | TC | F | Pet for lymphoma staging | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0165 | | F | Pet, rec melanoma/met ca | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0165 | 26 | F | Pet, rec melanoma/met ca | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0165 | TC | F | Pet, rec melanoma/met ca | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | XXX |
| G0203 | | F | Screenmamammographyfilmdigital | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0205 | | F | Diagnostic mammography filmpro | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0205 | 26 | F | Diagnostic mammographyfilmpro | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0205 | TC | F | Diagnostic mammographyfilmpro | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0207 | | F | Diagnostic mammographyfilm | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0207 | 26 | F | Diagnostic mammographyfilm | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0207 | TC | F | Diagnostic mammographyfilm | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| J7193 | | X | Factor IX non-recombinant | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| J7195 | | X | Factor IX recombinant | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| J7198 | | X | Anti-inhibitor | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| J7199 | | X | Hemophilia clot factor noc | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| Q0187 | | X | Factor via recombinant | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| Q3014 | | X | Telehealth facility fee | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| Q3017 | | X | ALS assessment | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |

19. In the Table of Addendum B the following HCPCS codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 92597 ..... | | ..... | Oral speech device eval ..... | +1.35 | 1.49 | 0.54 | 0.05 | 2.89 | 1.94 | XXX |
| 92598 ..... | | ..... | Modify oral speech device ..... | +0.99 | 0.76 | 0.40 | 0.04 | 1.79 | 1.43 | XXX |
| 99375 ..... | | ..... | Home health care supervision ..... | +1.73 | 1.57 | NA | 0.06 | 3.36 | NA | XXX |
| 99378 ..... | | ..... | Hospice care supervision ..... | +1.73 | 1.97 | NA | 0.06 | 3.76 | NA | XXX |

20. In the Table of Addendum B the following HCPCS codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 76390 ..... | | N | Mr spectroscopy ..... | 1.40 | 11.14 | NA | 0.55 | 13.09 | NA | XXX |
| 76390 ..... | 26 | N | Mr spectroscopy ..... | 1.40 | 0.50 | 0.50 | 0.06 | 1.96 | 1.96 | XXX |
| 76390 ..... | TC | N | Mr spectroscopy ..... | 0.00 | 10.64 | NA | 0.49 | 11.13 | NA | XXX |
| 90887 ..... | | N | Consultation with family ..... | +1.48 | 0.83 | 0.59 | 0.03 | 2.34 | 2.10 | XXX |

21. In the Table of Addendum B the following HCPCS codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 36533 ..... | | A | insertion of access device ..... | 5.32 | 15.34 | 3.50 | 0.49 | 21.15 | 9.31 | 000 |

22. In the Tables of Addendum B and C the following CPT codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 76085 ..... | | A | Computer mammogram add-on ..... | 0.06 | 0.41 | NA | 0.02 | 0.49 | NA | ZZZ |
| 76085 ..... | TC | A | Computer mammogram add-on ..... | 0.00 | 0.39 | NA | 0.01 | 0.40 | NA | ZZZ |

23. In the Tables of Addendum B and C the following CPT codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician Work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 93025 ..... | | A | Microvolt t-wave assess ..... | 0.75 | 6.51 | NA | 0.11 | 7.37 | NA | XXX |
| 93025 ..... | 26 | A | Microvolt t-wave assess ..... | 0.75 | 0.32 | 0.32 | 0.02 | 1.09 | 1.09 | XXX |
| 93025 ..... | TC | A | Microvolt t-wave assess ..... | 0.00 | 6.19 | NA | 0.09 | 6.28 | NA | XXX |

24. In the Tables of Addenda B and C the following CPT codes are corrected to read as follows:

| CPT [1] HCPCS2 | MOD | Status | Description | Physician work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 93613 ..... | | C | Electrophys map, 3d, add-on ..... | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | ZZZ |
| 93662 ..... | TC | C | Intracardiac ecg (ice) ..... | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | ZZZ |

| CPT[1] HCPCS2 | MOD | Status | Description | Physician work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 95824 ..... | | C | Electroencephalography ..... | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | ZZZ |
| 95824 ..... | TC | C | Electroencephalography ..... | 0.00 | 0.00 | NA | 0.00 | 0.00 | NA | ZZZ |

25. In the Tables of Addenda B and C the following CPT codes are corrected to read as follows:

| CPT[1] HCPCS2 | MOD | Status | Description | Physician work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 76092 ..... | | A | mammogram, screening ..... | 0.70 | 1.47 | NA | 0.09 | 2.26 | NA | XXX |
| 76092 ..... | TC | A | mammogram, screening ..... | 0.00 | 1.22 | NA | 0.06 | 1.28 | NA | XXX |
| 92136 ..... | | A | Ophthalmic biometry ..... | 0.54 | 1.95 | NA | 0.07 | 2.56 | NA | XXX |
| 92136 ..... | 26 | A | Ophthalmic biometry ..... | 0.54 | 0.26 | 0.26 | 0.01 | 0.81 | 0.81 | XXX |
| 92136 ..... | TC | A | Ophthalmic biometry ..... | 0.00 | 1.69 | NA | 0.06 | 1.75 | NA | XXX |
| 95250 ..... | | A | Glucose monitoring, cont ..... | 0.00 | 3.02 | NA | 0.01 | 3.03 | NA | XXX |
| 95808 ..... | | A | Polysomnography, 1–3 ..... | 2.65 | 9.54 | NA | 0.44 | 12.63 | NA | XXX |
| 95808 ..... | 26 | A | Polysomnography, 1–3 ..... | 2.65 | 0.99 | 0.99 | 0.09 | 3.73 | 3.73 | XXX |
| 95808 ..... | TC | A | Polysomnography, 1–3 ..... | 0.00 | 8.55 | NA | 0.35 | 8.90 | NA | XXX |
| 95810 ..... | | A | Polysomnography, 4 or more ..... | 3.53 | 16.92 | NA | 0.47 | 20.92 | NA | XXX |
| 95810 ..... | 26 | A | Polysomnography, 4 or more ..... | 3.53 | 1.26 | 1.26 | 0.12 | 4.91 | 4.91 | XXX |
| 95810 ..... | TC | A | Polysomnography, 4 or more ..... | 0.00 | 15.66 | NA | 0.35 | 16.01 | NA | XXX |
| 95811 ..... | | A | Polysomnography, wcpap ..... | 3.80 | 17.19 | NA | 0.49 | 21.48 | NA | XXX |
| 95811 ..... | 28 | A | Polysomnography, wcpap ..... | 3.80 | 1.34 | 1.34 | 0.13 | 5.27 | 5.27 | XXX |
| 95811 ..... | TC | A | Polysomnography, wcpap ..... | 0.00 | 15.85 | NA | 0.36 | 16.21 | NA | XXX |
| 95903 ..... | | A | Motor nerve conduction ..... | 0.60 | 0.81 | NA | 0.04 | 1.45 | NA | XXX |
| 95903 ..... | 26 | A | Motor nerve conduction ..... | 0.60 | 0.27 | 0.27 | 0.02 | 0.89 | 0.89 | XXX |
| 95903 ..... | TC | A | Motor nerve conduction ..... | 0.00 | 0.54 | NA | 0.02 | 0.56 | NA | XXX |
| 95951 ..... | | A | EEG monitoring/videorecord ..... | 6.00 | 39.72 | NA | 0.58 | 46.30 | NA | XXX |
| 95951 ..... | TC | A | EEG monitoring/videorecord ..... | 0.00 | 37.00 | NA | 0.38 | 37.38 | NA | XXX |
| 95956 ..... | | A | Eeg monitoring, cable/radio ..... | 3.08 | 12.34 | NA | 0.47 | 15.89 | NA | XXX |
| 95956 ..... | TC | A | Eeg monitoring, cable/radio ..... | 0.00 | 11.04 | NA | 0.36 | 11.40 | NA | XXX |
| G0108 .... | | A | Diab manage trn per indiv ..... | 0.00 | 0.82 | NA | 0.01 | 0.83 | NA | XXX |
| G0109 .... | | A | Diab manage trn indi/group ..... | 0.00 | 0.48 | NA | 0.01 | 0.49 | NA | XXX |
| G0236 .... | | A | digital film convert diag ma ..... | 0.06 | 0.41 | NA | 0.02 | 0.49 | NA | ZZZ |
| G0236 .... | TC | A | digital film convert diag ma ..... | 0.00 | 0.39 | NA | 0.01 | 0.40 | NA | ZZZ |

26. In the Table of Addendum B the following CPT codes are corrected to read as follows:

| CPT[1] HCPCS2 | MOD | Status | Description | Physician work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| 97601 ..... | | A | Wound(s) care selective ..... | 0.50 | 0.61 | 0.61 | 0.04 | 1.15 | 1.15 | XXX |

27. The following HCPCS codes should be added to the Table of Addendum C to read as follows:

| CPT[1] HCPCS2 | MOD | Status | Description | Physician work RVUs | Fully implemented non-facility PE RVUs | Fully implemented facility PE RVUs | Malpractice RVUs | Fully implemented non-facility total | Fully implemented facility total | Global |
|---|---|---|---|---|---|---|---|---|---|---|
| G0237 .... | | A | Therapeutic procd strg endur ..... | 0.00 | 0.45 | NA | 0.02 | 0.47 | NA | XXX |
| G0238 .... | | C | Oth resp proc, indiv ..... | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |
| G0239 .... | | C | Oth resp proc, group ..... | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 | XXX |

## V. Addendum E [Corrected]

28. In the table of Addendum E, the following HCPCS codes for Radiation Therapy Services and Supplies are added immediately following HCPCS code 92974 and the following HCPCS codes for Preventive Screening Tests, Immunizations and Vaccines are added immediately following HCPCS code 90732:

RADIATION THERAPY SERVICES AND SUPPLIES

| | |
|---|---|
| G0242 | Multisource photon stero plan. |
| G0243 | Multisource photon stero treat. |

PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES

| | |
|---|---|
| 90744 .. | Hep b vacc ped/adol 3 dose im. |
| 90746 .. | Hep b vaccine, adult im. |
| 90747 .. | Hep b vacc, ill pat 4 dose im. |

29. In the table of Addendum E, the following HCPCS codes are removed:

RADIOLOGY

| | |
|---|---|
| 76390 .. | MR spectroscopy. |
| G0188 | Xray lwr extrmty-full lngth. |

PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES

| | |
|---|---|
| Q3018 | Hepatitis B vaccine. |

## VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a Notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this document merely provides technical corrections to the regulations. Therefore, we find good cause, we waive notice and comment procedures.

**Authority:** (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: April 11, 2002.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 02–9395 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 208 and 210**

**[DFARS Case 2002–D003]**

## Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act. Section 811 requires DoD to conduct market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector.

**DATES:** Effective date: April 26, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before June 25, 2002, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002–D003 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D003.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule amends the DFARS to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act (Public Law 107–107). Section 811 requires DoD to conduct market research before purchasing a product listed in the FPI catalog, to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector. If the FPI product is not comparable, DoD must use competitive procedures to acquire the product. In conducting such a competition, DoD must consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule will permit small entities to compete with FPI for DoD contract awards under certain conditions. An initial regulatory flexibility analysis has been prepared and is summarized as follows: This interim rule amends DoD policy pertaining to the acquisition of products from FPI. The rule implements new statutory requirements. The impact of the rule is unknown at this time. However, the rule could benefit small business concerns that offer products comparable to those listed in the FPI catalog, by permitting those concerns to compete for DoD contract awards.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D003.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 811 of the Fiscal Year 2002 National Defense Authorization Act (Public Law 107–107). Section 811 requires DoD to conduct market research before purchasing a product

listed in the FPI catalog to determine whether the FPI product is comparable to products available from the private sector. If the FPI product is not comparable, DoD must use competitive procedures to acquire the product. Section 811 became effective on October 1, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Parts 208 and 210**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 208 and 210 are amended as follows:

1. The authority citation for 48 CFR Part 208 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.602 is added to read as follows:

**208.602 Policy.**

(a) Before purchasing a product listed in the FPI Schedule, departments and agencies shall conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral decision made solely at the discretion of the department or agency.

(i) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(ii) If the FPI product is not comparable—

(A) Use competitive procedures to acquire the product; and

(B) Consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

3. Section 208.606 is revised to read as follows:

**208.606 Exceptions.**

For DoD, FPI clearances also are not required—

(1) For orders of listed items totaling $250 or less that require delivery within 10 days; or

(2) If market research shows that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery.

4. Part 210 is added to read as follows:

## PART 210—MARKET RESEARCH

Sec.
210.001 Policy.

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**210.001 Policy.**

(a) Also conduct market research before purchasing a product listed in the Federal Prison Industries (FPI) Schedule. Use the results to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. (See subpart 208.6.)

[FR Doc. 02–10097 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–U

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 215

**[DFARS Case 2000–D018]**

## Defense Federal Acquisition Regulation Supplement; Changes to Profit Policy

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make changes to profit policy. The changes reduce the emphasis on facilities investment, add general and administrative expense to the cost base used in determining profit objectives, increase emphasis on performance risk, and encourage contractor cost efficiency.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2000–D018.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This final rule amends the profit policy in DFARS Subpart 215.4. The rule—

- Reduces the value assigned to facilities capital employed for equipment by 50 percent, and eliminates facilities capital employed for buildings in establishing profit objectives on sole source, negotiated contracts;
- Offsets these changes by increasing the values for performance risk by 1 percentage point; and
- Adds a special factor for cost efficiency to encourage cost reduction efforts.

DoD published a proposed rule at 65 FR 45574 on July 24, 2000. Due to the complexity of the issues raised in the comments received, DoD published a notice of public meeting at 65 FR 69895 on November 21, 2000. The public meeting was held on December 12, 2000. After considering written comments received in response to the proposed rule, and verbal comments provided during the public meeting, DoD published a second proposed rule at 66 FR 48649 on September 21, 2001.

DoD received comments from five respondents on the second proposed rule. The comments, grouped into eight major categories, are discussed below:

1. *Use of the Cost Efficiency Factor.* Several respondents expressed concern regarding the measurement and documentation of cost savings. One thought metrics should be developed to aid in assessing cost efficiency gains. Another thought consideration should be expanded beyond ''pending contracts'' and that its use should be mandatory. Another wanted an element in the cost efficiency factor that would recognize new facilities when they contributed to improved productivity. *DoD Response:* Partially concur. A sentence has been added to DFARS 215.404–71–5(b)(4) to suggest how metrics could be used to demonstrate cost reduction efforts. The policy requires the contractor to demonstrate cost reduction efforts that benefit the pending contract. While we believe in a longer-term focus, we believe that the longer-term payoff will be on those contract actions that actually benefit from the contractor's efforts at cost reduction. Since cost efficiency is being added as a special factor, it already must be considered; however, we do not concur with mandating its use. We have also added a new 215.404–41–5(b)(8) to recognize new facilities when such investments contribute to improved productivity.

2. *Reduction of Facilities Capital Employed as a Factor in Calculating Profit Objectives.* One respondent wanted facilities capital completely restored while another wanted only the equipment portion restored. A number of respondents believed it was a good idea to eliminate facilities capital, while others thought there might be circumstances where it would be desirable to reward facilities investment. *DoD Response:* Partially concur. The equipment portion has been restored by 50 percent from the policy shown in the first proposed rule. DoD remains concerned about overcapacity

within the defense industry and continues to believe some reduction in emphasis on facilities capital employed is warranted. However, we added a new 215.404–71–5(b)(8) so that contracting officers could recognize new facilities as part of the cost efficiency factor in appropriate circumstances.

3. *Adding general and administrative (G&A) expense to the Cost base used to develop profit objectives.* Some respondents thought putting G&A expense back into the cost base was a good idea, while others thought it would incentivize contractors to increase their G&A costs. *DoD Response:* Most other agencies include G&A in computing profit objectives, and this was the DoD policy until 1986. We believe that adding G&A into the cost base results in consistent treatment of all allowable costs when computing profit objectives, and that G&A expenses should not be subject to less favorable treatment than other types of contract costs.

4. *Revenue neutrality.* Some respondents believed that the changes to the profit policy would increase negotiated profits; one thought profits would stay the same; and one thought profits would decrease under the proposed policy. *DoD Response:* DoD's goal was to have the policy changes be revenue neutral, excluding the cost efficiency factor. We believe the final policy achieves that objective.

5. *Performance risk.* One respondent did not agree with the added emphasis on performance risk, whereas another respondent stated that the high end of the range should be increased to allow the contracting officer to provide the statutory limits where the risk merits the highest fee. *DoD Response:* Do not concur. The increase to performance risk was to offset the impact of reducing facilities capital employed, thereby maintaining revenue neutrality. Any further increase or decrease would affect the goal of revenue neutrality. Statutory limits of profit apply only to cost-plus-fixed-fee contracts.

6. *Contract type risk.* One respondent recommended increasing the weights for fixed-price contracts. *DoD Response:* Do not concur. This policy makes no change to contract type risk.

7. *Eliminate structured approach.* One respondent recommended eliminating the structured approach to profit, determining profit based on sound business judgment, and establishing a website with guidance on current profit incentivizing techniques used by Government and industry. *DoD Response:* Do not concur. The FAR requires a structured approach for establishing profit objectives. The ''Guide to Incentive Strategies for Defense Acquisitions'' is available at www.acq.osd.mil/ar/resources.htm.

8. *Other Comments*

a. One respondent indicated that DoD should expressly allow and encourage the use of a technology incentive factor for superior life cycle support through COTS insertion. *DoD Response:* Technology incentive is not being considered as a part of this case.

b. One respondent recommended modifying DFARS 215.404–71–3(d)(2) so that it is inoperative when contractors furnish funds prior to contract award in order to protect schedule, permit efficient material ordering, and provide continuity of workflow. Additional profit for management/cost control should be allowed. *DoD Response:* Current policy is appropriate, which requires the contracting officer to assess the extent to which costs have been incurred prior to contract definitization, reimburse the contractor for actual costs incurred, and reduce contract risk accordingly.

c. One respondent stated that adjusting a factor or two by a point or half a point is not going to provide adequate incentive to change contractor operations. *DoD Response:* Concur. That is why a 4 percent factor for cost efficiency was added.

d. One respondent recommended eliminating cost of money since the money at stake is often minimal. *DoD Response:* Do not concur.

e. One respondent recommended that the profit percentage should be lowered if performance-based payments are used. *DoD Response:* Concur. The DFARS weighted guidelines method already has different weights for this type of financing than for the progress payments type of financing. In addition, contracts with performance-based payments do not receive any working capital adjustment factor.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are below $500,000, are based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 215**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 215 is amended as follows:

1. The authority citation for 48 CFR Part 215 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 215—CONTRACTING BY NEGOTIATION

2. Sections 215.404–71–1 and 215.404–71–2 are revised to read as follows:

### 215.404–71–1 General.

(a) The weighted guidelines method focuses on four profit factors—

(1) Performance risk;

(2) Contract type risk;

(3) Facilities capital employed; and

(4) Cost efficiency.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used (see 215.404–71–5).

### 215.404–71–2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

| Item | Contractor risk factors | Assigned weighting | Assigned value | Base (item 20) | Profit objective |
|---|---|---|---|---|---|
| 21 | Technical | (1) | (2) | N/A | N/A |
| 22 | Management/Cost Control | (1) | (2) | N/A | N/A |
| 23 | Reserved. | | | | |
| 24 | Performance Risk (Composite) | N/A | (3) | (4) | (5) |

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

| | Assigned weighting (percent) | Assigned value (percent) | Weighted value (percent) |
|---|---|---|---|
| Technical | 60 | 5.0 | 3.0 |
| Management/Cost Control | 40 | 4.0 | 1.6 |
| Composite Value | 100 | | 4.6 |

(4) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

(5) Multiply (3) by (4).

(c) Values: Normal and designated ranges.

| | Normal value (percent) | Designated range |
|---|---|---|
| Standard | 5 | 3% to 7% |
| Technology Incentive. | 9 | 7% to 11% |

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.*

(1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Requirements are relatively simple;

(B) Technology is not complex;

(C) Efforts do not require highly skilled personnel;

(D) Efforts are routine;

(E) Programs are mature; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the

norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The adequacy of the contractor's management approach to controlling cost and schedule; and

(vii) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value when there is a high degree of management effort. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a good record of past performance;

(D) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(E) The contractor provides fully documented and reliable cost estimates;

(F) The contractor makes appropriate make-or-buy decisions; or

(G) The contractor has a proven record of cost tracking and control.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate;

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or

(K) The contractor has a poor record of past performance.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

3. Section 215.404–71–3 is amended as follows:

a. In paragraph (b), in the table, by removing the heading ''Base (Item 18)'' and adding in its place ''Base (Item 20)''; and

b. By revising paragraph (b)(2) and the introductory text of paragraph (e)(2) to read as follows:

**215.404–71–3 Contract type risk and working capital adjustment.**

* * * * *

(b) * * *

(2) Insert the amount from Block 20, i.e., the total allowable costs excluding facilities capital cost of money.

* * * * *

(e) * * *

(2) Total costs equal Block 20 (i.e., all allowable costs excluding facilities capital cost of money), reduced as appropriate when—

* * * * *

4. Section 215.404–71–4 is amended as follows:

a. In paragraph (a), in the first sentence, by removing the word ''aggressive'';

b. In paragraph (b)(2)(ii), in the first and last sentences, by removing ''Block 18'' and adding in its place ''Block 20'; and

c. By revising paragraphs (c) and (d) to read as follows:

**215.404–71–4 Facilities capital employed.**

* * * * *

(c) *Values: Normal and designated ranges.* These are the normal values and ranges. They apply to all situations.

| Asset type | Normal value (percent) | Designated range |
|---|---|---|
| Land | 0 | N/A |
| Buildings | 0 | N/A |
| Equipment | 17.5 | 10 to 25 |

(d) *Evaluation criteria.*

(1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD; and

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(2) *Above normal conditions.*

(i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries; or

(B) Investments in new equipment for research and development applications.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

5. Section 215.404–71–5 is added to read as follows:

**215.404–71–5 Cost efficiency factor.**

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts.

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

(1) The contractor's participation in Single Process Initiative improvements;

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;

(5) The contractor's adoption of process improvements to reduce costs;

(6) Subcontractor cost reduction efforts;

(7) The contractor's effective incorporation of commercial items and processes; or

(8) The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

**215.404–72 [Amended]**

6. Section 215.404–72 is amended as follows:

a. In paragraph (b)(1)(i), in the first sentence, by removing ''Block 18'' and adding in its place ''Block 20'';

b. By removing paragraph (b)(1)(ii); and

c. By redesignating paragraph (b)(1)(iii) as paragraph (b)(1)(ii).

7. Section 215.404–73 is amended by revising the first sentence of paragraph (b)(2)(i) to read as follows:

**215.404–73 Alternate structured approaches.**

* * * * *

(b) * * *

(2) * * *

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money. * * *

* * * * *

8. Section 215.404–74 is amended by revising paragraph (c) to read as follows:

**215.404–74 Fee requirements for cost-plus-award-fee contracts.**

* * * * *

(c) Apply the offset policy in 215.404–73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money; and

* * * * *

[FR Doc. 02–10096 Filed 4–25–02; 8:45 am]

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## DEPARTMENT OF DEFENSE

## 48 CFR Part 225

**[DFARS Case 2002–D007]**

## Defense Federal Acquisition Regulation Supplement; NAFTA Procurement Threshold

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). The rule implements the determination of the U.S. Trade Representative to increase the dollar threshold for application of the North American Free Trade Agreement (NAFTA) to procurement of goods from Mexico, from $54,372 to $56,190.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D007.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On February 21, 2002 (67 FR 8057), the U.S. Trade Representative published a determination that increased the dollar threshold for application of NAFTA to procurement of goods from Mexico, from $54,372 to $56,190. This final rule amends the prescription for use of the clause at DFARS 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, to reflect the new dollar threshold.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2002–D007.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 225

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 225 is amended as follows:

1. The authority citation for 48 CFR part 225 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

**225.1101 [Amended]**

2. Section 225.1101 is amended in paragraph (13)(i)(A) in the first sentence, and in paragraph (13)(i)(B), by removing ''$54,372'' and adding in its place ''$56,190''.

[FR Doc. 02–10098 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

## 48 CFR Parts 225 and 252

**[DFARS Case 2000–D020]**

## Defense Federal Acquisition Regulation Supplement; Balance of Payments Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy pertaining to the Balance of Payments Program. The DFARS policy replaces Federal Acquisition Regulation (FAR) policy on this subject that is being eliminated. The Balance of Payments Program provides a preference for the acquisition of domestic supplies and construction material for use outside the United States.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2000–D020.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This DFARS rule provides policy pertaining to the Balance of Payments Program to replace FAR policy on this subject that has been proposed for elimination (65 FR 54936, September 11, 2000). The Balance of Payments Program applies to contracts for supplies to be used, and construction to be performed, outside the United States. Although the DFARS already contained policy that implemented the Balance of Payments Program for acquisition of supplies for use outside the United States, DoD used the FAR policy for construction contracts performed outside the United States. This final rule adds DFARS policy for application of the Balance of Payments Program to construction contracts.

DoD published a proposed rule with request for comments at 66 FR 47155 on September 11, 2001. DoD also requested comments on the advisability of discontinuing application of the Balance of Payments Program to DoD construction contracts.

Seven sources submitted comments on the proposed rule. Four of the respondents expressed concerns regarding the potential impact of the rule on the American maritime industry. A summary of these comments and the DoD response is provided below:

• *Comment:* The Balance of Payments Program should be applied to purchases at or below the simplified acquisition threshold.

*DoD Response:* Do not concur. The exception for purchases at or below the simplified acquisition threshold represents a continuation of the policy at FAR 25.303(a). DoD is not aware of any significant negative impact to domestic sources that has resulted from use of this exception.

• *Comment:* DoD should eliminate the policy that permits a contracting officer to make a pre-solicitation determination that a requirement can be filled only by a foreign product.

*DoD Response:* Do not concur. The DFARS policy sufficiently identifies the situations where such a determination would be appropriate and, therefore, should not arbitrarily or adversely affect domestic sources.

• *Comment:* The rule grants wide discretionary authority to contracting officers and agency heads to avoid implementing the Balance of Payments Program.

*DoD Response:* Do not concur. The authorities provided to contracting officers and agency heads are sufficiently defined to maintain proper compliance with the Balance of Payments Program.

• *Comment:* The rule exempts ''petroleum products'' and ''end items acquired for commissary resale'' from the Balance of Payments Program. These product descriptions are too generic and should be considered for deletion.

*DoD Response:* Do not concur. These exemptions represent a continuation of the policy at FAR 25.303(d). DoD is not aware of any significant negative impact to domestic sources that has resulted from use of these exemptions.

Three respondents submitted comments regarding administrative aspects of the rule. A summary of these comments and the DoD response is provided below:

• *Comment:* Any determination made by the contracting officer, that a requirement can best be filled by a foreign end product or construction material, and any determination made by the head of the agency, that it is not in the public interest to apply the restrictions of the Balance of Payments Program to an end product or construction material, should be in writing.

*DoD Response:* Do not concur. Although such determinations are frequently in writing, DoD does not consider it necessary to specify a requirement for a written determination. The policy at FAR 25.303, pertaining to similar determinations, does not specify that the determinations be in writing. DoD is not aware of any implementation problems that have resulted from use of the FAR policy.

• *Comment:* The rule should clarify who has the authority to make the determination at 225.7501(a)(2)(ii), that a product or material can best be acquired in the geographic area concerned.

*DoD Response:* Concur. This paragraph has been moved to 225.7501(5)(ii) to clarify that the contracting officer has the authority to make this determination.

• *Comment:* The contracting officer's determination made in accordance with 225.7501(a)(1), that a particular construction material is at or below the simplified acquisition threshold, will be reflected in the contract clause at 252.225–7044(b)(2), in the list of excepted construction materials. This could cause a conflict if the contracting officer determines the construction material to be above the simplified acquisition threshold, but the offeror determines the material to be at or below the threshold.

*DoD Response:* Do not concur. Exclusion of a particular construction material from the list of excepted materials at 252.225–7044(b)(2) does not necessarily mean the contracting officer has determined the material to be above the simplified acquisition threshold. Materials at or below the simplified acquisition threshold are covered by the blanket exception at 252.225–7044(b)(1). Materials excepted for other reasons would be listed at 252.225–7044(b)(2).

DoD also received comments on the advisability of eliminating the Balance of Payments Program for DoD construction contracts. Several respondents expressed concerns regarding the impact that elimination of the program would have on the American maritime industry. Others favored elimination of the program, stating that the program has resulted in higher costs and longer lead times. DoD is continuing to study this issue.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Balance of Payments Program requirements in this rule are transferred from existing FAR requirements, with administrative changes that are not expected to have a significant effect outside of the Government.

**C. Paperwork Reduction Act**

This rule does not impose any additional information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The information collection requirements associated with the clause at 252.225–7005, Identification of Expenditures in the United States, are approved under OMB Clearance Number 0704–0229 for use through March 31, 2004.

**List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Section 225.003 is amended by revising paragraph (3) to read as follows:

### 225.003 Definitions.

* * * * *

(3) ''Domestic concern'' means—

(i) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is a foreign concern); or

(ii) An unincorporated concern having its principal place of business in the United States.

* * * * *

## Subpart 225.3 [Removed]

3. Subpart 225.3 is removed.

### 225.1101 [Amended]

4. Section 225.1101 is amended by removing the phrase ''—Balance of Payments Program'' in the following places:

a. In paragraph (1), in the first sentence, the second time it appears;

b. In paragraph (2) introductory text;

c. In paragraph (12) introductory text the second time it appears; and

d. In paragraph (13) introductory text, in the first sentence, the second time it appears.

5. Section 225.1103 is amended by revising paragraph (1) to read as follows:

### 225.1103 Other provisions and clauses.

(1) Unless the contracting officer knows that the prospective contractor is not a domestic concern, use the clause at 252.225–7005, Identification of Expenditures in the United States, in solicitations and contracts that—

(i) Exceed the simplified acquisition threshold; and

(ii) Are for the acquisition of—

(A) Supplies for use outside the United States;

(B) Construction to be performed outside the United States; or

(C) Services to be performed primarily outside the United States.

* * * * *

6. Subpart 225.75 is added to read as follows:

## Subpart 225.75—Balance of Payments Program

Sec.
225.7500 Scope of subpart.
225.7501 Policy.
225.7502 Procedures.
225.7503 Contract clauses.

### 225.7500 Scope of subpart.

This subpart provides policies and procedures implementing the Balance of Payments Program. It applies to contracts for the acquisition of—

(a) Supplies for use outside the United States; and

(b) Construction to be performed outside the United States.

### 225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104 or 225.104(a)(iii);

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(iv) An industrial gas; or

(v) A brand drug specified by the Defense Medical Materiel Board;

(3) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(4) The end product is acquired for commissary resale; or

(5) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (see subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product subject to the Trade Agreements Act or NAFTA;

(iii) For acquisitions subject to the Trade Agreements Act, is an information technology product in Federal Supply Group 70 or 74 that is substantially transformed in the United States; or

(iv) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is designated country construction material or NAFTA country construction material, and the acquisition is subject to the Trade Agreements Act or NAFTA respectively; or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

**225.7502 Procedures.**

(a) *Solicitation of offers.* Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(b) *Evaluation of offers.* (1) *Supplies.* Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in subpart 225.5. However, treatment of duty may differ when delivery is overseas.

(i) Duty may not be applicable to nonqualifying country offers.

(ii) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(iii) Foreign governments may impose duties. Evaluate offers including such duties as offered.

(2) *Construction.* Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with 225.7501(a)(5)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(c) *Postaward.* For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American Act, also apply to noncompliance under the Balance of Payments Program.

**225.7503 Contract clauses.**

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than $6,806,000.

(b) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $6,806,000 or more. For acquisitions with a value of $6,806,000 or more, but less than $7,068,419, use the clause with its Alternate I.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 252.225–7005 is revised to read as follows:

**252.225–7005 Identification of Expenditures in the United States.**

As prescribed in 225.1103(1), use the following clause:

Identification of Expenditures in the United States (Apr 2002)

(a) This clause applies only if the Contractor is—

(1) A concern incorporated in the United States (including a subsidiary that is incorporated in the United States, even if the parent corporation is not incorporated in the United States); or

(2) An unincorporated concern having its principal place of business in the United States.

(b) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment that represents estimated expenditures in the United States. The identification—

(1) May be expressed either as dollar amounts or as percentages of the total amount of the request for payment;

(2) Should be based on reasonable estimates; and

(3) Shall state the full amount of the payment requested, subdivided into the following categories:

(i) U.S. products—expenditures for material and equipment manufactured or produced in the United States, including end products, components, or construction material, but excluding transportation;

(ii) U.S. services—expenditures for services performed in the United States, including all charges for overhead, other indirect costs, and profit under construction or service contracts;

(iii) Transportation on U.S. carriers—expenditures for transportation furnished by U.S. flag, ocean, surface, and air carriers; and

(iv) Expenditures not identified under paragraphs (b)(3)(i) through (iii) of this clause.

(c) Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the U.S. Government any right to audit the Contractor's books or records.

(End of clause)

8. Sections 252.225–7044 and 252.225–7045 are added to read as follows:

**252.225–7044 Balance of Payments Program—Construction Material.**

As prescribed in 225.7503(a), use the following clause:

Balance of Payments Program—Construction Material (Apr 2002)

(a) *Definitions.* As used in this clause'

''Component'' means any article, material, or supply incorporated directly into construction material.

''Construction material'' means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

''Cost of components'' means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

''Domestic construction material'' means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

''United States'' means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.* This clause implements the Balance of Payments Program by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate* ''*none*'']

(End of clause)

**252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.**

As prescribed in 225.7503(b), use the following clause:

Balance of Payments Program—Construction Material Under Trade Agreements (Apr 2002)

(a) *Definitions.* As used in this clause—

''Component'' means any article, material, or supply incorporated directly into construction material.

''Construction material'' means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

''Cost of components'' means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

''Designated country'' means any of the following countries:

Aruba
Austria
Bangladesh
Belgium
Benin
Bhutan
Botswana
Burkina Faso
Burundi
Canada
Cape Verde
Central African Republic
Chad
Comoros
Denmark
Djibouti
Equatorial Guinea
Finland
France
Gambia
Germany
Greece
Guinea
Guinea-Bissau
Haiti
Hong Kong
Iceland
Ireland
Israel
Italy
Japan
Kiribati
Korea, Republic of
Lesotho
Liechtenstein
Luxembourg
Malawi
Maldives
Mali
Mozambique
Nepal
Netherlands
Niger
Norway
Portugal
Rwanda
Sao Tome and Principe
Sierra Leone
Singapore
Somalia
Spain
Sweden
Switzerland
Tanzania U.R.
Togo
Tuvalu
Uganda
United Kingdom
Vanuatu
Western Samoa
Yemen

''Designated country construction material'' means a construction material that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the material from which it was transformed.

''Domestic construction material'' means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

''North American Free Trade Agreement (NAFTA) country'' means Canada or Mexico.

''North American Free Trade Agreement (NAFTA) country construction material'' means a construction material that—

(1) Is wholly the growth, product, or manufacture of a NAFTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the material from which it was transformed.

''United States'' means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and the North American Free Trade Agreement (NAFTA) apply to this acquisition. Therefore, the Buy American Act and Balance of Payments Program restrictions are waived for designated country and NAFTA country construction materials.

(c) The Contractor shall use only domestic, designated country, or NAFTA country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate* ''*none*''.]

(End of clause)

Alternate I (APR 2002). As prescribed in 225.7503(b), delete the definitions of ''North American Free Trade Agreement country'' and ''North American Free Trade Agreement country construction material'' from the definitions in paragraph (a) of the basic clause and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material.

(c) The Contractor shall use only domestic or designated country construction material in performing this contract, except for—

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation; or

(2) The construction material or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate* ''*none*''.]

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 225 and 252**

**[DFARS Case 2002–D002]**

## Defense Federal Acquisition Regulation Supplement; Codification and Modification of Berry Amendment

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 832 of the National Defense Authorization Act for Fiscal Year 2002. Section 832 codifies and modifies the provision of law known as the ''Berry Amendment,'' which requires the acquisition of certain items from domestic sources.

**EFFECTIVE DATE:** April 26, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before June 25, 2002, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002–D002 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D002.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This interim rule implements Section 832 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 832 codifies and makes minor modifications to the provision of law known as the Berry Amendment (formerly 10 U.S.C. 2241 note, Limitations on Procurement of Food, Clothing, and Specialty Metals Not Produced in the United States; now codified at 10 U.S.C. 2533a).

The rule updates statutory references in the DFARS text, and clarifies the DFARS text by specifying that—

- The domestic source requirements apply to listed items acquired either as end products or as components of end products;
- For foods manufactured or processed in the United States, an exception to the domestic source requirement applies regardless of where the foods (and any component) were grown or produced; and
- The clause at 252.225–7012, Preference for Certain Domestic Commodities, does not apply to end products incidentally incorporating minor amounts of cotton, other natural fibers, or wool.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is intended to clarify existing policy pertaining to the acquisition of certain items from domestic sources. Therefore, DoD has not prepared an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D002.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 832 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 832 codifies and modifies the provision of law known as the ''Berry Amendment,'' which requires the acquisition of certain items from domestic sources. Section 832 became effective upon enactment, on December 28, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Section 225.7001 is amended by removing paragraph (c); redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

**225.7001 Definitions.**

* * * * *

(b) *Component* and *end product* are defined in the clause at 252.225–7012, Preference for Certain Domestic Commodities.

* * * * *

3. Sections 225.7002–1 and 225.7002–2 are revised to read as follows:

**225.7002–1 Restrictions.**

The following restrictions implement 10 U.S.C. 2533a. Except as provided in subsection 225.7002–2, do not acquire—

(a) Any of the following items, either as end products or components, unless the items have been grown, reprocessed, reused, or produced in the United States:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (a).

(b) Specialty metals, including stainless steel flatware, unless the

metals were melted in steel manufacturing facilities located within the United States.

(c) Hand or measuring tools, unless the tools were produced in the United States.

**225.7002–2 Exceptions.**

Acquisitions in the following categories are not subject to the restrictions in 225.7002–1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisitions of any of the items in 225.7002–1(a) or (b), if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices.

(c) Acquisitions of items listed in FAR 25.104(a), unless the items are hand or measuring tools.

(d) Acquisitions outside the United States in support of combat operations.

(e) Acquisitions of perishable foods by activities located outside the United States for personnel of those activities.

(f) Emergency acquisitions by activities located outside the United States for personnel of those activities.

(g) Acquisitions by vessels in foreign waters.

(h) Acquisitions of items specifically for commissary resale.

(i) Acquisitions of end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—

(1) Is not more than 10 percent of the total price of the end product; and

(2) Does not exceed the simplified acquisition threshold.

(j) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced.

(k) Purchases of specialty metals by subcontractors at any tier for programs other than—

(1) Aircraft;

(2) Missile and space systems;

(3) Ships;

(4) Tank-automotive;

(5) Weapons; and

(6) Ammunition.

(l) Acquisitions of specialty metals and chemical warfare protective clothing when the acquisition furthers an agreement with a qualifying country (see 225.872).

(m) Acquisitions of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670); or

(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—

(i) The Netherlands; or

(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition, Technology, and Logistics) makes a determination in accordance with Section 807 of Public Law 105–261 that—

(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;

(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and

(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country.

4. Section 225.7002–3 is amended by revising the introductory text and paragraphs (a) and (b) to read as follows:

**225.7002–3 Contract clauses.**

Unless an exception applies—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in solicitations and contracts exceeding the simplified acquisition threshold.

(b)(1) Use the clause at 252.225–7014, Preference for Domestic Specialty Metals, in solicitations and contracts exceeding the simplified acquisition threshold that require delivery of an article containing specialty metals.

(2) Use the clause with its Alternate I in solicitations and contracts exceeding the simplified acquisition threshold requiring delivery, for one of the following major programs, of an article containing specialty metals:

(i) Aircraft.

(ii) Missile and space systems.

(iii) Ships.

(iv) Tank-automotive.

(v) Weapons.

(vi) Ammunition.

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.212–7001 [Amended]**

5. Section 252.212–7001 is amended as follows:

a. By revising the clause date to read ''APR 2002'';

b. In paragraph (b), in the entry ''252.225–7012'', by removing ''(AUG 2000) (10 U.S.C. 2241 note)'' and adding in its place ''(APR 2002) (10 U.S.C. 2533a)'';

c. In paragraph (b), in the entries ''252.225–7014'' and ''252.225–7015'', by removing ''(10 U.S.C. 2241 note)'' and adding in its place ''(10 U.S.C. 2533a)''; and

d. In paragraph (c), in the entry ''252.225–7014'', by removing ''(10 U.S.C. 2241 note)'' and adding in its place ''(10 U.S.C. 2533a)''.

6. Section 252.225–7012 is revised to read as follows:

**252.225–7012 Preference for Certain Domestic Commodities.**

As prescribed in 225.7002–3(a), use the following clause:

Preference for Certain Domestic Commodities (Apr 2002)

(a) *Definitions.* As used in this clause—

(1) *Component* means any item supplied to the Government as part of an end product or of another component.

(2) *End product* means supplies delivered under a line item of this contract.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico:

(1) Food.

(2) Clothing.

(3) Tents, tarpaulins, or covers.

(4) Cotton and other natural fiber products.

(5) Woven silk or woven silk blends.

(6) Spun silk yarn for cartridge cloth.

(7) Synthetic fabric, and coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics.

(8) Canvas products.

(9) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).

(10) Any item of individual equipment (Federal Supply Class 8465) manufactured from or containing fibers, yarns, fabrics, or materials listed in this paragraph (b).

(c) This clause does not apply—

(1) To items listed in section 25.104(a) of the Federal Acquisition Regulation (FAR), or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at U.S. market prices;

(2) To end products incidentally incorporating cotton, other natural fibers, or wool, for which the estimated value of the cotton, other natural fibers, or wool—

(i) Is not more than 10 percent of the total price of the end product; and

(ii) Does not exceed the simplified acquisition threshold in FAR part 2;

(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced;

(4) To chemical warfare protective clothing produced in the countries listed in subsection 225.872–1 of the Defense FAR Supplement; or

(5) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end product that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(A) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/ furs/apparel/findings/ tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

[FR Doc. 02–10094 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–U

## DEPARTMENT OF DEFENSE

## 48 CFR Part 235

**[DFARS Case 2001–D002]**

## Defense Federal Acquisition Regulation Supplement; Research and Development Streamlined Contracting Procedures

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate the requirement for posting of solicitations at the Research and Development Streamlined Solicitation Web site. Posting of solicitations at this Web site is no longer necessary, because contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps).

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena Moy, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–0350. Please cite DFARS Case 2001–D002.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DFARS subpart 235.70 contains streamlined procedures for acquiring research and development using a standard solicitation and contract format. The standard format is available on the Research and Development Streamlined Solicitation (RDSS) Web site at *http://www.rdss.osd.mil*. This final rule revises DFARS 235.7003–2 to eliminate the requirement for posting of individual solicitations at the RDSS Web site. Contracting activities now make synopses and solicitations available to the public through the Governmentwide point of entry (FedBizOpps), in accordance with FAR 5.102 and 5.203.

DoD published a proposed rule at 66 FR 63348 on December 6, 2001. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

### B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not significantly change solicitation procedures or limit public access to solicitation information.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Part 235

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.7003–2 is revised to read as follows:

**235.7003–2 RDSS process.**

(a) *Synopsis.* The synopsis required by FAR 5.203 shall include—

(1) The information required by FAR 5.207; and

(2) A statement that the solicitation will be issued in the research and development streamlined solicitation format shown at the RDSS/C Web site.

(b) *Solicitation.*

(1) The solicitation, to be made available consistent with the requirements of FAR 5.102—

(i) Shall be in the format shown at the RDSS/C Web site;

(ii) Shall include the applicable version number of the RDSS standard format; and

(iii) Shall incorporate by reference the appropriate terms and conditions of the RDSS standard format.

(2) To encourage preparation of better cost proposals, consider allowing a delay between the due dates for technical and cost proposals.

[FR Doc. 02–10092 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

**[Docket No. 020419092-2092-01 ; I.D. 041802E]**

**RIN 0648-AP97**

## Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

**ACTION:** Temporary area and gear restrictions.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These restrictions apply to lobster trap and anchored gillnet fishing gear in an area totaling approximately 1,100 square nautical miles (nm2) (2,038.5 km2) in April and 1,700 nm2 (3,150 km2) in May off Cape Ann, MA for 15 days. The purpose of this action is to provide immediate protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** The area and gear restrictions are effective beginning April 29, 2002 through May 13, 2002.

**ADDRESSES:** Send comments on this document to Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930. Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region at the address above.

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at http://www.nero.nmfs.gov/whaletrp/.

**FOR FURTHER INFORMATION CONTACT:** Diane Borggaard, NMFS/Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

**SUPPLEMENTARY INFORMATION:** The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the DAM program (67 FR 1133). The DAM program provides specific authority for NMFS to temporarily restrict the use of lobster trap and anchored gillnet fishing gear in areas north of 40° N. lat. on an expedited basis to protect North Atlantic right whales (right whales) where the animals congregate to feed. The regulations found at § 229.32(g)(3) allow NMFS to: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15-day period, and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of 3 or more right whales sighted within an area (75nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting based upon which a DAM zone would be triggered.

On April 14, 2002, NMFS received a reliable report from a NMFS aerial survey team of 8 right whales, in the proximity of 42° 31′ N lat and 70° 00.6′ W long. This position lies approximately 30 nautical miles east of Cape Ann, Massachusetts in an area called Wildcat Knoll.

Once a DAM zone is triggered, NMFS will determine whether to impose, in the zone, restrictions on fishing and/or fishing gear. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above and, through this action, until April 30, 2002, restricts lobster trap and gillnet gear set in the waters bounded by:

42° 54′N , 70° 30′W (NW Corner)
42° 54′N, 69° 30′W
42° 30′N, 69° 30′W
42° 30′N, 70° 15′W
42° 12′N, 70° 15′W
42° 12′N, 70° 30′W (SW Corner).

This DAM zone excludes areas of overlap within the Seasonal Area Management (SAM) West area. Additionally, the DAM abuts but does not overlap with the northen boundary of the Cape Cod Bay Critical Habitat Area. The restrictions for the DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters within 2 days of publication of this notice in the Federal Register, and no new gear may be set in this area during the restricted period. On May 1, 2002, due to the termination of gear restrictions within the SAM West area, the DAM zone and restrictions will be expanded to include the waters bounded by the following coordinates:

42° 54′N , 70° 30′W (NW Corner)
42° 54′N, 69° 30′W
42° 12′N, 69° 30′W
42° 12′N, 70° 30′W (SW Corner).

The restrictions within the expanded DAM zone are as follows: All anchored gillnet and lobster trap gear must be removed from these waters and no new gear may be set in this area during the restricted period. The restrictions will remain in effect through May 13, 2002, unless terminated sooner or extended by NMFS, through another notification in the **Federal Register**. This restriction will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

## Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator for Fisheries, NOAA (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under NEPA is not required.

The AA finds that providing prior notice and an opportunity for public comment on this action would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. To meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once

the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. The criteria were triggered with respect to this rule on April 14, 2002. If NMFS were to provide notice and an opportunity for public comment prior to the creation of a DAM restricted zone, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap and anchored gillnet gear as such procedures would be impracticable and contrary to the public interest.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time that it went into effect, thereby rendering the action ineffective at reducing the risk of entanglement of endangered right whales. Nevertheless, NMFS recognizes the need for fishermen to have time to remove their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as possible.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (SEE **ADDRESSES**).

This rule has been determined to be not significant under EO 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: April 19, 2002.

**Rebecca J. Lent,**

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

[FR Doc. 02–10227 Filed 4–22–02; 4:55 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 81
Friday, April 26, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 37, 38, 39 and 40

**RIN 3038–AB63**

### Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed Rules.

**SUMMARY:** The Commodity Futures Trading Commission (Commission or CFTC) is proposing a number of technical amendments to its rules implementing the Commodity Futures Modernization Act of 2000 with respect to trading facilities and clearing organizations. The Commission is proposing additional categories of exchange rules or rule amendments that need not be self-certified to the Commission; amendments to the definitions of ''rule'' and ''dormant contract;'' the addition of new definitions of ''dormant contract market,'' ''dormant derivatives transaction execution facility,'' and ''dormant derivatives clearing organization''; and the addition of a procedure for listing or relisting products for trading on a registered entity that has become dormant.

**DATES:** Comments must be received by June 25, 2002.

**ADDRESSES:** Comments should be sent to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat. Comments may be sent by facsimile transmission to (202) 418–5521 or by e-mail to *secretary@cftc.gov.* Reference should be made to ''Amendments to Trading Facility Rules.''

**FOR FURTHER INFORMATION CONTACT:** Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5260. E-mail: *PArchitzel@cftc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The Commission, on August 10, 2001, promulgated rules implementing those provisions of the Commodity Futures Modernization Act of 2000 (CFMA) relating to trading facilities.[1] 66 FR 42256. These rules, parts 36 through 40 of the Commission's rules, became effective on October 9, 2001.

The CFMA profoundly altered federal regulation of commodity futures and option markets. The new statutory framework established two categories of markets subject to Commission regulatory oversight, designated contract markets (contract markets) and registered derivatives transaction execution facilities (DTFs), and two categories of exempt markets, exempt boards of trade and, under section 2(h)(3) of the Commodity Exchange Act (Act), exempt commercial markets. The Commission's rules relating to trading facilities established administrative procedures necessary to implement the CFMA, interpreted certain of the CFMA's provisions and provided guidance on compliance with various of its requirements. In addition, the Commission, under its exemptive authority, in a limited number of instances, provided relief from, or greater flexibility than, the CFMA's provisions. The Commission is proposing a limited number of amendments responding to initial issues that have arisen in administering its implementing rules, or which are technical in nature. The Commission will consider as appropriate additional amendments to the rules implementing the CFMA related to trading facilities based upon further administrative experience.

## II. The Proposed Rules

### *A. Dormant Contract Markets and Products*

The Commission has long required boards of trade, before relisting a dormant contract for trading, to demonstrate that the contract continues to meet the Act's requirements. *See* 17 CFR 5.2. This requirement was based upon the premise that contracts that have been dormant for a significant period of time may not have been updated to reflect intervening changes in cash-market practices, and therefore may no longer meet applicable statutory and regulatory requirements. Accordingly, the relisting of a dormant contract was treated in some respects similarly to the designation of a new contract.

Part 40 of the Commission's rules implementing the CFMA retains the concept that the Act's requirements for listing a new product for trading should also be applicable when relisting a dormant contract for trading. Specifically, Commission rule 40.2 requires that, before either listing a contract or relisting a dormant contract for trading, registered entities certify that the product complies with the Act. The Commission is proposing to amend its part 40 requirements relating to dormant contracts in two ways.

First, the Commission is proposing to revise the exemptive period in the definition of ''dormant contract'' in rule 40.1 from the time following ''initial listing'' to the time following initial exchange certification or Commission approval. The Commission originally used ''initial listing'' to mark the beginning of the exemptive period based upon its belief that registered entities routinely would certify products to the Commission shortly before trading was imminent as permitted by rule 40.2. However, many exchanges have continued their prior practice of fulfilling regulatory requirements well in advance of a product's anticipated listing date. In addition, some exchanges have certified to the Commission, but have never listed for trading, a number of new products. Accordingly, the Commission is proposing that the exemptive period under the dormant contract definition begin running from the time of certification or Commission approval. Second, in light of the far greater rapidity with which markets innovate and change today compared to when the dormant contract rule was first promulgated and the lessened burden of a simple self-certification compared to the previous requirement that dormant contracts be approved by the Commission prior to relisting, and for

[1] The CFMA was intended, in part, ''to promote innovation for futures and derivatives,'' ''to reduce systemic risk,'' and ''to transform the role of the Commission to oversight of the futures markets.'' *See* section 2 of the CFMA.

consistency with the operation of other rules, the Commission is proposing to amend rule 40.1 to reduce the grace period during which a new contract is exempt from being defined as dormant from 60 to 36 complete calendar months.

The Commission also is proposing to amend rule 40.2 so that it would apply in instances where the registered entity itself has become dormant. Prior to enactment of the CFMA, the term ''designated contract market'' denoted the Commission-approved products traded on a board of trade.[2] Accordingly, prior to the CFMA, a board of trade's initial application for designation as a contract market in a commodity triggered review of both the general requirements for designation as a contract market as well as those requirements that were product-specific. If a board of trade determined to relist a contract for trading after all of its contracts had become dormant, the Commission would have reviewed both the terms and conditions of the product to be relisted as well as whether the board of trade continued to meet the general designation requirements. The Commission is proposing to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading (or in the case of a derivatives clearing organization, to accept a product for clearing), it must demonstrate that it continues to satisfy the criteria for designation or registration.[3] In making such a demonstration, a registered entity may rely upon previously-submitted materials that still pertain to, and accurately describe, current conditions.

*B. Product Approval Procedures*

Contract markets or DTFs may request that the Commission review and approve new products and new rules or rule amendments. The Commission is proposing to amend rules 40.3 and 40.5 to include a provision similar to that for applications for contract market designation and DTF registration, that the applicant or submitting entity identify with particularity information in the submission that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification. *See* rules 38.3(a)(5) and 37.5(b)(5). Proposed rule 40.3 also provides that the terms and conditions of products for which approval is voluntarily requested will be made publicly available at the time of their submission to the Commission to enable the Commission, by obtaining the views of market participants and others, to ascertain whether the proposed product would be readily susceptible to manipulation, or otherwise violate the Act.[4] Finally, the Commission is proposing a new rule 40.8 to make clear that all other information required by the core principles to be made public[5] by a registered entity will be treated as public information by the Commission at the time the Commission issues an order of designation or registration, a registered entity is deemed approved, or a rule or rule amendment is approved or deemed approved by the Commission or can first be made effective by the registered entity.

*C. Exchange Fees*

The Commission is also proposing to amend rules 40.1, 40.4 and 40.6 explicitly to address the procedures applicable to the imposition or amendment of exchange fees. Generally, the Commission is clarifying that only fees related to delivery of an enumerated agricultural commodity would be subject to the prior-approval requirements of the Act, and that all other fees would be subject only to the certification requirement. Fees or fee changes of any type of less than $1.00 are proposed to be exempt from the certification requirement (or the prior-approval requirement, if applicable) as de minimis. Specifically, the Commission is proposing to amend the definition of ''terms and conditions'' in rule 40.1 to reference explicitly delivery-related fees. It is also proposing to amend rule 40.4 to make clear, however, that the imposition or amendment of such delivery-related fees by less than $1.00 per contract is not material for purposes of the prior-approval requirement relating to amendments of the terms or conditions of contracts on agricultural commodities.[6] Moreover, the Commission is proposing to amend rule 40.6 to provide that the imposition or change of any fee by less than $1.00, including delivery-related fees, need not be certified to the Commission.[7]

*D. Definition of Rule*

The Commission is also proposing to amend the definition of ''rule'' in part 40.1[8] to exclude from its meaning

[2] In contrast, the CFMA redefined the meaning of ''designated contract market'' to refer to the approved or licensed facility on which futures contracts and commodity options are traded.

[3] The proposed definitions of ''dormant contract market,'' ''dormant derivatives transaction execution facility,'' and ''dormant derivatives clearing organization'' provide for a 36-month initial exemptive period that would begin when the Commission issues an order, including conditional orders, designating a contract market or registering a DTF or a derivatives clearing organization.

The Commission is also proposing two technical amendments related to continuing goodstanding designation or registration status. The first would make clear that the notification procedure available to contract markets to operate as a DTF applies only to active contract markets. Accordingly, before using this notification procedure, dormant contract markets must reinstate their active contract market status. Of course, they could also become a registered DTF by application. The second would provide that, upon a change of ownership of a contract market or DTF, the new owners must certify that the facility continues to meet the respective designation or registration requirements.

[4] Commission staff routinely conduct trade interviews when reviewing novel instruments to ascertain the relative susceptibility of a product to being manipulated. To be meaningful, these interviews require the release of the proposed instrument's terms and conditions. Generally, the Commission also intends to continue its long-standing practice of requesting public comment on the terms and conditions of new products under review for Commission approval by publication of notices in the **Federal Register**. In instances where notice in the **Federal Register** is impracticable or otherwise unnecessary, notice of a submission for voluntary approval and of the public availability of the proposed product's terms and conditions will be through the Commission's internet web site (www/cftc.gov).

The terms and conditions of products eligible for trading by self-certification must be made publicly available by the contract market (Core Principle 7) or the DTF (Core Principle 4), and will be available from the Commission, at the time that the exchange legally could commence trading—the beginning of the business day following certification to the Commission.

[5] This requirement is limited to information required to be made public by a registered entity under a core principal, and does not apply to additional materials that may be filed in support of an application for designation or registration. For example, section 5(d)(7) of the Act requires contract markets to make publicly available information concerning ''the terms and conditions of the contracts of the contract market and the mechanisms for executing transactions on or through the facilities.''

[6] Separately, the Commission is proposing to revise the list of rule amendments that are not material changes to futures contracts on the enumerated agricultural commodities to clarify that rule changes not required to be certified to the Commission under rule 40.6(c) are also not material.

[7] Such a certification includes the exchange's determination that the fee or fee change complies with the exchange's obligation under Core Principle 18 that its actions avoid resulting in an unreasonable restraint of trade or imposing any material anticompetitive burden on trading.

[8] With respect in general to the definition of ''rule,'' Commission staff in recent months has learned, through bulletins and notices to the members of registered entities, of a number of rule changes that were not appropriately submitted to the Commission for review under Part 40. The Commission reminds registered entities that the definition of ''rule'' under part 40.1 encompasses more than just provisions labeled as ''rules'' in rulebooks, but includes, among other things, resolutions, interpretations and stated policies. In order to relieve any administrative burdens, registered entities may submit rule changes to the Commission in the form of member bulletins and notices, so long as those submissions are labeled

Continued

exchange actions relating to the setting of margin levels, except with respect to security futures products and contracts on stock indices. Prior to the CFMA, section 5a(a)(12) of the Act required that all changes to contract terms and conditions, with the exception of rules relating to the setting of margin levels, be submitted to the Commission for prior approval. The ability to adjust margin levels was afforded this special status because of the recognized need for exchanges to change margin levels rapidly, often changing margin levels within a single trading session, in response to changing market conditions. In section 113 of the CFMA, Congress removed the prior-approval provision, providing instead that registered entities could amend their rules by self-certification. However, there is no indication that Congress intended thereby to affect the special status accorded rules relating to the setting of margin levels.[9] Accordingly, the Commission believes that specifically excluding the setting of margin levels (except with respect to stock index products and security futures products) from the definition of ''rule'' is consistent with Congress'' intent and with the public interest.[10]

## III. Cost-Benefit Analysis

Section 15 of the Act, as amended by section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. Section 15 does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, section 15 simply requires the Commission to ''consider the costs and benefits'' of its action, in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed rules constitute a package of largely procedural amendments to the rules it recently promulgated to implement the CFMA. Many of the proposed amendments merely clarify or make explicit existing requirements. Others reduce required submissions to the Commission. Except for the proposal to require that dormant contract markets reapply for designation prior to listing products for trading, none of the proposed amendments imposes a significant obligation, burden or cost on any person or registered entity. With regard to dormant contract markets, the public interest in ensuring that a dormant market meets the requirements of the Act when it lists or relists an initial product for trading outweigh the burden of reapplying for contract market designation. The cost of reapplying for designation should be diminished to the extent that a contract market has kept its rules, trading platform and other aspects of its infrastructure up-to-date during the period it was dormant. On the other hand, to the extent that a dormant contract market has not kept its infrastructure up-to-date during the period of dormancy, the public interest in a review of its reapplication increases.

After considering the five factors enumerated in the Act, the Commission has determined to propose the revisions to its rules discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposed rules with their comment letters.

## IV. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The rules adopted herein would affect contract markets and other registered entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[11] In its previous determinations, the Commission has concluded that contract markets, DTFs and clearing organizations are not small entities for the purpose of the RFA.[12]

Accordingly, the Commission does not expect the rules, as proposed herein, to have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission invites the public to comment on this finding and on its proposed determination that the trading facilities covered by these rules would not be small entities for purposes of the RFA.

### *B. Paperwork Reduction Act of 1995*

This proposed rulemaking contains information-collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

*Collection of Information:* Rules Relating to Part 37, Establishing Procedures for Entities to be Registered as Derivatives Transaction Execution Facilities (DTFs), OMB Control Number 3038–0053. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.

*Annual responses by each respondent:* 1.

*Total annual responses:* 10.

*Estimated average hours per response:* 200.

*Annual reporting burden:* 2,000.

*Collection of Information:* Rules Relating to Part 38, Establishing Procedures for Entities to Become Designated as Contract Markets, OMB Control Number 3038–0052. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.

*Annual responses by each respondent:* 1.

*Total annual responses:* 10.

*Estimated average hours per response:* 300.

*Annual reporting burden:* 3,000.

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and, if necessary, certified in accordance with the procedural requirements of part 40.

[9] In this regard, Congress did not modify the Act's other provisions relating to margins. *See* section 2(a)(C)(v).

[10] The Commission is also proposing a number of technical amendments. Appendix C to part 40 details the information that foreign boards of trade should include in a request for no-action relief to offer and sell to persons in the United States futures contracts on broad-based foreign securities indices. The Commission is proposing to amend that guidance to incorporate the changes made by the CFMA to the criteria for designating such stock indexes. The Commission is also proposing conforming changes to a number of delegations in the rules and to several other provisions.

[11] 47 FR 18618–21 (Apr. 30, 1982).

[12] 47 FR 18618, 18619 (April 30, 1982) (discussing contract markets); 66 FR 42256, 42268 (August 10, 2001) (discussing DTFs); 66 FR 45605, 45609 (August 29, 2001) (discussing DCOs).

*Collection of Information:* Rules Relating to Part 39, Establishing Procedures for Entities to Become Registered as Derivatives Clearing Organizations, OMB Control Number 3038–0051. The proposed rules will not change the burden previously approved by OMB.

The estimated burden was calculated as follows:

*Estimated number of respondents:* 10.

*Reports annually by each respondent:* 1.

*Total annual responses:* 10.

*Estimated Average hours per response:* 200.

*Annual burden in fiscal year:* 2,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503; Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in:

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of collecting 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.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

**List of Subjects**

*17 CFR Part 37*

Commodity futures, Commodity Futures Trading Commission.

*17 CFR Part 38*

Commodity futures, Commodity Futures Trading Commission.

*17 CFR Part 39*

Commodity futures, Consumer protection.

*17 CFR Part 40*

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000), and in particular, sections 1a, 2, 3, 4, 4c, 4i, 5, 5a, 5b, 5c, 5d, 6 and 8a thereof, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 37—DERIVATIVES TRANSACTION EXECUTION FACILITIES

1. The authority citation for part 37 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 6(c), 7a and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

2. Section 37.2 is revised to read as follows:

### § 37.2 Exemption.

Contracts, agreements or transactions traded on a derivatives transaction execution facility registered as such with the Commission under section 5a of the Act, the facility and the facility's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 37 and §§ 1.3, 1.31, 1.59(d), 1.63(c), 15.05, 33.10, part 40, part 41 and part 190 of this chapter, and as applicable to the market, parts 15 through 21 of this chapter, which are applicable to a registered derivatives transaction execution facility as though they were set forth in this section and included specific reference to derivatives transaction execution facilities.

3. Section 37.5 is amended by revising paragraphs (a), (b), and (f)(1) to read as follows:

### § 37.5 Procedures for registration.

(a) *Notification by contract markets.* (1) To operate as a registered derivatives transaction execution facility pursuant to section 5a of the Act, a board of trade, facility or entity that is designated as a contract market, which is not a dormant contract market as defined in § 40.1 of this chapter, must:

(i) Comply with the core principles for operation under section 5a(d) of the Act and the provisions of this part 37; and

(ii) Notify the Commission of its intent to so operate by filing with the Secretary of the Commission at its Washington, DC, headquarters a copy of the facility's rules (which may be trading protocols) or a list of the designated contract market's rules that apply to operation of the derivatives transaction execution facility, and a certification by the contract market that it meets:

(A) The requirements for trading of section 5a(b) of the Act; and

(B) The criteria for registration under section 5a(c) of the Act.

(2) Before using the notification procedure of paragraph (a) of this section for registration as a derivatives transaction execution facility, a dormant contract market as defined in § 40.1 of this chapter must reinstate its designation under § 38.3(a)(2) of this chapter.

(b) *Registration by application.*—(1) *Initial registration.* A board of trade, facility or entity shall be deemed to be registered as a derivatives transaction execution facility thirty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for registration as a derivatives transaction execution facility unless notified otherwise during that period, or, as determined by Commission order, registered upon conditions, if:

(i) The application demonstrates that the applicant satisfies the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively;

(ii) The submission is labeled ''Application for DTF Registration'';

(iii) The submission includes:

(A) The derivatives transaction execution facility's rules, which may be trading protocols;

(B) Any agreements entered into or to be entered into between or among the facility, its operator or its participants, technical manuals and other guides or instructions for users of such facility, descriptions of any system test procedures, tests conducted or test

results, and descriptions of the trading mechanism or algorithm used or to be used by such facility, to the extent such documentation was otherwise prepared; and

(C) To the extent that compliance with the requirements for trading or the criteria for recognition is not self-evident, a brief explanation of how the rules or trading protocols satisfy each of the conditions for registration;

(iv) The applicant does not amend or supplement the application for recognition, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to the time provisions of and procedures under section 6 of the Act.

(2) *Reinstatement of dormant registration.* Before listing products for trading, a dormant derivatives transaction execution facility as defined in § 40.1 must reinstate its registration under the procedures of paragraphs (a)(1) or (b)(1) of this section, as applicable; *provided however*, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

(f) *Delegation of authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Trading and Markets and separately to the Director of Economic Analysis or such other employee or employees as the Directors may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegatee, authority to exercise the functions provided under paragraph (d) of this section.

* * * * *

4. Section 37.6 is amended by revising paragraphs (a), (b), (b)(1), (b)(2) and (b)(2)(i) introductory text, (b)(2)(iii), and (c) to read as follows:

**§ 37.6 Compliance with core principles.**

(a) *In general.* To maintain registration as a derivatives transaction execution facility upon commencing operations by listing products for trading or otherwise, or for a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter that has been reinstated under § 37.5(b)(2) upon recommencing operations by relisting products for trading or otherwise, and on a continuing basis thereafter, the derivatives transaction execution facility must have the capacity to be, and be, in compliance with the core principles of section 5a(d) of the Act.

(b) *New and reinstated derivatives transaction execution facilities.*—(1) *Certification of compliance.* Unless an applicant for registration or for reinstatement of registration has chosen to make a voluntary demonstration under paragraph (b)(2) of this section, a newly registered derivatives transaction execution facility at the time it commences operations, or a dormant derivatives transaction execution facility as defined in § 40.1 of this chapter at the time that it recommences operations, must certify to the Commission that it has the capacity to, and will, operate in compliance with the core principles under section 5a(d) of the Act.

(2) *Voluntary demonstration of compliance.* An applicant for registration or for reinstatement of registration may choose to make a voluntary demonstration of its capacity to operate in compliance with the core principles as follows:

(i) At least thirty days prior to commencing or recommencing operations, the applicant for registration or for reinstatement of registration must file (during the business hours defined in § 40.1 of this chapter) with the Secretary of the Commission at its Washington, DC, headquarters, either separately or with the application required by § 37.5, a submission that includes:

* * * * *

(iii) If it appears that the applicant has failed to make the requisite showing, the Commission will so notify the applicant at the end of that period. Upon commencement or recommencement of operations by the derivatives transaction execution facility, such a notice may be considered by the Commission in a determination to issue a notice of violation of core principles under section 5c(d) of the Act.

(c) *Existing derivatives transaction execution facilities.—(1) In general.* Upon request by the Commission, a registered derivatives transaction execution facility shall file with the Commission such data, documents and other information as the Commission may specify in its request that demonstrates that the registered derivatives transaction execution facility is in compliance with one or more core principles as specified in the request or that is requested by the Commission to enable the Commission to satisfy its obligations under the Act.

(2) *Change of owners.* Upon a change of ownership of an existing registered derivatives transaction execution facility, the new owner shall file with the Secretary of the Commission at its Washington, D.C., headquarters, a certification that the derivatives transaction execution facility meets the requirements for trading and the criteria for registration of sections 5a(b) and 5a(c) of the Act, respectively.

* * * * *

## PART 38—DESIGNATED CONTRACT MARKETS

5. The authority citation for Part 38 is revised to read as follows:

**Authority:** 7 U.S.C. 2, 5, 6, 6c, 7 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

6. Section 38.2 is revised to read as follows:

**§ 38.2 Exemption.**

Agreements, contracts, or transactions traded on a designated contract market under section 6 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.63(c), 1.67, 33.10, part 9, parts 15 through 21, part 40, part 41 and part 190 of this chapter.

7. Section 38.3 is amended by revising paragraph (a) to read as follows:

**§ 38.3 Procedures for designation by application.**

(a)(1) *Initial Application.* A board of trade or trading facility shall be deemed to be designated as a contract market sixty days after receipt (during the business hours defined in § 40.1 of this chapter) by the Secretary of the Commission at its Washington, DC, headquarters, of an application for designation unless notified otherwise during that period, or, as determined by Commission order, designated upon conditions, if:

(i) The application demonstrates that the applicant satisfies the criteria for designation of section 5(b) of the Act, the core principles for operation under section 5(d) of the Act and the provisions of this part 38;

(ii) The application is labeled as being submitted pursuant to this part 38;

(iii) The application includes:

(A) A copy of the applicant's rules and any technical manuals, other guides or instructions for users of, or participants in, the market, including minimum financial standards for members or market participants;

(B) A description of the trading system, algorithm, security and access limitation procedures with a timeline for an order from input through settlement, and a copy of any system test procedures, tests conducted, test results and the nature of contingency or disaster recovery plans;

(C) A copy of any documents pertaining to the applicant's legal status and governance structure, including governance fitness information;

(D) A copy of any agreements or contracts entered into or to be entered into by the applicant, including partnership or limited liability company, third-party regulatory service, member or user agreements, that enable or empower the applicant to comply with a designation criterion or core principal; and

(E) To the extent that any of the items in § 38.3(a)(1)(iii)(A)–(D) raise issues that are novel, or for which compliance with a condition for designation is not self-evident, a brief explanation of how that item and the application satisfies the conditions for designation;

(iv) The applicant does not amend or supplement the designation application, except as requested by the Commission or for correction of typographical errors, renumbering or other nonsubstantive revisions, during that period;

(v) The applicant identifies with particularity information in the application that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(vi) The applicant has not instructed the Commission in writing at the time of submission of the application or during the review period to review the application pursuant to procedures under section 6 of the Act.

(2) *Reinstatement of dormant designation.* Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraph (a)(1) of this section; *provided however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

8. Section 38.4(a)(2) is revised to read as follows:

**§ 38.4 Procedures for listing products and implementing contract market rules.**

(a) *Request for Commission approval of rules and products.* (1) * * *

(2) Notwithstanding the forty-five day review period for voluntary approval under §§ 40.3(b) and 40.5(b) of this chapter, the operating rules and the terms and conditions of products submitted for voluntary Commission approval under § 40.3 or § 40.5 of this chapter that have been submitted at the same time as an application for contract market designation or an application under § 38.3(a)(2) to reinstate the designation of a dormant contract market as defined in § 40.1 of this chapter, or while one of the foregoing is pending, will be deemed approved by the Commission no earlier than the facility is deemed to be designated or reinstated.

* * * * *

9. Section 38.5 is amended by adding a new paragraph (c) to read as follows:

**§ 38.5 Information relating to contract market compliance.**

* * * * *

(c) Upon a change of ownership of an existing designated contract market, the new owner shall file with the Secretary of the Commission at its Washington, DC, headquarters, a certification that the designated contract market meets all of the requirements of sections 5(b) and 5(d) of the Act and the provisions of this part 38.

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

10. The authority citation for part 39 is revised to read as follows:

**Authority:** 7 U.S.C. 7b as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

11. Section 39.4 is amended by revising the section heading, by redesignating the text in paragraph (c) as paragraph (c)(2) and by adding a new paragraph (c)(1) to read as follows:

**§ 39.4 Procedures for implementing derivatives clearing organization rules and clearing new products.**

* * * * *

(c) *Acceptance of new products for clearing.* (1) A dormant derivatives clearing organization within the meaning of § 40.1 of this chapter may not accept for clearing a new product until its registration as a derivatives clearing organization is reinstated under the procedures of § 39.3 of this part; *provided however,* that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

* * * * *

## PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

12. The authority citation for part 40 is revised to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by Appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

13. Section 40.1 is amended by revising the definitions of *dormant contract, rule,* and paragraph (6) of *terms or conditions* and by adding in alphabetic placement definitions of *business hours, dormant contract market, dormant derivatives clearing organization* and *dormant derivatives transaction execution facility,* to read as follows:

**§ 40.1 Definitions.**

* * * * *

*Business hours* means the hours between 8:15 a.m. and 4:45 p.m., eastern standard time or eastern daylight savings time, whichever is currently in effect in Washington, DC, all days except Saturdays, Sundays and legal public holidays.

*Dormant contract market* means any designated contract market on which no trading has occurred for a period of six complete calendar months; *provided, however,* no contract market shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of designation was issued or that the contract market was deemed to be designated.

*Dormant derivatives clearing organization* means any derivatives clearing organization that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under sections 5b(a) and 5b(b) of the Act, respectively, for a period of six complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives clearing organization was deemed to be registered.

*Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of

six complete calendar months; provided, however, no derivatives transaction execution facility shall be considered to be dormant until the end of 36 complete calendar months following the day that the order of registration was issued or that the derivatives transaction execution facility was deemed to be registered.

*Dormant contract* or *dormant product* means any commodity futures or option contract or other agreement, contract, transaction or instrument in which no trading has occurred in any future or option expiration for a period of six complete calendar months; *provided, however*, no contract or instrument shall be considered to be dormant until the end of thirty-six complete calendar months following initial exchange certification or Commission approval.

* * * * *

*Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, term and condition, trading protocol, agreement or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, derivatives transaction execution facility or derivatives clearing organization or by the governing board thereof or any committee thereof, except those provisions relating to the setting of levels of margin for commodities other than those subject to the provisions of section 2(a)(1)(C)(v) of the Act and security futures as defined in section 1a(31) of the Act.

*Terms and conditions* means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions include provisions relating to the following:

* * * * *

(6) Delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

* * * * *

14. Section 40.3 is amended by revising paragraph (a)(4) and adding paragraph (a)(5) to read as follows:

**§ 40.3 Voluntary submission of new products for Commission review and approval.**

(a) * * *

(4) The submission identifies with particularity information in the submission, except for the product's terms and conditions which are made publicly available at the time of submission, that will be subject to a request for confidential treatment and supports that request for confidential treatment with reasonable justification; and

(5) The submission includes the fee required under Appendix B to this part.

* * * * *

15. Section 40.4 is amended by revising paragraphs (b)(5) and (b)(6) and by adding paragraphs (b)(7) and (b)(8) to read as follows:

**§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.**

* * * * *

(b) * * *

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority;

(6) Corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such nonsubstantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(7) Fees or fee changes of less than $1.00; and

(8) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, DC, headquarters and that has been labeled ''Non-material Agricultural Rule Change,'' and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

16. Section 40.5 is amended by revising paragraphs (a)(1)(v) and (a)(1)(vi) and by adding paragraph (a)(1)(vii) to read as follows:

**§ 40.5 Voluntary submission of rules for Commission review and approval.**

(a) * * *

(1) * * *

(v) Note and briefly describe any substantive opposing views expressed with respect to the proposed rule that were not incorporated into the proposed rule prior to its submission to the Commission;

(vi) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or Commission regulations that the Commission may need to interpret in order to approve the proposed rule. To the extent that such an amendment or interpretation is necessary to accommodate a proposed rule, the submission should include a reasoned analysis supporting the amendment to the Commission's rule or interpretation; and

(vii) Identify with particularity information in the submission (except for a product's terms and conditions, which are made publicly available at the time of submission) that will be subject to a request for confidential treatment and support that request for confidential treatment with reasonable justification.

* * * * *

17. Section 40.6 is amended by revising paragraphs (c)(2)(iii), (c)(2)(iv), (c)(3)(ii)(B) and (c)(3)(ii)(C), and by adding paragraph (c)(2)(v) to read as follows:

**§ 40.6 Self-certification of rules by designated contract markets and registered derivatives clearing organizations.**

* * * * *

(c) * * *

(2) * * *

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than a stock index) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and that was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis, or

(v) *Fees.* Fees or fee changes of less than $1.00.

(3) * * *

(ii) * * *

(B) *Administrative procedures.* The organization and administrative procedures of a contract market or a derivatives clearing organization's governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to

gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area; or

* * * * *

19. Section 40.7(b)(1) is revised to read as follows:

**§ 40.7 Delegations.**

* * * * *

(b) * * *

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

* * * * *

20. Part 40 is amended by adding a new § 40.8 to read as follows:

**§ 40.8 Availability of public information.**

Any information required to be made publicly available by a registered entity under sections 5(d)(7), 5a(d)(4) and 5b(c)(2)(L) of the Act, respectively, will be treated as public information by the Commission at the time an order of designation or registration is issued by the Commission, a registered entity is deemed to be designated or registered, a rule or rule amendment of the registered entity is approved or deemed to be approved by the Commission or can first be made effective the day following its certification by the registered entity.

17. Appendix C to part 40 is amended by revising paragraphs (5)(ii) through (vii) to read as follows:

**Appendix C—Information That a Foreign Board of Trade Should Submit When Seeking No-Action Relief to Offer and Sell, to Persons Located in the United States, a Futures Contract on a Broad-based Foreign Securities Index Traded on That Board of Trade**

* * * * *

(5) * * *

(ii) The total capitalization, number of stocks (including the number of unaffiliated issuers if different from the number of stocks), and weighting of the stocks by capitalization and, if applicable, by price in the index as well as the combined weighting of the five highest-weighted stocks in the index;

(iii) Procedures and criteria for selection of individual securities for inclusion in, or removal from, the index, how often the index is regularly reviewed, and any procedures for changes in the index between regularly scheduled reviews;

(iv) Method of calculation of the cash-settlement price and the timing of its public release;

(v) Average daily volume of trading by calendar month, measured by share turnover and dollar value, in each of the underlying securities for a six-month period of time and, separately, the dollar value of the average daily trading volume of the securities comprising the lowest weighted 25% of the index for the past six calendar months, calculated pursuant to § 41.11;

(vi) If applicable, average daily futures trading volume; and

(vii) A statement that the index is not a narrow-based security index as defined in section 1a(25) of the Act.

Issued in Washington, DC, this 19th day of April, 2002, by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–10031 Filed 4–25–02; 8:45 am]

BILLING CODE 6351–01–P

## INTERNATIONAL TRADE COMMISSION

## 19 CFR Part 201

## Rules of General Application

**AGENCY:** International Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States International Trade Commission (Commission) proposes to amend its Rules of Practice and Procedure (Rules) to permit persons the option of filing certain documents with the Commission in electronic form instead of in paper form only, as currently required by the Rules. The Commission also proposes amending its Rules of Practice and Procedure to allow electronic service of documents in limited circumstances and to require persons to complete and submit a standard cover sheet when filing documents, either in paper form or in electronic form, with the Commission. The intended effect of these amendments is to provide a choice to persons who wish to file documents electronically and/or serve documents by electronic means on other parties.

**DATES:** To be assured of consideration, written comments must be received by 5:15 p.m. on June 25, 2002.

**ADDRESSES:** A signed original and 8 copies of each set of comments on these proposed amendments, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usite.gov*).

**SUPPLEMENTARY INFORMATION:** The preamble below is designed to assist readers in understanding these proposed amendments to the Commission Rules. The preamble begins with a discussion of the background leading up to these proposed amendments and ends with a regulatory analysis addressing government-wide statutes and issuances on rulemaking. The Commission encourages members of the public to comment—in addition to any other comments they wish to make on the proposed amendments—on whether the proposed amendments are in language that is sufficiently plain for users of the rules to understand.

### Background

The Government Paperwork Elimination Act (GPEA) (Pub. L. No. 105–277, Div. C, Title XVII), enacted on October 21, 1998, provides for Federal agencies to permit individuals and/or entities the option of transacting business with the agency electronically and to maintain records electronically, when practicable, by October 21, 2003. GPEA also provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. The Commission is authorized by section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. Consistent with GPEA and the Tariff Act of 1930, this notice proposes two (2) amendments to section 201.8 of the Commission's Rules and one (1) amendment to section 201.16 of the Commission's Rules.

The first proposed amendment to section 201.8 would allow persons appearing before the Commission the option of filing certain documents electronically at the Commission's Internet website in lieu of or in addition to filing such documents in paper form. By amending the Rules to allow for

electronic filing, the Commission does not intend to require persons to file documents with the Commission in electronic form; instead the Commission is offering persons the option of filing documents electronically.

The second proposed amendment to section 201.8 would require persons to submit a cover sheet with their paper or electronic filing to enable the Commission to properly docket the filed document on its electronic document information system (EDIS–II). The cover sheet requests information such as the investigation number, document type, document title, identity of the filer, and the security of the document (public or confidential). When a document is entered into EDIS–II, certain information that describes the document also is entered. The proposed amendment is designed to streamline that process by requiring that all filers submit the cover sheet. The cover sheet will insure that the document is docketed and catalogued properly in EDIS–II.

The proposed amendment to section 201.16 would permit persons the option of serving documents electronically on other parties in limited circumstances. Under proposed amendment, parties wishing to effect electronic service of documents must obtain the prior consent of the Secretary except in proceedings conducted under section 337 of the Tariff Act of 1930. In section 337 proceedings, parties must obtain the consent of the presiding administrative law judge before serving documents electronically on other parties. The Commission is not prepared at this time to permit electronic service in all instances. Instead, the Secretary or the administrative law judge will make a determination on whether to permit full or partial electronic service in a proceeding based on the circumstances of that case.

Consistent with its normal practice, the Commission is promulgating this amendment in accordance with the rulemaking procedure in section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553). This procedure consists of the following steps: (1) Publication of a notice of proposed rulemaking in the **Federal Register**; (2) solicitation of public comments on the proposed rules; (3) Commission review of such comments prior to developing final rules; and (4) publication of rules not less than thirty days prior to their effective date. See 5 U.S.C. 553.

**Regulatory Analysis**

The Commission has determined that these proposed rules do not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) of the APA or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

**Proposed Information Collection**

With respect to the Commission's proposal to amend section 201.8 of the Rules to add paragraph (g), the proposed information collection is being conducted pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Pursuant to the Office of Management and Budget's (OMB) regulations regarding information collection, the Commission has prepared a supporting statement to be submitted to the Office of Management and Budget concerning the information collected by the Commission on the cover sheet. The public is entitled to comment on this information collection after review of the cover sheet, which is published simultaneously with this notice. In your comments, please address any concerns regarding the proposed collection of information, including (1) whether it is necessary for the proper performance of the functions of the Commission; (2) whether the information will have practical utility; (3) whether the agency's estimate of the burden of the proposed collection of information is accurate, including the validity of the methodology and assumptions used; (4) how to enhance the quality, utility, and clarity of the information to be collected; and (5) how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. A sample of the proposed cover sheet is attached to this Notice. The collection of information contained in the proposed rule, and identified as such, have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Members of the public are invited to submit comments to this proposed information collection both to the Commission and to OMB. A signed original and 8 copies of each set of comments on this proposed information collection, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW, Room 112, Washington, DC 20436, and to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for International Trade Commission, Room 10102, 725 17th Street NW, Washington, DC 20503 by 5:15 p.m. on June 25, 2002. The Commission provides the following information regarding the proposed information collection:

1. *Title:* EDIS–II cover sheet.

2. *Summary of the collection of information:* Filers of documents in paper and electronic form will be required to submit a cover sheet that describes the filer and the document. EDIS–II will also involve registration of electronic filers, but that will only entail a filer providing name and contact information as well as agreeing to the terms of use of EDIS–II.

3. *Description of the Need for Information and Proposed User of the Information:* The collection of information is necessary so that the Commission may catalog each filing as accurately and efficiency as possible. EDIS–II will be organized to permit users to locate documents depending on information on the cover sheet, including the type of investigation, investigation number, type of document, and identity of the filer.

4. *Description of Likely Respondents:* Likely respondents are limited mostly to

those firms who regularly file documents at the Commission on behalf of parties to Commission investigations or questionnaire respondents. The estimated number of respondents is about 4,695 and the estimated frequency of response to the collection of information is either about 47 times or one time per year, depending on the filer.

5. *Estimated Total Annual Reporting and Recordkeeping Burden:* The estimated total annual reporting burden is about 1,153.3 hours. There is no recordkeeping burden.

**Section-by-Section Analysis of the Proposed Amendments**

## PART 201—RULES OF GENERAL APPLICATION

*Subpart B—Initiation and Conduct of Investigations*

*Section 201.8*

Section 201.8 currently provides that a signed original and 14 copies of each document are to be filed with the Secretary of the Commission. The Commission proposes to add a new paragraph (f) to section 201.8 to permit persons the options of filing certain documents electronically at the Commission's Internet Web site without violating the relevant provisions of the Rules that govern paper filing of documents with the Commission.

The Commission also proposes to add a new paragraph (g) to section 201.8 to require that persons filing documents either in paper form or electronically must provide certain coding information to the Commission along with their filings.

*Section 201.16*

Section 201.16 provides generally that documents required to be served by a person or by the Commission on another party shall be effected by mailing or delivering a copy of such documents to such party or its authorized representative or its attorney. The Commission proposes to add a new paragraph (e) to section 201.16 to permit persons the option of serving documents on other parties electronically, if the Secretary consents to such electronic service, except in proceedings under section 337 of the Tariff Act of 1930. In section 337 proceedings, parties must obtain the prior permission of the presiding administrative law judge before serving documents electronically on other parties.

**List of Subjects in 19 CFR Part 201**

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend 19 CFR part 201 as follows:

## PART 201—RULES OF GENERAL APPLICATION

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

**Authority:** Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

2. Amend § 201.8 to add paragraphs (f) and (g) to read as follows:

**§ 201.8 Filing of documents.**

* * * * *

(f) *Electronic filing.* Notwithstanding the relevant provisions of § § 201.8, 201.12, 201.16, 207.3, 207.93, 210.4 and 210.7 of the Commission's Rules of Practice and Procedure (19 CFR 201.8, 201.12, 201.16, 207.3 207.93, 210.4 and 210.7) governing the filing of documents in paper form with the Commission, a person may instead or in addition choose to file electronically certain documents at *http://edis.usitc.gov.* A person so choosing shall comply with the procedures set forth in the Commission's Handbook on Electronic Filing Procedures, which is available at the Office of the Secretary and at *http://edis.usitc.gov.* The Commission's Handbook on Electronic Filing Procedures will include a description of documents that are permitted to be filed with the Commission in electronic form.

(g) *Cover sheet.* Documents filed in paper form with the office of the Secretary must be accompanied by a cover sheet in a form prescribed by the Secretary, completed in its entirety. The cover sheet may be obtained from the Secretary or printed-out at *http://edis.usitc.gov.* For documents that are filed electronically, the cover sheet for such filing must be completed on-line at *http://edis.usitc.gov* at the time of the electronic filing.

3. Amend $201.16 to add paragraph (e) to read as follows:

**§ 201.16 Service of process and other documents.**

* * * * *

(e) *Electronic service.* With the prior consent of the Secretary, parties may serve documents by electronic means in all matters before the Commission, except for proceedings conducted under section 337 of the Tariff Act of 1930. In the case of proceedings under section 337 of the Tariff Act of 1930, parties may serve documents by electronic means with the prior consent of the presiding administrative law judge. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. If electronic service is permitted, paragraphs (a), (b) and (d) of this section shall not apply. However, any dispute that arises among aprties regarding electronic service must be resolved by the parties themselves, without the Commission/s involvement. A party may withdraw its consent to electronic service and require service under paragraphs (a) and (b) of this section

Dated: April 23, 2002.

By Order of the Commission:

**Marilyn R. Abbott,**

*Secretary.*

The following atttachment will not appear in the Code of Federal Regulations.

**ATTACHMENT: EDIS–II Cover Sheet**

Filed by _____
Firm/Organization _____
Filed on Behalf of _____
Security _____
Investigation # _____
Document Type _____
Document Title _____
Document Date _____
Add Attachments: _____
_____
_____
_____

[FR Doc. 02–10346 Filed 4–25–02; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–163892–01]**

**RIN 1545–AY42**

## Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection With an Acquisition

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

**ACTION:** Withdrawal of notice of proposed rulemaking; and notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** This document withdraws the notice of proposed rulemaking published in the **Federal Register** on January 2, 2001. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing

temporary regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written and electronic comments and requests for a public hearing must be received by July 25, 2002.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG–163892–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–163892–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Amber R. Cook at (202) 622–7530; concerning submissions, Treena Garrett, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## Background and Explanation of Provisions

On January 2, 2001, the IRS and Treasury published in the **Federal Register** (66 FR 66) a notice of proposed rulemaking (REG–107566–00) under section 355(e) of the Internal Revenue Code of 1986. Those proposed regulations are withdrawn.

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 355(e). The temporary regulations provide rules relating to recognition of gain on certain distributions of stock or securities of a controlled corporation in connection with an acquisition. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

## Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these regulations is Amber R. Cook, Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and Treasury Department, however, participated in their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

## Withdrawal of Proposed Amendments to the Regulations and Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 355(e)(5), the notice of proposed rulemaking (REG–107566–00) that was published in the **Federal Register** on Tuesday, January 2, 2001, (66 FR 66) is withdrawn. In addition, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.355–7 also issued under 26 U.S.C. 355(e)(5). * * *

**Par. 2.** Section 1.355–0 is amended by revising the introductory text and adding an entry for § 1.355–7 to read as follows:

### § 1.355–0 Table of contents.

In order to facilitate the use of §§ 1.355–1 through 1.355–7, this section lists the major paragraphs in those sections as follows:

* * * * *

### § 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.

(a) In general.
(b) Plan.
(1) In general.
(2) Certain post-distribution acquisitions.
(3) Plan factors.
(4) Non-plan factors.
(c) Operating rules.
(1) Internal discussions and discussions with outside advisors evidence of business purpose.
(2) Takeover defense.
(3) Effect of distribution on trading in stock.
(4) Consequences of section 355(e) disregarded for certain purposes.
(5) Multiple acquisitions.
(d) Safe harbors.
(1) Safe Harbor I.
(2) Safe Harbor II.
(3) Safe Harbor III.
(4) Safe Harbor IV.
(5) Safe Harbor V.
(i) In general.
(ii) Special rules.
(6) Safe Harbor VI.
(i) In general.
(ii) Special rule.
(7) Safe Harbor VII.
(i) In general.
(ii) Special rule.
(e) Stock acquired by exercise of options, warrants, convertible obligations, and other similar interests.
(1) Treatment of options.
(i) General rule.
(ii) Agreement, understanding, or arrangement to write an option.
(iii) Substantial negotiations related to options.
(2) Instruments treated as options.
(3) Instruments generally not treated as options.
(i) Escrow, pledge, or other security agreements.
(ii) Compensatory options.
(iii) Options exercisable only upon death, disability, mental incompetency, or separation from service.
(iv) Rights of first refusal.
(v) Other enumerated instruments.
(f) Multiple controlled corporations.
(g) Valuation.
(h) Definitions.
(1) Agreement, understanding, arrangement, or substantial negotiations.

(2) Controlled corporation.
(3) Controlling shareholder.
(4) Coordinating group.
(5) Discussions.
(6) Established market.
(7) Five-percent shareholder.
(8) Similar acquisition.
(9) Ten-percent shareholder.
(i) [Reserved]
(j) Examples.
(k) Effective date.

**Par. 3.** Section 1.355–7 is added to read as follows:

**§ 1.355–7 Recognition of gain on certain distributions of stock or securities in connection with an acquisition.**

[The text of proposed § 1.355–7 is the same as the text of § 1.355–7T published elsewhere in this issue of the **Federal Register**].

**Robert E. Wenzel,**
*Deputy Commissioner of Internal Revenue.*

[FR Doc. 02–9818 Filed 4–23–02; 12:14 pm]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[SC–039; 043–200222(b); FRL–7202–3]**

## Approval and Promulgation of Implementation Plans South Carolina: Approval of Revisions to the 1-Hour Ozone Maintenance State Implementation Plan for the Cherokee County

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Cherokee County 1-hour ozone maintenance area portion of the South Carolina Air Quality State Implementation Plan (SIP), submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) on January 31, 2002. This SIP revision satisfies the requirement of section 175A(b) of the Clean Air Act (CAA) for the ten-year update for the Cherokee County maintenance plan. Additionally, this submittal explicitly identifies the motor vehicle emission budgets (''budgets'') for oxides of nitrogen ($NO_X$) and volatile organic compounds (VOC). In this action, EPA is also finding the $NO_X$ and VOC ''budgets'' supplied in this updated maintenance plan adequate, and is proposing approval of these 'budgets.' These budgets, identified for the year 2012, will be used for the purposes of conducting transportation conformity analyses for Cherokee County, in accordance with the requirements of the CAA amendments of 1990 and the Transportation Conformity rule. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to the direct final rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before May 28, 2002.

**ADDRESSES:** All comments should be addressed to: Sean Lakeman or Lynorae Benjamin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file number SC–039; 043–200222. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), EPA, 401 M Street, SW, Washington, DC 20460.

SC DHEC, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Planning Section, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Mr. Lakeman's telephone number is (404) 562–9043. He can also be reached via electronic mail at *lakeman.sean@epa.gov.*

Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: April 18, 2002.

**Winston A. Smith,**
*Acting Regional Administrator, Region 4.*

[FR Doc. 02–10335 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

## 48 CFR Part 225

**[DFARS Case 2002–D005]**

## Defense Federal Acquisition Regulation Supplement; Foreign Military Sales Customer Involvement

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy regarding the participation of foreign military sales (FMS) customers in the development of contracts that DoD awards on their behalf. The objective is to provide FMS customers with more visibility into the contract pricing and award process.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before June 25, 2002, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2002-D005 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002-D005.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

## A. Background

FMS customers have requested more visibility into the preparation and pricing of contracts that DoD awards on their behalf. This proposed rule revises DFARS 225.7304 to provide for greater involvement of FMS customers in the contract award process, while protecting against unauthorized disclosure of contractor proprietary data.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the involvement of FMS customers in contract development should have no significant effect on offerors or contractors. The rule provides for the protection of contractor proprietary data. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D005.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

## List of Subjects in 48 CFR Part 225

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, DoD proposes to amend 48 CFR Part 225 as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 225—FOREIGN ACQUISITION

2. Section 225.7304 is revised to read as follows:

**225.7304 FMS customer involvement.**

(a) FMS customers may request that a defense article or defense service be obtained from a particular contractor. In such cases, FAR 6.302–4 provides authority to contract without full and open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only if the LOA or other written direction sufficiently fulfills the requirements of FAR subpart 6.3.

(b) FMS customers should be encouraged to participate with U.S. Government acquisition personnel in discussions with industry to—

(1) Develop technical specifications;

(2) Establish delivery schedules;

(3) Identify any special warranty provisions or other requirements unique to the FMS customer; and

(4) Review prices on varying alternatives, quantities, and options needed to make price-performance tradeoffs.

(c) Do not disclose to the FMS customer any data, including cost or pricing data, that is contractor proprietary unless the contractor authorizes its release.

(d) Except as provided in paragraph (e)(3) of this section, the degree of FMS customer participation in contract negotiations is left to the discretion of the contracting officer. Factors that may limit FMS customer participation include situations where—

(1) The contract includes requirements for more than one FMS customer;

(2) The contract includes unique U.S. requirements; or

(3) Contractor proprietary data is a subject of negotiations.

(e) Do not allow representatives of the FMS customer to—

(1) Direct the exclusion of certain firms from the solicitation process (They may suggest the inclusion of certain firms);

(2) Interfere with a contractor's placement of subcontracts; or

(3) Observe or participate in negotiations between the U.S. Government and the contractor involving cost or pricing data, unless a deviation is granted in accordance with subpart 201.4.

(f) Do not accept directions from the FMS customer on source selection decisions or contract terms (except that, upon timely notice, the contracting officer may attempt to obtain any special contract provisions, warranties, or other unique requirements requested by the FMS customer).

(g) Do not honor any requests by the FMS customer to reject any bid or proposal.

(h) If an FMS customer requests additional information concerning FMS contract prices, the contracting officer shall, after consultation with the contractor, provide sufficient information to demonstrate the reasonableness of the price and reasonable responses to relevant questions concerning contract price. This information—

(1) May include tailored responses, top-level pricing summaries, historical prices, or an explanation of any significant differences between the actual contract price and the estimated contract price included in the initial LOA; and

(2) May be provided orally, in writing, or by any other method acceptable to the contracting officer.

[FR Doc. 02–10093 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 245 and 252

**[DFARS Case 92–D024]**

## Defense Federal Acquisition Regulation Supplement; Demilitarization

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** DoD is withdrawing the proposed rule published at 62 FR 30832 on June 5, 1997. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to address demilitarization of excess property under Government contracts. DoD 4160.21–M–1, Defense Demilitarization Manual, is presently being revised to define DoD policy on this subject. After the revised manual is issued, DoD will reevaluate the need for DFARS changes pertaining to demilitarization.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Layser, Defense Acquisition Regulations Council, OUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 92–D024.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 02–10099 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–U

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**[I.D. 040802B]**

## Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Atlantic Coastal Fisheries Cooperative Management; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMPs). However, consideration of comments on the proposal is required and further review and consultation may be necessary before a final determination is made that the activity will have no significant impacts on the human environment, and that the issuance of EFPs is warranted. NMFS is reviewing analyses prepared in an Environmental Assessment to help make final determinations. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue EFPs that would allow two federally permitted fishing vessels to conduct fishing operations otherwise restricted by the regulations governing the Atlantic sea scallop and Northeast multispecies fisheries. EFPs would allow the federally permitted vessels to compare a standard scallop dredge to a modified scallop dredge in order to estimate finfish bycatch reduction in the modified dredge. EFPs are necessary to exempt the vessels from days-at-sea (DAS), scallop gear, and multispecies closed area restrictions.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments must be received on or before 5 p.m. Eastern Standard Time May 13, 2002.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments on Scallop Dredge EFP Proposal.'' Comments may also be sent via facsimile (fax) to (978) 281–9135. A copy of the proposal and the Environmental Assessment are available from the Northeast Regional Office at the address stated above.

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Policy Analyst, (978) 281–9288.

**SUPPLEMENTARY INFORMATION:** Ronald Smolowitz, of Coonamessett Farm, Inc., submitted an application to conduct an experimental fishery to test experimental scallop dredges outside of scallop DAS and within portions of Georges Bank Closed Area II and the Nantucket Lightship Closed Area. The experiment would be a continuation and expansion of experiments with similar gear that Coonamessett Farm, Inc., has conducted in the past.

The experiment is necessary to expand the level of information and data that Mr. Smolowitz has collected on the experimental scallop dredge and to conduct the experimental fishing in areas where both scallops and finfish species are in high abundance relative to other areas. The modified scallop dredge uses a modified dredge frame equipped with a roller sweep and excluder chains across the mouth of the dredge to reduce finfish bycatch. Prior experimental fishing with the gear has demonstrated a reduction of the bycatch of yellowtail flounder by 40 percent, skate by 40 percent, and winter flounder by 50 percent, compared to a standard dredge with 10-inch (25.4-cm) twine top mesh. Comparisons of the modified dredge and a standard dredge with 6-inch (15.2-cm) twine top mesh would allow the researcher to determine the overall effectiveness of the modified dredge.

The proposed experiment would be conducted as soon as possible following approval of the EFPs, if the final decision is to grant EFPs. Each participating vessel would be authorized to take two trips into a portion of either Georges Bank Closed Area II or the Nantucket Lightship Closed Area, or one trip into each area. In addition, each vessel would be authorized to take two trips outside of the closed areas. Conducting the trips in both closed and open areas would allow the gear to be tested in areas of both extremely high and moderate scallop and finfish abundance. The information gathered from this experiment could be valuable for consideration in future management actions under the Atlantic Sea Scallop FMP. Participating vessels would be allowed to retain up to 15,000 lb (6,804 kg) of scallops and the regulated amount of incidental catch of other species (e.g., 300 lb (136 kg) of regulated multispecies and monkfish) per trip. EFPs would allow exemptions from the following regulations for Fisheries of the Northeastern United States (50 CFR part 648): DAS notification requirements specified at § 648.10(b)(1)(i); scallop dredge twine top restrictions specified at § 648.51(b)(4)(iv); scallop DAS restrictions specified at § 648.53; and Northeast multispecies Closed Area II and Nantucket Lightship Closed Area restrictions specified at § 648.81(b)(1) and (c)(1).

Participating vessels would land approximately 60,000 lb (27,216 kg) of scallops, 1,200 lb (544 kg) of Northeast multispecies, and 1,200 lb (544 kg) of monkfish. Minimal amounts of other legally retained bycatch species, such as skates, may be landed. The catch of scallops in excess of the 15,000-lb (6,804-kg) per trip allowance may occur in closed areas due to very high concentrations of scallops. This would result in some scallop discard, but discard survival rates of scallops is expected to be high. Discards of other species caught during experimental fishing is expected to be about 40,000 lb (18 mt) of flounder species and skates, 35,000 lb (16 mt) of monkfish, and 4,400 lb (2 mt) of other species. For comparison, the total allowed catch (TAC) in the 2000 Georges Bank Sea Scallop Exemption Program (the same portions of Closed Area II and the Nantucket Lightship Closed Area are proposed for access in the experiment) for yellowtail flounder was 725 mt with no catch limits on other species. Although information on the survival of finfish discards is lacking, not all discarded fish would die. Based on the analyses of the proposed action, the relative impact of the expected catch overall during the proposed experiment does not appear to be significant. The increase in DAS (exempting two vessels from DAS restrictions for a total of 40 DAS) is approximately 0.14-percent of the overall DAS used in the scallop fishery on an annual basis.

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 22, 2002.

**John H. Dunnigan,**

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

[FR Doc. 02–10358 Filed 4–25–02; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 020325069–2069–01; I.D. 071299C]**

**RIN 0648–AM91**

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

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

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

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**SUMMARY:** Under the framework provisions of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), NMFS proposes to amend the consolidated regulations governing the Atlantic HMS fisheries to: define operations and regulations for HMS Charter/Headboats (CHBs), require an Atlantic HMS recreational permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels, and allow NMFS to set differential BFT retention limits by vessel type (e.g., charter boats, headboats). Additionally, NMFS is requesting comments on, but not proposing at this time, an extension of the existing condition on commercial HMS permits to require that permit holders abide by more restrictive Federal regulations regardless of whether fishing occurs within or beyond the exclusive economic zone (EEZ).

Public hearings on this proposed rule will be held in May 2002 and will be announced in a separate **Federal Register** document. Comments on the proposed rule and supporting documents can be submitted by mail, by fax, or electronically through the NMFS e-Comments pilot project web site. In addition to comments on the proposed rule and supporting documents, comments are also invited on the e-Comments pilot project.

**DATES:** Comments on the proposed rule and supporting documents must reach NMFS on or before May 28, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 28, 2002.

**ADDRESSES:** Please submit your comments on the proposed rule, supporting documents, and the e-Comments pilot project by only one of the following means; comments submitted via e-mail will not be accepted:

(1) By mail to Christopher Rogers, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282.

(2) By fax to Christopher Rogers at NMFS at 301–713–1917.

(3) Electronically through the NMFS e-Comments pilot project web site at http://www.nmfs.noaa.gov

Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS but must also be mailed to the Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the supporting documents (see **SUPPLEMENTARY INFORMATION**) are available by sending your request to the address and fax number listed under (1) and (2), respectively, or by calling (301) 713–2347. The supporting documents will also be posted on the e-comments website listed under (3).

**FOR FURTHER INFORMATION CONTACT:** For questions on this proposed rule, or on submitting public comments, call Brad McHale at (978) 281–9260.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 28, 1999, NMFS published the final rule (64 FR 29090) that implemented the HMS FMP and Amendment One to the Atlantic Billfish FMP, and that consolidated regulations for Atlantic HMS into one CFR part. After issuance of the final HMS FMP and publication of the final consolidated rule, NMFS received comment that several provisions of the regulations were inconsistent with the HMS FMP. Additionally, several commenters indicated that activities previously authorized under the HMS regulations when issued under separate CFR parts were now prohibited under the consolidated format of the regulations. NMFS subsequently published a technical amendment to the final consolidated regulations (64 FR 37700, July 13, 1999) to correct certain drafting errors and omissions that were not consistent with the final HMS FMP. However, addressing other more substantive issues raised about omissions from, or corrections to, the consolidated regulations requires a regulatory amendment under the framework provisions of the HMS FMP and the amended Billfish FMP. NMFS issues this proposed rule to solicit public comment on the merits and potential impacts of changes to the regulations intended to address comments received on the consolidated regulations, and to further the objectives of the HMS and Billfish FMPs.

### Charter/Headboat Operations

NMFS first required Charter/Headboat permits for Atlantic tunas vessels in 1994. Given quota reductions and allocation issues in the recreational BFT fisheries, it became necessary to improve inseason monitoring of catch, particularly for school BFT. In response, NMFS began issuing permits in order to develop a telephone dialing frame for a fishing effort survey. Recognizing that charter vessels and headboats tend to have higher effort rates than private recreational vessels and, on average, higher catch rates, NMFS established a separate permit category for the purposes of stratifying the two populations for the telephone survey. Issuing separate permits for private and for-hire vessels also facilitated the issuance of regulations tailored to the unique aspects of each category (e.g., catch limits, sale of fish).

In developing the HMS FMP, the HMS Advisory Panel (AP) noted the significance of the for-hire fleet in the recreational fisheries for tunas, billfishes and sharks. The HMS AP recommended that NMFS expand the CHB permit program from Atlantic tunas to include vessels targeting any HMS so that catch and effort monitoring could be improved, and NMFS adopted this permit requirement in the HMS FMP. With all HMS vessels included in the permit system, NMFS can now select a more representative sample of CHB vessels for the logbook program and telephone survey.

The HMS Charter/Headboat permit is required in lieu of any other commercial or recreational category tunas permit, and is considered a commercial tunas permit because Atlantic tunas caught by persons aboard vessels with this permit may be sold. Given this more restrictive statement of the permit requirement (i.e., the HMS Charter/Headboat permit

is the only permit authorized to embark fee-paying anglers), and the dual nature of the permit (carrying fee-paying recreational anglers, and also allowed to sell tunas), further clarifications to the regulations pertaining to charter/headboat operations are needed relative to sale of fish, applicability of retention limits and the requirements for licensed captains.

As the retention limits applicable to the recreational fisheries for HMS do not generally apply to persons aboard permitted commercial fishing vessels, it is necessary to specify the circumstances under which persons aboard a CHB vessel are subject to the recreational retention limits for any HMS. These retention limits are directly linked to how a for-hire trip on a CHB is defined. Such designation is practical for BFT because the quota categories are related to size classes of fish, thus the size of the fish itself determines authorized catch limits and disposition (i.e., sold or retained for personal consumption). However, in certain situations, the consolidated regulations are not clear with respect to catch limits, size limits and authorized disposition applicable to sharks and yellowfin tuna (YFT) taken aboard vessels issued HMS Charter/Headboat permits.

In a technical amendment to the consolidated regulations, NMFS clarified that the recreational retention limit of three YFT per person per day applies at all times to persons fishing aboard vessels permitted in the Atlantic tunas Charter/Headboat category, now the Atlantic HMS Charter/Headboat permit. While the Atlantic HMS Charter/Headboat permit is classified as a commercial tuna permit, and YFT landed by persons aboard such vessels may be sold to permitted dealers, the number of YFT landed cannot exceed three times the number of persons aboard, including captain and crew.

Since the technical amendment was issued, NMFS has received comment that applying the YFT retention limit at all times precludes legitimate commercial activity when the vessels are not carrying fee-paying anglers. These commenters have indicated that a few dozen charter vessels in the Mid-Atlantic region have historically conducted commercial fishing trips for YFT when not operating as a for-hire vessel. Further, these commenters noted that the HMS FMP did not specifically address commercial fishing by the for-hire fleet and its supporting analyses did not consider the impacts of prohibiting such commercial fishing on a part-time basis.

NMFS recognizes that certain vessels operating as charter vessels and headboats by taking anglers fishing for HMS on a fee basis may, on occasion, sell tunas taken by those anglers. Additionally, some of these vessels may, when not operating as a CHB, directly engage in commercial tuna fishing operations. Therefore, consistent with other regulations issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act), NMFS proposes to define a for-hire trip as a trip carrying a passenger who pays a fee and/or having a specified number of persons aboard: More than three persons for a vessel licensed to carry six or fewer; more than the required number of crew for an inspected vessel. Therefore, these trips would be considered for-hire recreational trips and recreational retention limits would apply. Trips where a vessel carries three or fewer passengers, or fewer that the required number of crew for an inspected vessel, would be considered commercial and commercial retention limits would apply. Under this proposal the recreational YFT retention limit would apply to vessels issued an HMS Charter/Headboat permit only when such vessels are engaged in a for-hire trip.

NMFS also proposes to authorize retention of sharks under the recreational catch limits by persons aboard vessels issued limited access permits for sharks after a closure of any shark management group if the vessel has also been issued an HMS Charter/Headboat permit and is engaged in a for-hire fishing trip. In such case, it would be required that the recreational landing and size limits be observed, that the sharks be landed in whole form, and that the sharks not be sold. If the fisheries for all shark species groups are open, vessels that possess a limited access permit for sharks and an HMS Charter/Headboat permit would be subject to the recreational retention limits for sharks when engaged in a for-hire fishing trip, but the shark(s) may be sold.

On December 26, 2001, NMFS published proposed regulations to establish a recreational retention limit for North Atlantic swordfish (66 FR 66390). If a recreational retention for North Atlantic swordfish were adopted, the application of the retention limit to vessels with both swordfish Handgear and HMS CHB permits would be similar to those vessel with shark limited access and HMS Charter/Headboat permits. Such vessels would be subject to the recreational retention limits when engaged in a for-hire fishing trip, and the North Atlantic swordfish could be sold if the directed fishery quota were open, but could not be sold if the directed fishery quota were closed. Directed and Incidental swordfish limited access permits are only valid if the vessel also possesses a valid Atlantic tunas Longline category permit, which means that the vessel could not possess an Atlantic HMS Charter/Headboat permit and could not be engaged in for-hire fishing.

**Atlantic HMS Angling Vessel Permits**

Current HMS regulations require that vessels fishing recreationally for Atlantic tunas obtain an Atlantic Tunas Angling Category permit. This proposed rule would extend the permit requirement to all recreational vessels fishing for any HMS regulated under the HMS and Billfish FMPs.

This proposed action would provide NMFS with a complete list of recreational vessels participating in the fisheries for Atlantic HMS. Knowing the universe of vessels participating in the recreational fisheries for HMS would enable NMFS to monitor recreational landings and catch and release statistics more accurately, thereby enhancing HMS management and research efforts. The total universe of recreational fishermen in the HMS fisheries, and their effort, catch and bycatch (including discards) is presently unknown. Estimates of some of these parameters are currently made using surveys, such as the Large Pelagic Survey and the Marine Recreational Fisheries Statistics Survey, as well as reporting from registered HMS tournaments. An HMS recreational permit system would greatly improve information available to NMFS regarding the recreational HMS fisheries by providing an accurate measure of participation, effort, catch and bycatch (including discards) from one of its most significant components.

A measure requiring permits for recreational HMS vessels would increase the regulatory burden on recreational fishermen by requiring that they participate in an annual permit process. However, the regulatory burden for both anglers and NMFS should be significantly reduced by incorporating the existing HMS recreational permitting requirement (Angling category permit for Atlantic tunas) into the expanded permit requirement. Many saltwater fishermen target more than one HMS during a single trip or throughout the fishing season; for example, some who target billfish also catch large pelagic species like tuna and sharks.

The universe of affected anglers could include the following: The nearly

13,000 vessels currently permitted in the Atlantic tunas Angling (recreational) category, approximately 10,000 billfish anglers (minimum estimate based on the number of billfish tournament anglers from Fisher and Ditton, 1992), and vessels engaged solely in recreational shark or swordfish fishing. The number of vessels associated with the 10,000 billfish anglers, as well as the extent of the overlap between billfish vessels, recreational shark and swordfish vessels, and (already permitted) tuna vessels is unknown, but the overlap is likely significant. Thus, the universe of affected vessel owners is likely to be smaller than the sum of the above estimates, as only one permit would be required for participation in any HMS recreational fishery. Annual permit issuance/renewal would not have a significant impact on HMS anglers. The renewal process would be the same automated system currently in effect for Atlantic tunas permits, reducing paperwork and mailing time for forms.

**Jurisdictional Issues Related to HMS Permits**

Through prior rulemaking, NMFS has implemented a condition on shark and swordfish permits that requires persons aboard permitted vessels to adhere to Federal regulations without regard to whether fishing activity occurs within or outside the EEZ (see 50 CFR 635.4(a)(1)). Such a condition is deemed necessary to ensure that the management objectives of the HMS FMP are met in recognition of the inherent mobility of the fish species and the fishing vessels. The permit condition was initially applied only to commercial fishing vessels because recreational vessels were not required to be permitted in the swordfish and shark fisheries. Additionally, although recreational tuna permits have been required for some time, tuna regulations were previously determined to be applicable outside the EEZ (i.e., the high seas and waters under State jurisdiction) under the authority of ATCA, thus not requiring a specific permit condition. Given that NMFS has since implemented an Atlantic HMS vessel permit for the Charter/Headboat category, and proposes in this rulemaking document that a permit be required for private recreational vessels fishing for tunas, swordfish, sharks or billfish, NMFS is considering the merits of applying a permit condition to all Atlantic HMS vessel permits, in both commercial and recreational categories. Such a condition would not supersede more restrictive regulations in waters under the jurisdiction of any State, but would help ensure that the activity of all vessels issued Federal permits would conform to the requirements of the HMS and Billfish FMPs throughout the range of the species in the respective management units. NMFS requests comments from the public on the merits and potential impacts of extending the permit condition across all HMS fisheries.

**BFT Fisheries in the Gulf of Mexico**

In 1982, the International Commission for the Conservation of Atlantic Tunas (ICCAT) recommended a ban on directed fishing for bluefin tuna in the Gulf of Mexico to protect the spawning stock. This action primarily impacted Japanese longline fishermen in the area, as U.S. longline gear had already been prohibited from targeting bluefin tuna in the Gulf of Mexico since 1981. NMFS issued additional regulations in 1983 to subdivide the Incidental BFT quota for longline fishermen, and to allow the retention of one giant BFT per year by vessels using rod and reel gear (48 FR 27745, June 17, 1983). No other handgear-caught BFT could be retained in the Gulf of Mexico, and the one giant ''incidental'' rod and reel-caught BFT could not be sold. The annual limit of one giant (large-medium or giant since 1992) BFT per vessel for handgear vessels in the Gulf of Mexico is still in place, and is now part of the BFT Angling category ''trophy'' quota.

The 1999 consolidation of the HMS regulations into one CFR part resulted in the BFT Angling category retention limit regulations for the Gulf of Mexico being unclear. NMFS has received comment that the current regulations under § 635.23(b) and (c) could be interpreted to mean that in the Gulf of Mexico, Angling category vessels may retain school, large-school, and small medium BFT subject to the retention limits in place at the time, while CHBs may not. This rule would modify the regulations to clarify that the only BFT that could be retained by Angling category and CHB vessels in the Gulf of Mexico is one large medium or giant BFT per vessel per year, caught incidentally while fishing for other species.

**Change of Tuna Permit Category**

Current regulations allow Atlantic tunas permit holders to change their vessel permit category only once per year, and that change must occur before May 15. These regulations are meant to prevent vessels from landing BFT in more than one quota category in a single fishing year. Atlantic tunas and Atlantic HMS CHB permits can now be obtained within minutes, 24 hours a day, 7 days a week, via the Internet. Because of the instant availability, NMFS proposes to allow the one permit category change to occur until the first day of the fishing year, June 1. In addition, NMFS proposes to allow the one permit category change to occur after June 1, so long as it occurs with the renewal or initial application for the current fishing year. For example, under current regulations, if a person purchased a vessel that had permitted in the General category in previous years, the vessel would have to remain in the General category if the new owner applied for a permit after May 15. Under the proposed regulations, the new owner could choose the appropriate permit or permit category at the time of application, regardless of the time of year and in which category the vessel was permitted the previous fishing year.

**Adjustments to BFT Retention Limits by Vessel Type**

Under the current HMS regulations, NMFS has the authority to adjust the BFT retention limits during the fishing season to maximize utilization of the quota for BFT. When vessels permitted in the HMS CHB category are fishing under the Angling category BFT quota, the same retention limits apply whether the vessel is operating as a charter boat with one passenger, or a headboat carrying 30 passengers. With the BFT retention limits generally defined in terms of the number of BFT that can be retained per vessel, the current situation can be inequitable for Coast Guard inspected vessels authorized to carry a larger number of passengers, as their limit is set at the same amount of BFT as a vessel with a charter of two to six anglers. Prior to the 1999 consolidation of the HMS regulations into one CFR part, the Atlantic tunas regulations included explicit provisions for NMFS to set differential retention limits by vessel type (e.g., charter boat vs. headboat), but this explicit authority was (unintentionally) not maintained in the consolidated regulations. This proposed rule would modify the HMS regulation to clarify that NMFS has the authority to set differential BFT retention limits by vessel type, so that NMFS could adjust the retention limits to provide equitable fishing opportunities for all fishing vessels, throughout the fishery.

**E-Comments Pilot Project**

NMFS encourages the public to participate in this proposed rulemaking by submitting comments. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project (see **ADDRESSES**). The e-Comments pilot

project is designed to introduce electronic rulemaking to NMFS an its constituents. The public is encouraged to use the new web site to compose and submit comments on this proposed rule and the associated supporting documents to help NMFS fully evaluate this new technology. In submitting comments, please include your name and address, indicate if you are commenting on the proposed rule or other rulemaking documents, and give the reason for each comment. If you are commenting on the proposed rule, indicate to which specific section each comment applies. Comments on the burden-hour estimates or other aspects of the collection of information that are part of this rulemaking can be submitted to NMFS but must also be mailed to OMB (see **ADDRESSES**). NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Copies of the supporting documents including the HMS FMP, the final regulations to implement the HMS FMP (64 FR 29090, May 28, 1999), the technical amendment to the final regulations (64 FR 37700, July 13, 1999), and the latest Stock Assessment and Fishery Evaluation Report are available by request (see **ADDRESSES**) or on-line at http://www.nmfs.noaa.gov. NMFS will consider all comments received during the comment period, regardless of how they were submitted, and NMFS may make changes in the final rule in consideration of them. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site after the comment period closes.

**Classification**

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed regulations, if implemented, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed action would amend the HMS regulations to clarify regulations regarding the sale of fish and applicability of daily catch limits on board vessels permitted in the HMS charter/Headboat (CHB) permit category. This proposed rule would also implement an Atlantic HMS recreational vessel permit, adjust the time frame for permit category changes for Atlantic HMS and Atlantic tunas permits, clarify the regulations regarding the retention of Atlantic bluefin tuna (BFT) in the Gulf of Mexico by recreational and HMS CHB vessels and allow NMFS to adjust BFT retention limits by vessel type. NMFS conducted a preliminary economic evaluation of the proposed measures, and, because the proposed measures would allow increased landings of YFT, revenues for the commercial handgear yellowfin tuna (YFT) fishery would increase slightly (3.6 percent). The proposed measures would not negatively affect the revenues of any small entities in the fishery, and the measures would not alter current fishing practices. Additionally, NMFS is requesting comments on, but not proposing at this time, an extension of the existing condition on commercial swordfish and shark permits to include other Atlantic HMS permits. The condition requires that permit holders abide by more restrictive Federal regulations regardless of whether fishing occurs within or beyond the EEZ. NMFS requests comment primarily to gauge the potential impacts on fishing activity in waters under State jurisdiction where regulated Atlantic HMS occasionally do occur. As NMFS is only requesting comment at this time, there is no direct impact on fishery participants. Comments will assist NMFS in assessing impacts under the Regulatory Flexibility Act when and if such a permit condition is proposed.

Because of this certification, an Initial Regulatory Flexibility Analysis was not prepared.

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

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

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

This proposed rule contains two new collection-of-information requirements and restates several existing reporting requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The new requirements have been submitted to OMB for approval.

The new requirement that has been submitted to OMB for approval is an extension of the Atlantic tunas recreational Angling category permit requirement to include fishermen who fish for all Atlantic HMS, including swordfish, sharks, and billfish, with an estimated public reporting burden of 30 minutes per response for initial permit applications, and 5 minutes per response for renewing the permit. Persons acquiring this permit who were not previously subject to a permit requirement may also be subject to existing gear-marking requirements. The extension of this requirement, estimated to take 15 minutes per float marked, has also been submitted to OMB for approval. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. This proposed rule also restates a number of collection-of-information requirements that have been approved by OMB. These requirements and their OMB control numbers and estimated response times are: vessel permits for Atlantic tunas and Atlantic HMS Charter/headboats, initial (30 minutes; 0648–0327) and renewal (6 minutes; 0648–327); vessel permits for Atlantic shark and swordfish (20 minutes; 0648–0205); dealer permits for Atlantic sharks and swordfish (5 minutes; 0648–0205); call in recreational landing reports for Atlantic bluefin tuna (5 minutes; 0648–0328); dealer permits for Atlantic tunas (5 minutes; 0648–0202); gear marking (15 minutes; 0648–0373); and vessel marking (45 minutes; 0648–0373).

All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: (1) the need for the proposed collection of information for the proper performance of the functions of the agency, including the practical utility of the information; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

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

Dated: April 23, 2002.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

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

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

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

### § 635.2 Definitions.

* * * * *

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

* * * * *

3. In § 635.4, paragraphs (a)(2), (a)(5), (b), (d) heading, (d)(1) through (d)(3), (h)(1) heading, and (m)(1) are revised to read as follows:

### § 635.4 Permits and fees.

* * * * *

(a) * * *

(2) *Vessel permit inspection*. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing, and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection, all valid vessel permits.

* * * * *

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

* * * * *

(b) *HMS Angling Category and Charter/Headboat Permits*—(1) *HMS Angling Category permits*. The owner of each vessel used to fish recreationally for Atlantic HMS or on which Atlantic HMS are retained or possessed, must obtain, in addition to any other required permits, an HMS Angling permit. Atlantic HMS caught, retained, possessed, or landed by persons on board vessels with an Atlantic HMS Angling permit may not be sold or transferred to any person for a commercial purpose. A vessel issued an Atlantic HMS Angling permit, during such permit's period of validity, shall not be issued an Atlantic tunas permit in any other category.

(2) *HMS Charter/Headboat Category permits*. (i) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an Atlantic HMS Charter/Headboat permit, during such permit's period of validity, shall not be issued an Atlantic tunas permit in any category.

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

* * * * *

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

(2) Persons aboard a vessel with a valid Atlantic tunas, HMS Angling, or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic tunas permit or a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued an Atlantic HMS Angling permit.

(3) Except for vessels with an Atlantic tunas purse seine category permit, a vessel owner may change the category of the vessel's Atlantic tunas permit, change between an Atlantic HMS Angling or HMS Charter/Headboat permit, or change between an Atlantic tunas permit and an Atlantic HMS Angling or HMS Charter/Headboat permit no more than once each year and only from April 1 to May 31. At all other times, the vessel's permit or permit category may not be changed, regardless of a change in the vessel's ownership. A vessel's permit or permit category change will be allowed outside of April 1 to May 31 if it occurs in conjunction with the permit renewal.

* * * * *

(h) * * *

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

* * * * *

(m) *Renewal*—(l) *General*. Persons must apply annually for a dealer permit for Atlantic tunas, sharks, and swordfish, and for an Atlantic HMS

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

* * * * *

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

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(c) *Anglers*. The owner of a vessel permitted in the Atlantic HMS Angling or Charter/Headboat category must report all BFT landed under the Angling category quota to NMFS through the automated catch reporting system by calling 1–888–USA—TUNA within 24 hours of the landing. * * *

* * * * *

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

**§ 635.6 Vessel and gear identification.**

* * * * *

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

* * * * *

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

* * * * *

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

**§ 635.22 Recreational retention limits.**

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

* * * * *

(c) *Sharks*. One shark from either the large coastal, small coastal or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark per person may be possessed on board a vessel. No prohibited sharks listed in Table 1(d) of Appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued an Atlantic shark permit under § 635.4. If an Atlantic shark quota is closed, the recreational retention limit for sharks also applies to persons aboard a vessel issued an Atlantic shark permit under § 635.4, if that vessel also possesses an Atlantic HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

(d) *Yellowfin tuna*. Three yellowfin tunas per person per day may be retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel that has been issued an Atlantic tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

* * * * *

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

**§ 635.23 Retention limits for BFT.**

* * * * *

(b) *Angling category*. BFT may be retained and landed under the daily limits and quotas applicable to the Angling category by persons aboard vessels with Atlantic HMS Angling permits as follows:

* * * * *

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

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

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

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

* * * * *

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

* * * * *

8. In § 635.27, the first three sentences of paragraph (a) introductory text, the

first two sentences of paragraph (a)(1)(i), and the first sentence of paragraph (a)(2) are revised to read as follows:

**§ 635.27 Quotas.**

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

(1) * * *

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

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

* * * * *

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

**§ 635.28 Closures.**

* * * * *

(b) * * *

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

* * * * *

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

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

(a) *Atlantic tunas*. (1) Persons that own or operate a vessel from which an Atlantic tuna is landed may sell such Atlantic tuna only if that vessel has a valid Atlantic HMS Charter/Headboat permit, or a General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. Persons may not sell a BFT smaller than the large medium size class. However, a large medium or giant BFT taken by a person on a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may not be sold (see § 635.23(c)). Persons may sell Atlantic tunas only to a dealer that has a valid permit for purchasing Atlantic tunas issued under this part.

* * * * *

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

**§ 635.71 Prohibitions.**

* * * * *

(b) * * *

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

* * * * *

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

* * * * *

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

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

* * * * *

[FR Doc. 02–10341 Filed 4–23–02; 4:12 pm]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 67, No. 81

Friday, April 26, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Clarification of Exemption Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice of clarification of exemption regarding historic natural gas pipelines.

**SUMMARY:** The Advisory Council on Historic Preservation clarifies its exemption from historic preservation review for projects involving historic natural gas pipelines by answering five questions that were posed after the exemption went into effect.

**DATES:** The exemption went into effect on April 5, 2002.

**FOR FURTHER INFORMATION CONTACT:** Address all questions about this clarification to Javier Marqués, Office of General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Suite 809, Washington,DC 20004. Telephone: 202–606–8503. Facsimile: 202–606–8672. E-mail: *jmarques@achp.gov.*

**SUPPLEMENTARY INFORMATION:** On April 5, 2002, the Advisory Council on Historic Preservation (''Council'') published in the **Federal Register** a Notice of Exemption Regarding Historic Preservation Review Process for Projects Involving Historic Natural Gas Pipelines (67 FR 16364). Since then, several questions regarding the interpretation and application of the exemption have been brought to the Council's attention. The purpose of this notice is to provide answers to those questions and to clarify the exemption. The following information constitutes the Council's formal views on the interpretation and application of the exemption and should be considered by all parties when taking actions under the exemption.

There are cases where the applicant, a Federal agency and a State Historic Preservation Officer (SHPO) have completed the section 106 process for a Federal action concerning a historic natural gas pipeline prior to the effective date of the exemption. Does the exemption supersede agreements that have been previously executed under Section 106?

Unless otherwise agreed to by the parties, the exemption will supersede any Memorandum of Agreement (MOA) in existence when the exemption went into effect. Note, however, that the exemption only applies to the effects of an action on historic natural gas pipelines. Accordingly, those portions of an MOA that deal with impacts on other historic properties remain in effect. If the agreement was a Programmatic Agreement (PA) developed in accordance with the Council's Section 106 regulations, the provisions of the PA remain applicable. See provision III of the exemption.

Some abandonments filed under section 7(b) of the Federal Natural Gas Act do not involve taking a historic pipeline permanently out of service or do not remove facilities from interstate commerce. Do these situations trigger the exception to the exemption that would require the applicant to meet the documentation standards contained in the exemption?

No. If the pipeline facilities will remain in operation and in interstate service, and therefore subject to subsequent Federal jurisdiction, the applicant for a section 7(b) abandonment is not required to comply with the documentation standards. For abandonments that would take facilities out of service permanently, or that would involve the sale of the facilities to a new owner who would remove the facilities from use in interstate commerce, the required documentation would be a condition for the abandonment.

If only a portion of a historic pipeline facility is proposed for abandonment, must the applicant meet the documentation requirements for the entire facility?

No. Only the portion proposed for abandonment must be documented before the Federal approval is granted. However, as the documentation for the segment to be abandoned may well include much of the information needed should future segments be abandoned, applicants may wish to consider providing documentation for other segments, up to and including the entire pipeline facility, to eliminate the need for a subsequent documentation effort should another segment or the entire pipeline facility be proposed for abandonment in the future.

What is the timing for completion of the documentation requirements specified in the exception to the exemption?

The documentation requirements can be completed at any time prior to the formal Federal action approving the abandonment. Given that the time period for the Federal agency to review the proposed action is usually several months, it is anticipated that there will be sufficient time to complete the requirements so that processing of the Federal approval will not be delayed. Subject to their individual legal authorities, Federal agencies may condition their approval of the abandonment on satisfactory completion of the documentation requirements, after which the abandonment would take effect. Applicants are encouraged to undertake preparation of the documentation as soon as the abandonment process is initiated in order to avoid any subsequent delays.

If the applicant pursues the process laid out in the exemption and the opinion of the SHPO is sought regarding the eligibility of the pipeline facilities for the National Register of Historic Places, is there a time limit within which the SHPO must respond?

Yes. While the concurrence of the SHPO must be sought in reaching a determination of eligibility (36 CFR 800.4(c)(2)), the Council's regulations (36 CFR 800.3(c)(4)) authorize the Federal agency official to proceed to the next step in the process based on the proposed determination if the SHPO fails to respond within 30 days of receipt of a request for review of the determination. This means also that, where an applicant has taken the lead in establishing the eligibility of a historic pipeline facility for the National Register, the same 30-day limit applies for the SHPO response.

**Authority:** 16 U.S.C. 470v; 36 CFR 800.14(c).

Dated: April 22, 2002.

**John M. Fowler,**

*Executive Director.*

[FR Doc. 02–10259 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–10–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Eastern Idaho Resource Advisory Committee Caribou-Targhee National Forest, Idaho Falls, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Caribou-Targhee National Forests' Eastern Idaho Resource Advisory Committee will meet Tuesday, May 21, 2002 in Idaho Falls for a business meeting. The meeting is open to the public.

**DATES:** The business meeting will be held on May 21, 2002 from 10 a.m. to 3 p.m.

**ADDRESSES:** The meeting location is the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83402.

**FOR FURTHER INFORMATION CONTACT:** Jerry Reese, Caribou-Targhee National Forest Supervisor and Designated Federal Officer, at (208) 524–7500.

**SUPPLEMENTARY INFORMATION:** The business meeting on May 21, 2002, begins at 10 a.m., at the Caribou-Targhee National Forest Headquarters Office, 1405 Hollipark Drive, Idaho Falls, Idaho. Agenda topics will include a review over the projects proposals that have been turned in.

Dated: April 22, 2002.

**Jerry B. Reese,**

*Caribou-Targhee Forest Supervisor.*

[FR Doc. 02–10266 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shasta County Resource Advisory Committee (RAC)

**AGENCY:** USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shasta County Resource Advisory Committee (RAC) will meet on May 15, 2002, in Redding, Calif. The purpose of the meeting will be to review and discuss remaining project proposals.

**DATES:** The meeting will be held on May 15, 2002, from 8 a.m. to noon.

**ADDRESSES:** The meeting will be held in the Shasta County Office of Education conference room, 1644 Magnolia Ave., Redding, CA

**FOR FURTHER INFORMATION CONTACT:** Sharon Heywood, Designated Federal Official, USDA Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA. Phone: (530) 242–2200. Email:*sheywood@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: April 19, 2002.

**J. Sharon Heywood,**

*Forest Supervisor.*

[FR Doc. 02–10267 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes in the National Handbook of Conservation Practices

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Channel Stabilization; Critical Area Planting; Cross Wind Ridges; Dam; Hillside Ditch; Irrigation Regulating Reservoir; Irrigation Storage Reservoir; Land Smoothing; Lined Waterway or Outlet; Mulching; Pond; Precision Land Forming; Pumping Plant; Rock Barrier; Soil Salinity Management—Nonirrigated; Stripcropping; Surface Drain Main or Lateral; Terrace; and Waterspreading. These standards are used to convey national guidance in developing Field Office Technical Guide Standards used in the States and the Pacific Basin and Caribbean Areas. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean Areas who choose to adopt these practices for use within their States/Areas will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in resource management systems that treat highly erodible land, or on land determined to be wetland.

**DATES:** Comments will be received for a 30-day period, starting on the date of this publication. This series of new or revised conservation practice standards will be adopted after the close of the 30-day period.

**FOR FURTHER INFORMATION CONTACT:** Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890. Telephone Number: (202) 720–5023. The standards are also available and can be downloaded from the Internet at: *http://www.ftw.nrcs.usda.gov/practice_stds.html.*

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 30 days, NRCS will receive comments on the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, DC, on April 4, 2002.

**Pearlie S. Reed,**

*Chief, Natural Resources Conservation Service.*

[FR Doc. 02–10251 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Bayou Duralde—Lower Nezpique Watershed, Acadia, Evangeline, and Jefferson Davis Parish, LA

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural

Resources Conservation Service Regulation (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bayou Duralde—Lower Nezpique Watershed, Acadia, Evangeline, and Jefferson Davis Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana, 71302, telephone (318) 473–7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

The recommended plan will consist of land treatment measures that are management type and enduring practices. The plan will treat approximately 30,300 acres or about 61 percent of the 50,000 acres problem area. Project measures will be installed under 75 long term contracts and will allow for the installation of 1,451 grade stabilization structures, 60 filter strips, 32 miles of irrigation pipelines and 21, 250 acres of land leveling. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bruce Lehto, Assistant State Conservationist/Water Resources, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO.10.904, Watershed Protection and Flood Prevention, and is subject to the provision of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: April 4, 2002.

**Donald W. Gohmert,**

*State Conservationist.*

[FR Doc. 02–10252 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Kelly Creek Watershed—Barry and Lawrence Counties, MO

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kelly Creek Watershed—Barry and Lawrence Counties, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Roger A. Hansen, State Conservationist, Natural Resources Conservation Service, Parkade Center Suite 250, 601 Business Loop 70 West, Columbia, Missouri, 65203, (573) 876–0901.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, Roger A. Hansen, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are flood damage reduction and recreational development of flood plain areas adjacent to Kelly Creek. The planned works of improvement include one single-purpose floodwater retarding structure and development of greenway, natural, and wildlife areas in the flood plain adjacent to Kelly Creek

The Notice Of A Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at teh above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harold L. Deckerd, Assistant State Conservationist at (573) 876–0900.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, andis subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

**Roger A. Hansen,**

*State Conservationist.*

[FR Doc. 02–10254 Filed 4–25–02; 8:45 am]

BILLING CODE 3410–16–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE: MAY 27, 2002.**

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D Kennerly, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:**

This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Service**

*Service Type/Location:* Storage and Distribution Service, Springs for DSCP, Defense Supply Center—Philadelphia, Philadelphia, PA.
*NPA:* Arizona Industries for the Blind, Phoenix, AZ.
*Contract Activity:* Defense Supply Center—Philadelphia, Philadelphia, PA.
*Service Type/Location:* Storage and Distribution Service, Springs for DSCP, Defense Supply Center—Philadelphia, Philadelphia, PA.
*NPA:* Industries of the Blind, Inc., Greensboro, NC.
*Contract Activity:* Defense Supply Center—Philadelphia, Philadelphia, PA.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 02–10325 Filed 4–25–02; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions and deletions

**AGENCY:** Committee for Purchase from People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

**EFFECTIVE DATE:** May 27, 2002.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION CONTACT:** Sheryl D. Kennerly (703) 603–7740.

**SUPPLEMENTARY INFORMATION:**

**Additions**

On February 8 and March 1 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 5966 and 9436) of proposed additions and deletions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is added to the Procurement List:

**Service**

*Service Type/Location:* Office Supply Store, Department of the Treasury Annex, Washington, DC.
*NPA:* Winston-Salem Industries for the Blind, Winston-Salem, NC.
*Contract Activity:* Department of the Treasury.

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product to Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-ODay Act (41 U.S.C.46–48c) in connection with the products deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46048 and 41 CFR 51–2.4.

Accordingly, the following products are hereby deleted from the Procurement List:

**Products**

*Product/NSN:* Applicator, Wax/7920–00–633–8774.
*NPA:* None Currently Authorized.
*Contract Activity:* GSA, General Products Commodity Center, Fort Worth, TX.
*Product/NSN:* Applicator, Wax/7920–00–633–9274.
*NPA:* None Currently Authorized.
*Contract Activity:* GSA, General Products Commodity Center, Fort Worth, TX.
*Product/NSN:* Box, Storage, Magnetic Tape/8115–00–432–6729.
*NPA:* None Currently Authorized.
*Contract Activity:* Office Supplies & Paper Products Commodity Center, New York, NY.
*Product/NSN:* Box, Storage, Magnetic Tape/8115–00–432–6730.
*NPA:* None Currently Authorized.
*Contract Activity:* Office Supplies & Paper Products Commodity Center, New York, NY.

**Sheryl D. Kennerly,**

*Director, Information Management.*

[FR Doc. 02–10326 Filed 4–25–02; 8:45 am]

BILLING CODE 6353–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a meeting of the Alaska Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 3 p.m. on May 16, 2002, at the Hilton Anchorage, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the planning meeting is to plan and discuss future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD

213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–10292 Filed 4–25–02; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Kansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on May 7, 2002, at the Holiday Inn, 200 McDonald Drive, Lawrence, Kansas 66044. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 22, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–10293 Filed 4–25–02; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting with briefing of the North Dakota Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on Wednesday, May 22, 2002, at the Radisson, 201 5th Street North Fargo, North Dakota 58102. The purpose of the meeting with briefing is to hold new member orientation, be briefed on current projects, and discuss civil rights issues in the state.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 19, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–10290 Filed 4–25–02; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the North Dakota Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 12:45 p.m. on Thursday, May 23, 2002, at the Radisson, 201 5th Street North Fargo, North Dakota 58102. The purpose of the community forum is to hear presentations from representatives of state and local agencies and community organizations concerning refugee and immigrant issues affecting Fargo.

Persons desiring additional information, or planning a presentation to the Committee, should contact, John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 19, 2002.

**Ivy L. Davis,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 02–10291 Filed 4–25–02; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Current Population Survey, May 2002 Race & Ethnicity Supplement.

*Form Number(s):* None. The CPS is conducted by Census Bureau interviewers using laptop computers.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 1,283 hours.

*Number of Respondents:* 57,000.

*Avg Hours Per Response:* 1.35 minutes for each interviewed household.

*Needs and Uses:* The Census Bureau requests Office of Management and Budget clearance for the Race and Ethnicity Supplement to the May 2002 Current Population Survey (CPS). The supplemental questions will be asked of all people 15 years of age and older who responded to the basic labor force questions. To answer these questions, respondents interviewed in person will select the appropriate race(s) and ethnic group from a proposed flashcard. It should be noted that—although the proposed race question includes an ''other'' category—the interviewers will be instructed not to read the ''other'' category, and the ''other'' responses will not be tabulated nor reflected in the resulting public use data set.

The Office of Management and Budget (OMB) issued a revised set of standards for collecting and reporting data on race and ethnicity in October 1997. These changes include altering the placement of the ethnicity question, allowing respondents to select more than one race, and adding a separate race category for Native Hawaiian or Other Pacific Islander. This supplement is designed to measure the effects of these changes on the demographic and economic characteristics of different racial and ethnic populations. The results will be used to plan for the implementation of the 1997 Standards in the CPS beginning in January 2003.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Section 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by

calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 22, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10262 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042202B]**

### Submission for OMB Review; Comment Request

**SUPPLEMENTARY INFORMATION:** The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Atlantic Highly Migratory Species Observer Notification Requirements.

*Form Number(s):* None.

*OMB Approval Number:* 0648-0374.

*Type of Request:* Regular submission.

*Burden Hours:* 295.

*Number of Respondents:* 212.

*Average Hours Per Response:* 2 minutes.

*Needs and Uses:* Under current regulations the National Marine Fisheries Service (NMFS) may select for observer coverage any fishing trip by a vessel that has a permit for Atlantic Highly Migratory Species (HMS). NMFS will advise vessel owners in writing when their vessels have been selected. The owners of those vessels are then required to notify NMFS before commencing any fishing trip for Atlantic HMS. NMFS will also request selected recreational fishermen to provide notifications on a voluntary basis. Such notification allows NMFS to arrange for observer placements and assignments.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 18, 2002

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10362 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on May 14, 2002, 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. Presentation of papers and comments by the public.
3. Update on initiative regarding thermal imaging license processing and commodity jurisdiction.
4. Report on recent interagency proceedings regarding Commerce Control List Category 6 (sensors and lasers).
5. Report on discussions regarding technology diversion issues.

*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/BIS 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 November 29, 2001, 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

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 22, 2002.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 02–10167 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–830]**

### Notice of Postponement of Final Antidumping Duty Determination and Extension of Provisional Measures: Carbon and Certain Alloy Steel Wire Rod from Mexico.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Marin Weaver at (202) 482–2336 or Charles Riggle at (202) 482–0650, AD/

CVD Enforcement, Office V, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

**Postponement of Final Determinations:**

The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of carbon and certain alloy steel wire rod (steel wire rod) from Mexico.

On April 10, 2002, the Department published its preliminary determination in this investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, (67 FR 17397). The notice stated that the Department would issue its final determination no later than 75 days after the date of issuance of the notice.

Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), on April 10, 2002 Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V. (SICARTSA), the sole respondent in the investigation, requested that the Department postpone its final determination. Further to this request, SICARTSA requested that the Department extend to not more than six months the application of the provisional measures prescribed under paragraphs (1) and (2) of section 733(d) of the Act. In accordance with section 735(a) of the Act and 19 CFR 351.210(b), because the preliminary determination in this case is affirmative and the request for postponement was submitted in writing by an exporter who accounts for a significant proportion of exports of the subject merchandise in this investigation, we are postponing the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register** (*i.e.*, until no later than August 23, 2002). Suspension of liquidation will be extended accordingly.

This postponement is in accordance with section 735(a)(2)(A) of the Act, and 19 CFR 351.210(b)(2).

Dated: April 17, 2002

**Bernard T. Carreau,**

*Acting Assistant Secretaryfor Import Administration.*

[FR Doc. 02–10350 Filed 4–25–02; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–037]**

### Drycleaning Machinery From Germany; Amended Final Results of Antidumping Duty Administrative Review in Accordance With Final Court Decision

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of amended final results of antidumping duty administrative review in accordance with final court decision.

**SUMMARY:**

On June 3, 1997, the U.S. Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce arising from the antidumping duty finding on drycleaning machinery from Germany. *See Boewe Reinigungs undWaschereitchnik GmbH and Boewe Passat Drycleaning & Laundry Machinery Corp. v. United States*, Slip Op. 97–72 (CIT 1997). After recalculation of the dumping margin for Boewe Reinigungstechnik, GmbH, and Boewe Systems & Machinery, Inc., we are amending the final results of the review in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results. These results do not affect cash deposits. This order was revoked, effective November 1, 1995. *See Notice of Revocation of Antidumping Finding*, 60 FR 65635.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Jack K. Dulberger or Sheila Forbes,AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5505 and 482–4697, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 26, 1991, the Department published in the Federal Register a notice of final results of the administrative review of the antidumping finding on drycleaning machinery from Germany. *See Notice of Final Results of Antidumping Duty Administrative Review*, 56 FR 66838 (*Final Results*). This review covered the period November 1, 1989 through October 31, 1990. Boewe Reinigungstechnik, GmbH and Boewe Systems & Machinery, Inc. (collectively, ''Boewe''), a manufacturer/exporter reviewed in this case, subsequently appealed the *Final Results* to the CIT on grounds that the Department erred in rejecting as untimely its information for certain expense adjustments, which Boewe claimed supported a circumstance-of-sale or level of trade (LOT) adjustment to its foreign market value (FMV). On May 7, 1993, the CIT, in *Boewe Reinigungs undWaschereitchnik GmbH v. United States*, 17 CIT 335 (1993) (Boewe I), remanded the *Final Results* to the Department, directing that it accept this information as timely and reconsider Boewe's claim for a circumstance-of-sale or LOT adjustment. (*See Boewe I*).

The Department, in its Final Results of Redetermination, August 5, 1993, (1993 Remand) allowed the previously-rejected data, but rejected Boewe's claim for a circumstance-of-sale or LOT adjustment. Additionally, in the 1993 Remand, the Department amended Boewe's dumping margin calculation to reflect corrections to certain of its United States sales transactions. (Note: Boewe alleged this ministerial error after the Department had published the *Final Results*). As a result, Boewe's margin decreased from 0.64 percent to 0.59 percent. See 1993 Remand at 13, 14. However, since this case remained subject to litigation, the Department did not issue amended final results at that time. *See* 1993 Remand at 13.

On May 8, 1996, the CIT sustained in part and remanded in part the Department's 1993 Remand. *See Boewe Reinigungs undWaschereitchnik GmbH and Boewe Passat Drycleaning & Laundry Machinery Corp. v. United States*, 926 F. Supp. 1138 (CIT 1996) (*Boewe II*). In its opinion, the CIT sustained the Department's correction of the ministerial error and several other aspects of the first remand but remanded the case again to the Department in order for the Department to reconsider the LOT adjustments.

On July 24, 1996, the Department issued a second remand redetermination for the final results of the 1989–1990 administrative review of the antidumping finding on drycleaning machinery from Germany. In this remand redetermination, the Department provided the CIT with additional explanation as to why it was denying Boewe's LOT adjustments. On December 11, 1996, the CIT affirmed much of the Department's second remand redetermination, but remanded the remaining LOT issues back to the Department. See *Boewe Reinigungs undWaschereitchnik GmbH and Boewe Passat Drycleaning & Laundry*

*Machinery Corp. v. United States* 951 F. Supp. 231 (CIT 1996)(*Boewe III*). On January 14, 1997, the Department issued its third remand redetermination for the 1989–1990 administrative review of drycleaning machinery from Germany. In this remand redetermination, the Department provided the CIT with additional explanation as to why it was denying Boewe's LOT adjustments.

On June 3, 1997, the CIT affirmed the Department's third remand redetermination in its entirety. *See Boewe Reinigungs undWaschereitchnik GmbH and Boewe Passat Drycleaning & Laundry Machinery Corp. v. United States*, Slip Op. 97–72 (CIT 1997)(*Boewe IV*). This decision made no change to the earlier recalculated margin and was not appealed. We are therefore publishing our amended final results for the review period November 1, 1989 through October 31, 1990.

**Amended Final Results of Review**

As a result of the remand redeterminations, the revised weighted-average margin during the period November 1, 1989 through October 31, 1990, for Boewe is as follows:

| Manufacturer/exporter | Margin (Percent) |
|---|---|
| Boewe ..... | 0.59 |

Accordingly, the Department will determine, and the U.S. Customs Service will assess, antidumping duties on all entries of subject merchandise from Boewe in accordance with these amended final results. The Department will issue appraisement instructions directly to Customs.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930 and 19 CFR 351.221(b)(5)(2002).

April 19, 2002

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–10466 Filed 4–25–02; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–433–809, A–351–836, A–570–876, A–427–824, A–428–835, A–533–827, A–560–816, A–485–808, A–791–816, A–469–813, A–489–811, A–423–813, A–307–823]**

### Notice of Initiation of Antidumping Duty Investigations: Oil Country Tubular Goods from Austria, Brazil, the People's Republic of China, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Initiation of Antidumping Duty Investigations.

**DATES:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** George Callen (India, Romania) at (202) 482–0180, Brandon Farlander (Austria) at (202) 482–0182, Jarrod Goldfeder (Brazil, South Africa) at (202) 482–0189, Phyllis Hall (Spain) at (202) 482–1398, Davina Hashmi (France, Germany) at (202) 482–4136, Minoo Hatten (Turkey) at (202) 482–1690, Michael Strollo (Indonesia, Venezuela) at (202) 482–0629, Alex Villanueva (PRC, Ukraine) at (202) 482–3208, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## INITIATION OF INVESTIGATIONS:

### The Applicable Statute and Regulations

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 (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations are references to the provisions codified at 19 CFR Part 351 (2001).

### The Petitions

On March 29, 2002, the Department received petitions filed in proper form by IPSCO Tubulars, Inc., Koppel Steel Corporation, a division of NS Group, Lone Star Steel Company[1], Maverick Tube Corporation, Newport Steel Corporation, a division of NS Group, and United States Steel Corporation (collectively, ''the petitioners''). The Department received supplemental information to the petitions on April 11, 12, 15, 16, 17, and 18, 2002.

In accordance with section 732(b)(1) of the Act, the petitioners allege that imports of oil country tubular goods (''OCTG'') from Austria, Brazil, the People's Republic of China (''the PRC''), France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela[2] are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support with respect to each of the antidumping investigations that they are requesting the Department to initiate. *See infra*, ''Determination of Industry Support for the Petitions.''

### Scope of Investigations

For purposes of these investigations, the products covered are certain oil country tubular goods. Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). The scope for these investigations does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium or finished drill pipe with tool joint attached. The merchandise subject to these investigations is typically classified in the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50,

[1] Lone Star is not a petitioner in the antidumping duty investigation on Romania.

[2] The original petition filed on March 29, 2002, also included a petition for the imposition of antidumping duties on OCTG from Colombia. On April 11, 2002, the petitioners withdrew the petition on Colombia.

7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[3]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petitions. Based upon our review of the petitioners' claims, we concur that there is a single domestic like product, which is defined in the ''Scope of Investigations'' section above. This is consistent with the Department's determinations in past investigations to treat all OCTG products as a single class or kind of merchandise. *See, e.g., Oil Country Tubular Goods From Argentina*, 60 FR 41055 (Aug. 11, 1995). We note that the ITC has previously determined that drill pipe was a separate like product from tubing and casing. *See Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, at I–9 (Inv. Nos. 701–TA–363–364 (Final) and 731–TA–711–717 (Final) (Publication 2911; August 1995)). However, in previous investigations, the Department has considered casing, tubing and drill pipe to be one class or kind of merchandise. *See, e.g., Oil Country Tubular Goods From Argentina*, 60 FR 41055 (Aug. 11, 1995).

The ITC's 1995 determination that drill pipe was a separate like product was based on a scope that included both unfinished drill pipe and finished drill pipe with attached tool joints. Id. at I–10. In that case, the ITC focused on the lack of interchangeability between finished drill pipe with attached tool joints and finished casing and tubing as a major determinant in its decision. This issue is not present in this investigation because only unfinished drill pipe is included in the scope. The ITC did state in its 1995 determination that there are ''certain distinctions between [unfinished] drill pipe and other OCTG products'' that also support including unfinished drill pipe in the same like product category as finished drill pipe with attached tool joints. *Id.* The ITC noted that drill pipe tends to be shorter and heavier than casing and tubing, drill pipe tends to be of low alloy steel, whereas casing and tubing are primarily of carbon steel, and the tensile strength of drill pipe is generally higher than that in casing and tubing. *Id.* However, the ITC report acknowledges that there is overlap between unfinished drill pipe and casing and tubing with respect to diameter, wall thickness, and length. *Id.* at I–11, fn. 17. Regarding the issue of alloy, various grades of casing and tubing are also low alloy steels, as evidenced by specific alloy designations in the Harmonized Tariff Schedules for these products. Finally, the strength requirements on many of the grades of casing and tubing can be higher than those for unfinished drill pipe. In fact, the final strength characteristics of all products will not be determined until the product has been subjected to certain heat treating operations. *See, e.g.*, American Petroleum Institute, *Specifications For High-Strength Casing, Tubing, and Drill Pipe*. Consequently, for purposes of this investigation, we conclude that casing, tubing, and unfinished drill pipe constitute one like product.

Finally, the Department has determined that the petitions contain adequate evidence of industry support and, therefore, polling is unnecessary. *See* Import Administration Antidumping Investigations Initiation Checklist for each country-specific proceeding, Industry Support section and Attachment II, April 18, 2002 (collectively, the ''Initiation Checklist''),

[3] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp.639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

The Department received no opposition to the petitions except with respect to Austria and Romania. In the context of the Romanian petition, two Romanian producers of OCTG filed a letter claiming that the petitioners had failed to demonstrate sufficient industry support. In the context of the Austrian petitions, Grant Prideco, Inc., which is a domestic producer of the like product and is the majority owner of the Austrian OCTG producer, also asserted that the petitioners had failed to demonstrate that they account for a majority of the domestic industry.

For all countries, we determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. The Department also determined that it will disregard Grant Prideco's opposition to the petition because it is related to a foreign producer. *See* Attachment II to the Initiation Checklist for further explanation. Accordingly, we determine that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

**Initiation Standard for Cost Investigations**

Pursuant to section 773(b) of the Act, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home markets of Brazil and France and the PRC third-country market of Germany were made at prices below the cost of production (''COP'') and, accordingly, requested that the Department conduct country-wide sales-below-COP investigations in connection with these investigations. The Statement of Administrative Action (''SAA''), submitted to the Congress in connection with the interpretation and application of the URAA, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316 at 833 (1994). The SAA, at 833, states that ''Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.''

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have ''reasonable grounds to believe or suspect'' that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices. *Id.* We have analyzed the country-specific allegations as described below.

**Export Price (''EP''), Constructed Export Price (''CEP''), and Normal Value (''NV'')**

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. A more detailed description of these allegations is provided in each Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, as appropriate.

**Austria**

EP

The petitioners stated that Voest-Alpine Stahlrohr Kindberg GmbH & Co KG (''Kindberg'') is the only Austrian producer and exporter of OCTG to the United States. However, we note that Kindberg changed its name to Voest-Alpine Tubulars GmbH & Co KG (''Voest-Alpine Tubulars'') during the anticipated period of investigation (''POI''). For the calculation of U.S. price, the petitioners used the average unit value (''AUV'') for OCTG from Austria, which is based on the Census Bureau's IM–145 import data for the anticipated POI. The petitioners used this AUV figure without adjustments as the basis for U.S. price. *See* Initiation Checklist.

NV

*Price-to-Constructed Value (''CV'') Comparisons*

The petitioners stated that they were unable to obtain home-market or third-country prices for OCTG from Austria. The petitioners stated that they were unable to obtain home-market prices because their market researcher did not have the capability to perform such research in Austria. Moreover, as further support, the petitioners note that, in the 1994–95 investigation of OCTG from Austria, the Department determined that Austria's home market was not viable. For third-country prices, the petitioners stated that they used a market researcher to determine that Russia is the largest third-country market. *See* Attachment D of the April 11, 2002, petition amendment. However, the petitioners stated they were unable to obtain pricing information for sales to Russia. Hence, the petitioners state that, because Austria's home market is not viable and it was unable to obtain third-country prices from Russia, the petitioners determined that it was necessary to use CV. Based on the petitioners' information, we determine that Austria's home market is not viable and that the petitioners made a reasonable effort to obtain third-country market prices for Russia.

Pursuant to section 773(e) of the Act, CV consists of the cost of manufacture (''COM''), selling, general, and administrative expenses (''SG&''), financial expenses, profit, and packing expenses. The petitioners calculated COM based on the production costs in the United States, adjusted to reflect known differences in the production costs in the home market (i.e., Austria). *See* Initiation Checklist. The petitioners utilized the costs of a like steel producer in the United States which manufactures seamless OCTG. The petitioners obtained certain unit factor costs incurred by an affiliate of Voest-Alpine Tubulars based on a proprietary report. The petitioners obtained natural gas prices from a European Union publication entitled ''Gas Prices for EU Industry on 1 January 2001,'' and used these cost values instead of those for the U.S. producer. The petitioners state that Voest-Alpine Tubulars and its affiliates' other unit factor costs are not reasonably available. Hence, for these costs, the petitioners used those of the U.S. producer. These operating costs were supported by an official of one of the petitioning firms. We examined the affidavit and found this official is in a position to know the inputs and costs of inputs for the production of the subject merchandise. Therefore, we found the costs calculated by the petitioners to be reasonable and accurate.

The petitioners stated that Voest-Alpine Tubulars' and its affiliates' fixed overhead expenses (including depreciation) are not reasonably available. Hence, for these costs, the petitioners used those of the U.S. producer. The petitioners were unable to calculate SG&A based on the unconsolidated financial statements of Voest-Alpine Tubulars's affiliates (Voest-Alpine Stahl Linz GmbH, Voest-Alpine Schienen GmbH, and Voest-Alpine Stahl Donawitz GmhH). Hence, the petitioners used the consolidated financial statement of Voest-Alpine Tubulars' parent company, Voest-Alpine Stahl AG. For financial expense, the petitioners used Voest-Alpine Stahl AG's consolidated financial statements. For profit, the petitioners used Voest-

Alpine Tubulars's unconsolidated financial statements for 2001. The SG&A, interest expense, and profit that the petitioners calculated were derived from the financial statements of either the foreign producer or its affiliates. Because of this, we found that use of these companies' SG&A, interest expense, and profit was appropriate for initiation purposes and we relied on this information.

The petitioners obtained exchange rates from the Federal Reserve. Because the source for these exchange rates is the same as we normally use in an antidumping investigation or review, we find it appropriate to rely on this information.

Based upon the comparison of CV to EP, the petitioners calculated an estimated dumping margin of 39.36 percent.

**Brazil**

EP

The petitioners identified five companies that produce and/or export subject merchandise in Brazil. The petitioners believe that these producers and/or exporters account for all OCTG sold in Brazil and exported to the United States from Brazil. The petitioners provided pricing and cost information for one of these five companies, V&M do Brasil S.A. (''V&M do Brasil''). According to the petitioners, V&M do Brasil made direct sales of the subject merchandise to unaffiliated U.S. customers. The petitioners based EP on offers for sale of OCTG by V&M do Brasil to an unaffiliated U.S. customer which were obtained through market research. To calculate EP, the petitioners deducted foreign inland freight from the price quote. The information supporting this deduction was obtained through market research. See Initiation Checklist.

NV

*Price-to-Price Comparisons*

The petitioners provided home-market prices for V&M do Brasil based on several grades and sizes of OCTG sold to an unaffiliated home-market customer, which were obtained from foreign market research. These products are comparable to the products exported to the United States that served as the basis for EP. To calculate NV, the petitioners deducted inland freight, which was also obtained from foreign market research. *See* Initiation Checklist. To adjust for differences in packing expenses, the petitioners deducted home-market packing expenses and added U.S. packing expenses based on information obtained from foreign market research. *See* Initiation Checklist. The petitioners also adjusted home-market prices to reflect differences in the credit expenses between the U.S. and Brazilian markets, based on information obtained from market research and the International Monetary Fund. The petitioners made this adjustment by deducting home-market imputed credit expenses and adding U.S. imputed credit expenses. *See*Initiation Checklist. Finally, for comparisons to EP, the petitioners converted the net home-market prices to U.S. dollars based on the average Federal Reserve exchange rate for the fiscal quarters in which the U.S. price quotes were made.

Based on EP price-to-price comparisons calculated in accordance with section 773(a) of the Act, the estimated dumping margins for OCTG from Brazil range from 6.01 percent to 8.97 percent.

*Price-to-CV Comparisons*

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of OCTG in the home market were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act, and they requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, financial expenses, and packing expenses. The petitioners calculated COM with the exception of the depreciation portion of fixed overhead based on their own production experience, adjusted for known differences between costs incurred to produce OCTG in the United States and Brazil. *See*Initiation Checklist. Specifically, the petitioners used consumption rates incurred by V&M do Brasil for raw materials, direct labor, electricity, and natural gas based on information obtained from publicly available data and an industry study. Where information on a specific variable consumption rate of V&M do Brasil was not reasonably available, the petitioners used those of a U.S. producer. To calculate the portions of fixed overhead other than depreciation, the petitioners relied upon the experience of a U.S. producer because V&M do Brasil's financial statements did not provide sufficient information. To calculate depreciation expense, SG&A, and financial expenses, the petitioners relied upon amounts reported in V&M do Brasil's fiscal year 2000 financial statements. *See* Initiation Checklist. Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioners also based NV for sales in Brazil on CV. The petitioners calculated CV using the same COM, SG&A, and financial expenses they used to compute Brazilian home-market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. Because V&M do Brasil operated at a loss in the most recent fiscal year for which data was reasonably available, the petitioners used the profit experience of Usinas Siderurgicas de Minas Gerais S/A, a Brazilian steel producer with a production process similar to V&M do Brasil.

Based upon the comparison of CV to EP, the petitioners calculated estimated dumping margins ranging from 51.35 to 67.07 percent.

**PRC**

EP

The petitioners identified Baoshan Iron and Steel Company (''Baoshan'') and Tianjin Pipe Company as major producers of OCTG in the PRC. The petitioners based EP on a price quote of PRC OCTG from Baoshan they received from an importer of PRC OCTG. The petitioners started with an average price in U.S. dollars per net ton and deducted an amount for numerous movement expenses and sales-specific adjustments. *See* Initiation Checklist.

For purposes of this initiation, the data submitted by the petitioners provides grounds to suggest that EP is an appropriate basis for calculating the U.S. price. To determine EP, we relied on the data in the petition.

NV

The petitioners provided a dumping margin calculation using the Department's non-market-economy (''NME'') methodology as required by 19 CFR 351.202(b)(7)(i)(C). For the NV calculation, the petitioners based the factors of production (''FOP''), as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for OCTG on information from PRC producers. *See* Initiation Checklist.

The petitioners selected India as the surrogate country. The petitioners argued that, pursuant to section

773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of India as a surrogate country is appropriate for purposes of initiation of this investigation. *See*Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioners valued the FOP, where possible, on reasonably available, public surrogate country data. Where possible, the petitioners developed unit factor costs relying on surrogate values from the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce, Government of India, *Monthly Statistics of the Foreign Trade* (''*MSFT*'') from April 2001 to August 2001, the most contemporaneous data available, which captures two months of the anticipated POI. Where *MSFT* data was not available, the petitioners used actual unit factor costs purchased by The TATA Iron & Steel Company (''TATA''), Ltd., and the Steel Authority of India, Ltd. (''SAIL''). The petitioners argue that these companies were selected because, like Baoshan, they are also integrated steel producers. Specifically, ''where both TATA and SAIL reported information regarding an input, the petitioners calculated the unit factor costs based on the weighted average for the companies. Where only one of the companies reported information regarding an input, the petitioners relied on the information for that company alone.'' *See* petition at 3.

Labor was valued using the regression-based wage rate for the PRC provided by Import Administration's website and in accordance with 19 CFR 351.408(c)(3). The petitioners derived factory overhead, SG&A, interest, and profit from the 2000–2001 financial statements of TATA, an Indian producer of the subject merchandise. The petitioners calculated factory overhead, interest and profit ratios by extracting the appropriate items from TATA's financial statements. The petitioners note that these financial ratios were used by the Department in a recent antidumping duty investigation on products from the PRC. *See Notice of Initiation of Antidumping Duty Investigation: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela,* 66 FR 54198 (October 26, 2001).

Based on comparisons of NV to EP, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for OCTG from the PRC is 42.07 percent.

**France**

EP

The petitioners identified one company, V&M France, that produces and/or exports subject merchandise in France. The petitioners believe that V&M France accounts for all OCTG sold in France and exported to the United States from France. The petitioners provided pricing and cost information for V&M France. According to the petitioners, V&M France made direct sales of the subject merchandise to unaffiliated U.S. customers. The petitioners based EP on offers for sale of OCTG by V&M France to unaffiliated U.S. customers, which were obtained from market research. To calculate EP, which was based on F.O.B. port of exportation U.S. prices of OCTG inclusive of foreign inland freight, the petitioners deducted foreign inland freight from the price quote. The information supporting this deduction was obtained from market research. See Initiation Checklist.

NV

*Price-to-Price Comparisons*

The petitioners provided home-market prices for V&M France based on OCTG sold to unaffiliated home-market customers, which were obtained from foreign market research. These products are comparable to the products exported to the United States that served as the basis for EP. To calculate NV, the petitioners deducted inland freight, which was also obtained from foreign market research. *See* Initiation Checklist. To adjust for differences in packing expenses, the petitioners deducted home-market packing expenses and added U.S. packing expenses based on information obtained from foreign market research. *See* Initiation Checklist. The petitioners also adjusted home-market prices to reflect differences in the credit expenses between the U.S. and French markets, based on information obtained from market research and the *International Financial Statistics* published by the International Monetary Fund. The petitioners made this adjustment by deducting home-market imputed credit expenses and adding U.S. imputed credit expenses. *See* Initiation Checklist. Finally, for comparisons to EP, the petitioners converted the net home-market prices to U.S. dollars based on the average Federal Reserve exchange rate for the fiscal quarters in which the U.S. price quotes were made.

Based on EP price-to-price comparisons calculated in accordance with section 773(a) of the Act, the estimated dumping margins for OCTG from France range from 5.50 percent to 5.71 percent.

*Price-to-CV Comparisons*

The petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of OCTG in the home market were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act, and they requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce OCTG products in the United States and France using publicly available data. *See* Initiation Checklist. To calculate SG&A, the petitioners relied upon amounts reported in a French steel producer's 2000 audited financial statements. For interest expense, the petitioners used the French OCTG producer's parent company's audited consolidated 2001 financial statements. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioners also based NV for sales in France on CV. The petitioners calculated CV using the same COM, SG&A, and interest expense figures they used to compute French home-market costs. Consistent with 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the French OCTG producer's parent company's audited consolidated 2001 financial statements.

Based upon the comparison of CV to EP, the petitioners calculated estimated dumping margins ranging from 27.86 to 37.91 percent.

**Germany**

EP

The petitioners identified V&M Deutschland GmbH (''V&M Germany'') and Benteler Stahl/Rorh GmbH as companies which produce and/or export subject merchandise in Germany. The petitioners believe that one of these two companies, V&M Germany, accounts for the largest share of imports of OCTG from Germany by volume and value. The petitioners provided pricing and CV information for V&M Germany. According to the petitioners, V&M Germany made direct sales of the subject merchandise to an unaffiliated U.S. customer. The petitioners based EP on offers for sale of OCTG by V&M Germany to an unaffiliated U.S. customer, which were obtained from market research. The prices provided by the petitioners were based on F.O.B. port of exportation prices inclusive of foreign inland freight. To arrive at an ex-factory price, the petitioners deducted foreign inland freight from the price quote adjusted on a net-ton basis and converted to U.S. dollars using exchange rates provided by the Federal Reserve. No other adjustments were made to EP. *See*Initiation Checklist.

NV

*Price-to-CV Comparisons*

The petitioners found that the quantity of home-market sales was insufficient to serve as the basis for NV and, thus, concluded that the German market was not viable. In its original petition, the petitioners found that OCTG export prices to third countries were not reasonably available. Therefore, the petitioners based the NV of V&M Germany on CV. The petitioners calculated CV based on the COM, SG&A, and financial expenses. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. On April 16, 2002, the petitioners supplemented the petition by providing information demonstrating reasonable grounds to believe or suspect that sales of OCTG in the PRC third-country market were made at prices below the fully absorbed COP within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce OCTG in the United States and Germany using publicly available data. To calculate SG&A and interest expense, the petitioners relied upon amounts reported in a German OCTG producer's 2000 and 2001 financial statements. *See* Initiation Checklist. Based upon a comparison of the prices of the foreign like product in the third country market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation with respect to sales to the PRC.

Based on the cost data discussed above, the petitioners found that the third-country market selling prices were below the COP. Therefore, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV on CV. The petitioners calculated CV using the same COM, depreciation, SG&A and interest expense figures used to compute the third- country market costs. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in the German OCTG producer's 2000 financial statements.

Based upon the comparison of CV to EP, the petitioners calculated estimated dumping margins ranging from 32.70 to 32.72 percent.

**India**

CEP

The petitioners identified two companies that produce OCTG in India. The petitioners state that these producers account for all the subject merchandise imported into the United States from India. The petitioners state that one of these, Maharashtra Seamless Ltd. (''Maharashtra''), produced more than two-thirds of the OCTG imported into the United States from India. They also state that a U.S. firm, Exploreco Energy (''Exploreco''), is the exclusive distributor for Maharashtra in the United States and, therefore, that CEP is the proper basis on which to calculate an ex-factory price. Although we found the CEP price quote to be an acceptable U.S. price, we are not finding that any of the parties are affiliated at this stage of the proceeding. The petitioners based CEP on an affidavit from an employee of a firm that purchases OCTG. This employee obtained information concerning a price quote received by another firm that received a price quote during the anticipated POI for subject merchandise produced by Maharashtra. In order to obtain an ex-factory price, the petitioners deducted from gross U.S. price early-payment discounts, distributor mark-ups, threading and coupling costs incurred in the United States, U.S. port charges, international shipping charges, U.S. Customs duties, and foreign inland freight expenses.

For purposes of initiation, we recalculated the U.S. price that the petitioners used in their calculation. We continued to deduct from U.S. price threading and coupling costs incurred in the United States. We also deducted early-payment discounts and movement expenses. We did not deduct distributor mark-ups from the starting price. While it may be necessary to deduct a distributor mark-up from the gross unit price to arrive at a CEP, in this case it appears that such expenses have already been accounted for, at least to some extent, in the other deductions made. Accordingly, to determine CEP, we relied on the data in the petition, except that we did not deduct the distributor mark-ups. *See* Initiation Checklist.

NV

*Price-to-Price Comparisons*

The petitioners based NV on prices of OCTG in India comparable to the products exported during the anticipated POI. The petitioners used a price that they obtained from a market-research report for a recent sale by one of the exporting firms to an unaffiliated customer in India as the starting point in calculating NV. The petitioners adjusted this price by adding fees for export packing expenses and by subtracting foreign inland freight charges, domestic packaging expenses, and Indian credit expense. We determined that the information the petitioners used for the calculation of home-market price is adequate and accurate and represents information reasonably available to them.

Based on CEP price-to-price comparisons calculated in accordance with section 773(a) of the Act, the estimated dumping margin for OCTG from India is 17.43 percent.

**Indonesia**

EP

The petitioners used import values declared to U.S. Customs (IM–145 data) to determine the AUV during January through December 2001 for HTSUS category 7304.29.30.40, which accounted for the largest volume of subject imports from Indonesia during the anticipated POI. The petitioners made no deductions to U.S. price.

NV

*Price-to-CV Comparisons*

The petitioners were unable to obtain Indonesian market prices on which to base NV. Therefore, pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, the petitioners based NV for sales in Indonesia on CV. The petitioners calculated CV for a seamless casing OCTG product, which corresponds to the HTSUS category which accounted for the largest volume of subject imports from Indonesia during the anticipated POI. The petitioners first constructed a value of the green tube produced by V&M France since, according to sources provided in the amendment to the petition, V&M France is PT Citra Tubindo's (''Citra'') main source of green tube. Green tube is used as the primary input into the finished OCTG product produced by Citra. *See* the petitioners' April 11, 2002, amendment to the petition, at 3 and Exhibit 2.

Specifically, the petitioners obtained unit factor costs for coal, scrap, iron ore, labor, and electricity by relying on publicly available data and an industry study. For the unit factor cost for natural gas, the petitioners relied upon natural gas prices reported by the European Union's statistical agency, Eurostat. Where information on a specific variable consumption rate of V&M France was not reasonably available, the petitioners used those of a surrogate U.S. producer. Because the financial statements of V&M France, V&M Tube, or the parent company of V&M France and V&M Tube, Vallourec, were not reasonably available to the petitioners, the petitioners calculated portions of fixed overhead other than depreciation and general and administrative expense (''G&A'') using the consolidated financial statements of Usinor SA, another integrated steel producer in France. To G&A the petitioners added the estimated cost of transporting green tube from France to Indonesia.

Next, the petitioners calculated Citra's variable costs using usage rates of the U.S. surrogate producer for quenching and tempering and threading and coupling. To this, the petitioners applied a percentage of fixed overhead to variable COM to calculate total COM, SG&A to the total COM to calculate total COP, and profit to the total COP to calculate CV. These percentages were based on Citra's fiscal year 2000 financial statements.

Based upon the comparison of CV to EP, the petitioners calculated an estimated dumping margin of 133.73 percent.

**Romania**

EP

The petitioners identified four companies that produce and/or export subject merchandise in Romania. The petitioners believe that these producers and/or exporters account for the majority of all OCTG produced in Romania and exported to the United States from Romania. They obtained an offer for a U.S. sale of OCTG from Romania which documents the sales terms for the subject merchandise. The petitioners stated in the petition that they believe this offer is for sale of a product that entered with plain ends but, in a subsequent submission, they indicated that they could not state with certainty whether the product in the offer was threaded or coupled in the United States or in Romania. They also stated that they were not certain whether the U.S. seller was affiliated with a Romanian producer. Because significant quantities of imports of both finished and unfinished subject merchandise entered the United States from Romania during the anticipated POI and the petitioners are unable to determine with certainty whether the threading and coupling took place in the United States or Romania, for initiation purposes, we did not use the petitioners' price offer. Instead, we used U.S. import statistics (*i.e.*, AUVs) for the U.S. price and did not make any adjustments.

NV

The petitioners state that Romania is an NME country and in all previous investigations the Department has determined that Romania is an NME. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000). Romania will be treated as an NME unless and until its NME status is revoked. Pursuant to section 771(18)(C)(i) of the Act, because Romania's status as an NME remains in effect, the petitioners determined the dumping margin using an FOP analysis.

For NV the petitioners based the FOP, as defined by section 773(c)(3) of the Act, on the consumption rates of a U.S. OCTG producer since information regarding the quantities of various inputs consumed by the Romanian producers is not reasonably available to the petitioners. The petitioners used Algeria as the most appropriate surrogate country for Romania because Algeria is: (1) at a comparable stage of economic development as Romania, in terms of per-capita gross national income, total gross domestic product growth, etc.; (2) a significant producer of comparable merchandise; and (3) the only available source of an accurate factor value for the type of principal material input used in the production of seamless OCTG.

The petitioners valued FOP, where possible, on reasonably available, public surrogate data from Algeria. The principal material input was based on the AUVs of such material imported into Algeria as published in the United Nations import data. For steel scrap, the petitioners stated that import figures for Algeria were not available. They used instead the United Nations import data for steel scrap for El Salvador. For labor, the petitioners used the regression-based wage rate for Romania on Import Administration's website. The petitioners calculated prices for electricity and natural gas in Algeria using information available on the website of an Algerian electric and gas company. For factory overhead, the petitioners applied rates derived from the 2000–2001 financial statements of an Indian producer of seamless OCTG. The petitioners adjusted all surrogate values which fell outside the anticipated POI using the Algerian consumer price index or the U.S. Producer Price Index, as published by the International Monetary *Fund's International Financial Statistics.*

Based on comparisons of NV to EP, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for OCTG from Romania is 36.7 percent.

**South Africa**

CEP

The petitioners identified one company, Iscor Limited (''Iscor''), that produces the subject merchandise in South Africa. The petitioners state that this one producer accounts for all of the OCTG production in South Africa and that the producer also accounts for all of the exports of subject merchandise to the United States. According to the petitioners, Iscor sells subject merchandise through an affiliated U.S. importer to unaffiliated U.S. purchasers. The petitioners based CEP on a price quote given to an unaffiliated U.S. distributor. To calculate CEP, which was based on a loaded-truck, duty-paid price from Iscor to the unaffiliated U.S. customer, the petitioners deducted early-payment discounts, port charges (unloading and wharfage), threading and coupling costs incurred in the United States, international shipping charges, and foreign inland freight from the price quote. See Initiation Checklist.

NV

*Price-to-CV Comparisons*

The petitioners stated that, to their knowledge, Iscor has no viable comparison market for OCTG and, therefore, they were unable to obtain price information for sales in the home market or any third-country market. The petitioners based this conclusion on an affidavit provided in the petition and from an examination of South African Export Statistics from the year 2000 for all HTS codes covered in the petition. See Initiation Checklist. Therefore, the petitioners based their calculation of NV on CV for purposes of the margin calculations.

The petitioners calculated CV based on their own production experience, adjusted for known differences between costs incurred to produce OCTG in the United States and South Africa using publicly available data. Specifically, the petitioners used the U.S. producers' own consumption rates for raw materials, direct labor, electricity, and natural gas. To adjust the U.S. producers' costs associated with raw materials, direct labor, and electricity, the petitioners relied upon average market prices supplied by publicly available data. To adjust the U.S. producers' costs associated with natural gas, the petitioners relied upon the experience of a large energy company with operations in South Africa. To calculate fixed overhead, SG&A, and financial expense, the petitioners relied upon amounts reported in Iscor's fiscal year 2001 financial statements. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon the profit of Iscor. *See* Initiation Checklist.

Based on the comparison of CV to CEP, the petitioners calculated estimated dumping margins ranging from 24.09 to 50.71 percent.

**Spain**

CEP

The petitioners identified Tubos Reunidos and Productos Tubulares as major producers of OCTG in Spain. The petitioners based CEP on a price quote for Spanish OCTG produced by Tubos Reunidos they received from a U.S. distributor. The petitioners provided evidence, including detailed import statistics, showing that Tubos Reunidos USA (''TRA'') is identified as the consignee for nearly all shipments by Tubos Reunidos. As TRA is a wholly owned subsidiary of Tubos Reunidos, the petitioners calculated the U.S. price using a CEP analysis. The petitioners calculated CEP based on the gross unit price from the U.S. price offering. The petitioners started with a gross unit price in U.S. dollars per net ton and deducted an amount for various movement expenses, sales-specific adjustments, and the cost of the threading and coupling performed in the United States after importation because the OCTG from Spain entered into the United States has plain ends but the price offering reflected the price of OCTG which was threaded and coupled.

For purposes of this initiation, the data submitted by the petitioners provides grounds to suggest that CEP is an appropriate basis for calculating the U.S. price. To determine CEP, we relied on the data in the petition.

NV

*Price-to-Price Comparisons*

The petitioners provided a dumping margin calculation by comparing third-country prices with U.S. price. The petitioners state during the anticipated POI the quantity of subject merchandise sold in Spain fell below the five-percent threshold and, thus, Spain is not a viable market for the purpose of determining NV. The petitioners stated that they were unable to obtain home-market prices because their market researcher did not have the capability to perform such research in Spain.

The petitioners used a market researcher to obtain third-country prices based upon exports from Spain of OCTG to a third country (*i.e.*, France). The quoted price was given in Euros per metric ton. To calculate NV, the petitioners deducted Spanish inland freight. To adjust for differences in packing expenses, the petitioners deducted packing expenses incurred by Tubos Reunidos for its third-country sales to France based on market research and added U.S. packing expenses. As the market-research report did not include packing costs for the U.S. sales, the petitioners assumed that packing costs would be the same for both markets since the same type of vessel is used for both. *See* Initiation Checklist. The petitioners also adjusted third-country prices to reflect differences in the credit expenses between the U.S. and third-country markets. The petitioners made this adjustment to the third-country prices by deducting third-country imputed credit expenses and adding U.S. imputed credit expenses. *See* Initiation Checklist. For the credit period, the market-research report provides information regarding Tubos Reunidos' payment terms for sales to the third-country market. For purposes of adjusting for differences in credit, the petitioners used the maximum number of days. For sales to the United States, the petitioners assumed the U.S. credit period to be zero days. To determine credit expenses on the third-country sales to France, the petitioners utilized a French Euro-denominated interest rate published by the International Monetary Fund.

Based on CEP price-to-price comparisons calculated in accordance with section 773(a) of the Act, the estimated dumping margin for OCTG from Spain is 22.44 percent.

**Turkey**

EP

The petitioners identified three companies that produce and/or export subject merchandise in Turkey. The petitioners believe that these producers and/or exporters account for all OCTG sold in Turkey and exported to the United States from Turkey. The petitioners provided pricing and cost information for one of these three companies, Borusan Birlesik Boru Fabrikalari A.S. (''Borusan''). According to the petitioners, Borusan made direct sales of the subject merchandise to unaffiliated U.S. customers. For the calculation of U.S. price, the petitioners provided a price quote and AUV data. The AUV data is based on the U.S. Census Bureau's IM–145 import data for the anticipated POI and is equivalent to an EP. We used the AUV data for the margin calculation. We made no adjustments to the EP. *See* Initiation Checklist.

NV

*Price-to-CV Comparisons*

The petitioners were unable to obtain home-market or third-country price data. Therefore, the petitioners based NV on CV.

Pursuant to sections 773(a)(4), 773(b), and 773(e) of the Act, CV consists of COM, SG&A expenses, financial expenses, profit, and packing expenses. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce OCTG in the United States and Turkey. *See* Initiation Checklist. Specifically, the petitioners used consumption rates incurred by a U.S. producer of OCTG for raw materials, direct labor, and electricity based on an affidavit from an employee of a U.S. producer of OCTG. The petitioners valued steel raw-material inputs using import statistics from the World Trade Atlas. The petitioners valued other raw-material inputs based on their own experience because no

data relating to the value of these products in Turkey was available. The petitioners valued labor based on rates found in the Import Administration website. The petitioners valued energy based on data published by the OECD International Energy Agency in the Fourth Quarter, 2001, issue of Energy Prices and Taxes. The petitioners calculated packing expenses using a methodology similar to the one they used to calculate the expense for raw materials other than steel.

To calculate the portions of fixed overhead, the petitioners relied upon the experience of a U.S. producer because Borusan's financial statements did not provide sufficient information with which to calculate a factory-overhead rate. We recalculated the factory-overhead percentage because the petitioners used the U.S. producer's COP as the denominator. Because the percentage is applied to only the sum of direct materials, direct labor, and energy, we recalculated the factory-overhead percentage using the sum of direct materials, direct labor, and energy for the U.S. producer as the denominator. *See* Initiation Checklist.

To calculate SG&A, financial expenses, and profit, the petitioners relied upon amounts reported in Borusan's fiscal year 2000 financial statements. We recalculated the SG&A to include other income and expenses and we revised the profit to reflect our change to SG&A and to exclude income taxes. See Initiation Checklist.

Based upon the comparison of CV to EP after our recalculations, the petitioners calculated an estimated dumping margin of 9.94 percent.

**Ukraine**

CEP

The petitioners identified Nizhnedneprovsky Tube Rolling Plant (''NTRP'') and Joint Stock Co Nikopol Pivdennotrubny Works as major producers of OCTG in Ukraine. The petitioners based CEP on a price quote for Ukrainian OCTG from NTRP they received from an importer of Ukranian OCTG. The petitioners assert that the importer is affiliated under section 771(33)(G) of the Act. *See* Initiation Checklist. Therefore, the petitioners calculated the U.S. price using a CEP analysis. The petitioners calculated CEP based on the average price for two sample threaded and coupled products. The petitioners started with an average price in U.S. dollars per net ton and deducted an amount for numerous movement expenses, sales-specific adjustments, and the cost of threading and coupling. The petitioners deducted the cost of threading and coupling as a further manufacturing cost for this CEP analysis because they allege that OCTG from Ukraine entered the United States with plain ends and was threaded and coupled in the United States. *See*Initiation Checklist.

For purposes of initiation, we recalculated the U.S. price that the petitioners used in their calculation. We continued to deduct from U.S. price threading and coupling costs incurred in the United States. We also deducted early-payment discounts and movement expenses. *See Notice of Final Determination at Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996). We did not deduct distributor and trading company mark-ups from the starting price. While it may be necessary to deduct a distributor and trading company mark-up from the gross unit price to arrive at a CEP, in this case it appears that such expenses have already been accounted for, at least to some extent, in the other deductions made. Accordingly, to determine CEP, we relied on the data in the petition, except that we did not deduct the distributor mark-ups. *See* Initiation Checklist.

NV

The petitioners provided a dumping margin calculation using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). For the NV calculation, the petitioners based the FOP, as defined by section 773(c)(3) of the Act (raw materials, labor and energy), for OCTG on information from Ukrainian producers. *See* Initiation Checklist.

The petitioners selected Indonesia as their surrogate country. The petitioners argued that, pursuant to 773(c)(4) of the Act, Indonesia is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the NME and is a significant producer of comparable merchandise. Based on the information provided by the petitioners, we believe that the petitioners' use of Indonesia as a surrogate country is appropriate for purposes of initiation of this investigation. *See* Initiation Checklist.

In accordance with section 773(c)(4) of the Act, the petitioners valued FOP, where possible, on reasonably available, public surrogate country data. Where possible, the petitioners developed unit factor costs relying on surrogate values from the Government of Indonesia's Trade Statistics (''GITS'') for the period of January 2001 through October 2001, the most contemporaneous data available, which captures four months of the anticipated POI. The petitioners note that GITS did not have information for coking coal. Therefore, the petitioners calculated a surrogate value for coking coal using information from *Coal Week International*, an industry publication, dated January 7, 2002.

Labor was valued using the regression-based wage rate for Ukraine available on the Import Administration website and in accordance with 19 CFR 351.408(c)(3). Factory overhead, SG&A, and profit were derived from the 1999–2000 financial statements of PT Krakatau Steel, an Indonesian producer of the subject merchandise.

Based on comparisons of NV to CEP, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for OCTG from Ukraine is 22.38 percent.

**Venezuela**

EP

To calculate EP, the petitioners obtained one U.S. price quote for OCTG produced in Venezuela for export to the United States, FOB Houston. The Venezuelan producer quoted a price for OCTG product to a distributor in the United States. The petitioners stated that the price quotes for NV and EP were obtained for products that would reflect similar finishing and permit closer comparison. The petitioners made no deductions from U.S. price.

NV

*Price-to-Price Comparisons*

The petitioners determined NV by relying on an ordinary-course-of-business price quote offered to an unaffiliated Venezuelan home-market customer contemporaneous with the offer for sale in the United States of a similar OCTG product. The Venezuelan home-market price quote uses U.S. dollars as the currency of sale so no currency conversion is necessary for comparison of NV and EP. The petitioners calculated NV in U.S. dollars per net ton for the product quoted. Exhibit I–9 of the petition demonstrates the petitioners' calculation of NV and the estimated dumping margin. No adjustments were made to NV.

Based upon the comparison of NV to EP, calculated in accordance with section 773(a) of the Act, the estimated dumping margin for OCTG from Venezuela is 55.60 percent.

**Fair Value Comparisons**

Based on the data provided by the petitioners, there is reason to believe that imports of OCTG from Austria, Brazil, the PRC, France, Germany, India, Indonesia, Romania, South Africa,

Spain, Turkey, Ukraine, and Venezuela are being, or are likely to be, sold at less than fair value.

**Allegations and Evidence of Material Injury and Causation**

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The volume of imports from Austria, Brazil, the PRC, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela, using the latest available data, exceed the statutory threshold of seven percent for a negligibility exclusion. *See* section 771(24)(A)(ii) of the Act.

The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

**Initiation of Antidumping Investigations**

Based upon our examination of the petitions on OCTG, we have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of OCTG from Austria, Brazil, the PRC, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation.

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Austria, Brazil, the PRC, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela. We will attempt to provide a copy of the public version of each petition to each exporter named in the petitions, as provided for under 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiations as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will determine no later than May 13, 2002, whether there is a reasonable indication that imports of OCTG from Austria, Brazil, the PRC, France, Germany, India, Indonesia, Romania, South Africa, Spain, Turkey, Ukraine, and Venezuela are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, theseinvestigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

DATED: April 18, 2002

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–10349 Filed 4–25–02; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–433–810]**

## Oil Country Tubular Goods from Austria: Notice of Initiation of Countervailing Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley (202–482–0666), AD/CVD Enforcement Group III, Office 7, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

**INITIATION OF INVESTIGATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are to the Tariff Act of 1930, as amended. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

**The Petition**

On March 29, 2002, the Department of Commerce (the Department) received a petition filed in proper form on behalf of IPSCO Tubulars Inc., Koppel Steel Corporation, a division of NS Group, Lone Star Steel Company, Maverick Tube Corporation, Newport Steel Corporation, a division of NS Group, and the United States Steel Corporation of America (hereinafter, the petitioners). The Department received from the petitioners information supplementing the petition on April 12, 2002. On April 15, 2002, the Department received comments from the Government of Austria (GOA) and the Delegation of the European Commission (EC) regarding the petition. We placed these comments on the record on April 17, 2002.

In accordance with section 702(b)(1) of the Act, the petitioners allege that Voest-Alpine Tubulars GmbH & Co KG (''Voest-Alpine Tubulars''), a producer/exporter of oil country tubular goods (OCTG) in Austria, received countervailable subsidies within the meaning of section 701 of the Act. The petitioners simultaneously filed antidumping petitions on a number of countries, including Austria. The initiation of these antidumping investigations is addressed in a separate **Federal Register** notice, which is published concurrently with this notice.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act. The petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation which they are requesting the Department to initiate (*see Determination of Industry Support for the Petition*, below).

**Scope of the Investigation**

For purposes of this investigation, the products covered are certain OCTGs. OCTGs are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). The scope for this investigation does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium or finished drill pipe with tool joint attached. The merchandise subject to this investigation is typically classified in the following Harmonized Tariff

Schedule of the United States (HTSUS) subheadings:

7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

**Consultations**

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOA and the EC for consultations with respect to the petition filed. The Department held consultations with representatives of the GOA and the EC on April 12, 2002. *See Memorandum to the File from Mark Hoadley through Barbara Tillman; Regarding Consultations on Austrian OCTGs CVD Petition* (April 16, 2002) (public document on file in the Central Records Unit of the Department of Commerce, Room B–099).

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall either poll the industry or rely on other information in order to determine if there is support for the petition.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

We reviewed the description of the domestic like product presented in the petition. Based upon our review of the petitioners' claims, we concur that there is a single domestic like product, which is defined in the ''Scope of Investigations'' section above. This is consistent with the Department's determinations in past investigations to treat all OCTG products as a single class or kind of merchandise. *See, e.g., Oil Country Tubular Goods From Argentina*, 60 FR 41055 (Aug. 11, 1995). We note that the ITC has previously determined that drill pipe was a separate like product from tubing and casing. *Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico*, at I–9 (Inv. Nos. 701–TA–363–364 (Final) and 731–TA–711–717 (Final) (Publication 2911; August 1995)). However, in previous investigations, the Department has considered casing, tubing and drill pipe to be one class or kind of merchandise. *See, e.g., Oil Country Tubular Goods From Argentina*, 60 FR 41055 (Aug. 11, 1995).

The ITC's 1995 determination that drill pipe was a separate like product was based on a scope that included both unfinished drill pipe and finished drill pipe with attached tool joints. Id. at I–10. In that case, the ITC focused on the lack of interchangeability between finished drill pipe with attached tool joints and finished casing and tubing as a major determinant in its decision. This issue is not present in this investigation because only unfinished drill pipe is included in the scope. The ITC did state in its 1995 determination that there are ''certain distinctions between [unfinished] drill pipe and other OCTG products'' that also support including unfinished drill pipe in the same like product category as finished drill pipe with attached tool joints. *Id.* The ITC noted that drill pipe tends to be shorter and heavier than casing and tubing, drill pipe tends to be of low alloy steel, whereas casing and tubing are primarily of carbon steel, and the tensile strength of drill pipe is generally higher than that in casing and tubing. *Id.* However, the ITC report acknowledges that there is overlap between unfinished drill pipe and casing and tubing with respect to diameter, wall thickness, and length. Id. at I–11, fn. 17. Regarding the issue of alloy, various grades of casing and tubing are also low alloy steels, as evidenced by specific alloy designations in the Harmonized Tariff Schedules for these products. Finally, the strength requirements on many of the grades of casing and tubing can be higher than those for unfinished drill pipe. In fact, the final strength characteristics of all products will not be determined until the product has been subjected to certain heat treating operations. *See e.g.*, American Petroleum Institute, *Specifications For High-Strength Casing, Tubing, and Drill Pipe*. Consequently, for purposes of this investigation, we conclude that casing, tubing, and unfinished drill pipe constitute one like product.

Finally, the Department has determined that the petition contains

[1] See Algoma Steel Corp. Ltd., v. United States, 688 F. Supp.639, 642-44 (CIT 1988); High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376, 32380-81 (July 16, 1991)

adequate evidence of industry support and, therefore, polling is unnecessary. *See* Import Administration Countervailing Duty Investigation *Initiation Checklist* for Austria, Industry Support section and Attachment II, April 18, 2002 (collectively, the Initiation Checklist), on file in the Central Records Unit, Room B–099 of the main Department of Commerce building.

Grant Prideco, Inc., which is a domestic producer of the like product and is the majority owner of the Austrian OCTG producer, asserted that the petitioners had failed to demonstrate that they account for a majority of the domestic industry. We determined that the petitioners have demonstrated industry support representing over 50 percent of total production of the domestic like product. The Department also determined that it will disregard Grant Prideco's opposition to the petition because it is related to a foreign producer. *See* Attachment II to the Initiation Checklist for further explanation. Accordingly, we determine that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

**Injury Test**

Because Austria is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Austria materially injure, or threaten material injury to, an industry in the United States.

**Allegations and Evidence of Material Injury and Causation**

The petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of imports of the subject merchandise. The petitioners contend that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit-to-sales ratios, production employment, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist.* With respect to the countervailing duty petition on Austria, since Austria is not a developing country, imports from Austria cannot be less than 3 percent for purposes of the injury analysis. See Sections 771(24)(A) and (B) of the Act. Imports from Austria are greater than 3 percent.

**Allegations of Subsidies**

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

**Initiation of Countervailing Duty Investigation**

The Department has examined the countervailing duty petition on OCTG from Austria and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether the producers/exporters of subject merchandise in Austria received subsidies. *See Initiation Checklist.*

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to Voest Alpine Tubulars in Austria:

1. 1987 Equity Infusions
2. 1987 Assumption of Losses by Osterreichische Industrieholding-Aktiengesellschaft (OIAG)
3. 1993 Grant from OIAG to Voest-Alpine Stahl AG
4. 1993 Assumption of Liabilities by OIAG
5. 1993 OIAG Subordinated Shareholder's Loan

We will also be investigating whether subsidies were conferred under these programs on suppliers of Voest-Alpine Tubulars that can be attributed to Voest-Alpine Tubulars under the cross-ownership provisions of section 351.525(b)(5) of the Department's regulations. See Initiation Checklist.

**Distribution of Copies of the Petitions**

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of the GOA and the EC. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of the Department's regulations.

**ITC Notification**

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

**Preliminary Determination by the ITC**

The ITC will determine no later than May 13, 2002, whether there is a reasonable indication that imports of OCTG from Austria are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated with respect to Austria; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: April 18, 2002

**Bernard T. Carreau,**

*Acting Assistant Secretaryfor Import Administration.*

[FR Doc. 02–10348 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042202C]**

### Submission for OMB Review; Comment Request

**SUPPLEMENTARY INFORMATION:** The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:*Seafood Inspection and Certification Requirements.

*Form Number(s):*NOAA Forms 89-800, 89-814, 89-819.

*OMB Approval Number:*0648-0266.

*Type of Request:*Regular submission.

*Burden Hours:*13,065.

*Number of Respondents:*7,082.

*Average Hours Per Response:*5 minutes for an application for inspection services, an application for appeal, or completion of a contract; 30 minutes for a label and specification submission; 105 hours for a Hazard Analysis Critical Control Point ( HACCP) Plan; and 80 hours for monitoring and recordkeeping.

*Needs and Uses:* NOAA operates a voluntary fee-for-service seafood inspection program. Federally-inspected products may display official quality grade marks. Those wishing to participate in the program must request

the services and submit specific compliance information.

*Affected Public:*Business and other for profit organizations.

*Frequency:*On occasion.

*Respondent's Obligation:*Required to obtain or retain a benefit.

*OMB Desk Officer:*David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 18, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10359 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042202A]**

### Submission for OMB Review; Comment Request

**SUPPLEMENTARY INFORMATION:** The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports.

*Form Number(s):* NOAA Form 88-191.

*OMB Approval Number:*0648-0371.

*Type of Request*: Regular submission.

*Burden Hours:* 24,295.

*Number of Respondents:*5,290.

*Average Hours Per Response:*12 minutes per trip summary report; 2 minutes for a no-catch or no-fishing report; 30 minutes for a cost-earnings trip report; and 30 minutes for an annual expenditure report.

*Needs and Uses:* The National Marine Fisheries Service (NMFS) of NOAA seeks to reinstate Paperwork Reduction Act clearance of an existing logbook information collection and to make mandatory an existing voluntary collection of cost-earnings data from fishermen who possess permits to fish for highly migratory species. The cost-earnings form is an added portion of the existing trip summary form for vessel logbooks. This form has been simplified, and some cost information has been removed from the trip summary form to be placed on an annual expenditures form, in response to comments from fishermen. The information collected in logbooks and the cost-earnings form will help NMFS identify impacts of proposed regulatory measures on fishermen and the resource, consistent with applicable law such as the Magnuson-Stevens Fishery Conservation and Management Act and the Regulatory Flexibility Act.

*Affected Public:* Business or other for-profit organizations, individuals or households.

*Frequency:* Annually, by trip.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482-3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 18, 2002.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–10361 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Advisory Committee on Commercial Remote Sensing

**ACTION:** Notice to establish an Advisory Committee on Commercial Remote Sensing.

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule of Federal Advisory Committee Management, 41 CFR part 102–3, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the National Oceanic and Atmospheric Administration (NOAA) Advisory Committee on Commercial Remote Sensing (ACCRES) is in the public interest, in connection with the performance of duties imposed on the Department by law.

The ACCRES will advise the Secretary, through the Under Secretary of Commerce for Oceans and Atmosphere, on long- and short-range strategies for the licensing of commercial remote-sensing satellite systems. The ACCRES will consist of no more than 15, and no less than 12, members to be appointed by the Under Secretary to assure a balanced representation among commercial remote-sensing satellite operators, data users, value-added resellers, academic and technical experts, and information technology firms. The ACCRES will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act, fifteen days from the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Interested persons are invited to submit comments regarding the establishment of this committee to Timothy Stryker, Acting Remote-Sensing Licensing Coordinator, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7311, Silver Spring, Maryland 20910; telephone 301–713–2024 x.205, e-mail *Timothy.Stryker@noaa.gov.*

**Mary M. Glackin,**

*Deputy Assistant Administrator for Satellite and Information Services.*

[FR Doc. 02–10268 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–HR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042202E]**

### Western Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Western Pacific Fishery Management Council's (Council)

Precious Corals Plan Team (PCPT) members will hold a meeting.

**DATES:** The plan team meeting will be held on May 10, 2002, from 9 a.m. to 12 noon.

**ADDRESSES:** The meetings will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The PCPT will discuss and may make recommendations to the Council on the following agenda items:

1. Review of the 112th Council Meeting
2. Status of the Industry
3. Status of the Exploratory Area Framework Adjustment
4. Current and future research on precious corals

A. Results of 2001 Pisces V surveys of the Makapuu Bed, Cross Seamount and Keahole Point

B. Results of the 2001 Pisces IV surveys of the Maui Black Coral Bed

(i) Invasion by the alien species, Carijoa riisei

(ii) Need to re-instate the 48 inch size limit

5. Impact of gold coral harvest on monk seals in the main Hawaiian islands
6. Reserve operations plan and sanctuary designation process
7. Proposed national ban on all coral harvest, and
8. Other business as required.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 23, 2002.

**Bruce Morehead,**

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

[FR Doc. 02–10360 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–22–S

## PATENT AND TRADEMARK OFFICE

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Recording Assignments.

*Form Number(s):* PTO–1594 and PTO–1595.

*Agency Approval Number:* 0651–0027.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 155,853 hours annually.

*Number of Respondents:* 311,704 responses per year.

*Avg. Hours Per Response:* The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to gather information, prepare, and submit a request to record an assignment document related to a patent, trademark, or application.

*Needs and Uses:* This information collection supports the recording of assignment documents that affect and establish the transfer of ownership rights for patents, trademarks, and applications. In order to obtain all of the information necessary to record an assignment document accurately and efficiently, the USPTO has developed cover sheets for patent and trademark assignments that the public can use to submit their documents for recording. To record an assignment, the respondent must submit an appropriate cover sheet along with the assignment document. For assignments related to patents or patent applications, respondents may also prepare and submit cover sheets and supporting documents electronically using software available from the USPTO. All recorded assignment documents are available for viewing by the public, except for those documents that are sealed under secrecy orders or related to unpublished patent applications. The public uses this collection to submit assignment documents related to patents, trademarks, and applications for recording; to transfer ownership rights, title, and interest in a patent or trademark from one party to another; and to submit corrections of assignment cover sheets containing errors. The USPTO uses the information collected from the public to process and record documents related to the assignment of patents, trademarks, and applications; and to ensure that all relevant bibliographic data is entered in the associated files and the searchable public database of assignment information.

*Affected Public:* Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the federal government, and state, local, or tribal governments.

*Frequency:* On occasion for recordkeeping and reporting.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before May 28, 2002, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

Dated: April 19, 2002.

**Susan K. Brown,**

*Records Officer, USPTO, Office of Data Management, Data Administration Division.*

[FR Doc. 02–10255 Filed 4–25–02; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0139]**

### Federal Acquisition Regulation; Information Collection; Federal Acquisition and Community Right-to-Know

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000–0139).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the reporting requirements of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109). The clearance currently expires on December 31, 2002.

**DATES:** Submit comments on or before June 25, 2002.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Laura Smith, Acquisition Policy Division, GSA (202) 208–7279.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

FAR Subpart 23.9 and its associate solicitation provision and contract clause implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), ''Federal Acquisition and Community Right-to-Know,'' and the Environmental Protection Agency's ''Guidance Implementing E.O. 12969; Federal Acquisition Community Right-to-Know; Toxic Chemical Release Reporting'' (60 FR 50738, September 29, 1995). The FAR coverage requires offerors in competitive acquisitions over $100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C 11001–11050) and the Pollution Prevention Act of 1990 (42 U.S.C 13101–13109).

### B. Annual Reporting Burden

*Respondents:* 167,487.
*Responses Per Respondent:* 1.
*Annual Responses:* 167,487.
*Hours Per Response:* 0.50.
*Total Burden Hours:* 83,744.

### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: April 19, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–10351 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0144]**

## Federal Acquisition Regulation; Information Collection; Payment by Electronic Fund Transfer

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0144).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning payment by electronic fund transfer. This OMB clearance currently expires on September 30, 2002.

**DATES:** Submit comments on or before June 25, 2002.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic fund transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Fund Transfer-Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Fund Transfer-Other Than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

### B. Annual Reporting Burden

*Respondents:* 14,000.
*Responses Per Respondent:* 10.
*Annual Responses:* 140,000.
*Hours Per Response:* .5.
*Total Burden Hours:* 70,000.

### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0144, Payment by Electronic Fund Transfer, in all correspondence.

Dated: April 19, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–10352 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0080]**

## Federal Acquisition Regulation; Information Collection; Integrity of Unit Prices

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0080).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning integrity of unit prices. This

OMB clearance currently expires on September 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 25, 2002.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

FAR 15.408(f) and the clause at FAR 52.215–14, Integrity of Unit Prices, require offerors and contractors under Federal contracts that are to be awarded without adequate price competition to identify in their proposals those supplies which they will not manufacture or to which they will not contribute significant value. The policies included in the FAR are required by section 501 of Public Law 98–577 (for the civilian agencies) and section 927 of Public Law 99–500 (for DOD and NASA). The rule contains no reporting requirements on contracts with commercial items.

### B. Annual Reporting Burden

*Respondents:* 1,000.
*Responses Per Respondent:* 10.
*Annual Responses:* 10,000.
*Hours Per Response:* 1 hour.
*Total Burden Hours:* 10,000.

### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0080, Integrity of Unit Prices, in all correspondence.

Dated: April 19, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–10353 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0082]**

## Federal Acquisition Regulation; Information Collection; Economic Purchase Quantities—Supplies

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0082).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning economic purchase quantities—supplies. This clearance currently expires on September 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 25, 2002.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The provision at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (1) recommend an economic purchase quantity, showing a recommended unit and total price, and (2) identify the different quantity points where significant price breaks occur. This information is required by Public Law 98–577 and Public Law 98–525.

### B. Annual Reporting Burden

*Respondents: 1,524.*
*Responses Per Respondent: 25.*
*Annual Responses: 38,100.*
*Hours Per Response: .83.*
*Total Burden Hours: 31,623.*

### *Obtaining Copies of Proposals*

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantities—Supplies, in all correspondence.

Dated: April 19, 2002.

**AL Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–10354 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0083]**

## Federal Acquisition Regulation; Information Collection; Qualification Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning qualification requirements. This OMB clearance currently expires on September 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before June 25, 2002.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

### B. Annual Reporting Burden

*Respondents:* 2,207.
*Responses Per Respondent:* 100.
*Annual Responses:* 220,700.
*Hours Per Response:* .25.
*Total Burden Hours:* 55,175.

### Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: April 19, 2002.

**Al Matera,**

*Director, Acquisition Policy Division.*

[FR Doc. 02–10355 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–EP–P

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## DEPARTMENT OF DEFENSE

## Office of the Secretary

## Strategic Environmental Research and Development Program, Scientific Advisory Board Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** On Wednesday, April 10, 2002, the Strategic Environmental Research and Development Program announced a Committee meeting (67 FR 17415). This notice is being published to inform interested persons that the meeting location has been changed.

**DATES:** June 11, 2002 from 0830 a.m. to 1655 p.m., and June 12, 2002 from 0830 a.m. to 1600 p.m.

**ADDRESSES:** Holiday Inn at Ballston, 4610 North Fairfax Drive, Arlington Room, Arlington, VA 22203–1860.

**FOR FURTHER INFORMATION CONTACT:** Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

**SUPPLEMENTARY INFORMATION:**

### Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: April 22, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–10279 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–M

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## DEPARTMENT OF DEFENSE

## Marine Corps; Privacy Act of 1974; System of Records

**AGENCY:** U.S. Marine Corps, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The U.S. Marine Corps proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective on May 28, 2002, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

**SUPPLEMENTARY INFORMATION:** The U.S. Marine Corps notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 17, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: April 22, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**MMN00016**

**SYSTEM NAME:**

Accident and Injury Reporting System (November 4, 1999, 64 FR 60174).

**CHANGES:**

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Categories of individuals covered by the system:

Delete entry and replace with 'Marine Corps military (to include recruits) or civilian personnel who are involved in accidents, injuries or illness which result in lost time, government or private property damage or destruction, personal injury or death.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Individual's name, Social Security Number, rank, type of injury, illness, or accident (such as training or motor vehicle), accident injury report, and any restriction of activities, if any.'

* * * * *

**PURPOSE(S):**

Add to entry 'Information will be used as a management tool to improve accident prevention, training success rates, to prevent re-injury and reduce medical costs.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Add 'excerpts from medical documents,' to entry.

* * * * *

**MMN00016**

**SYSTEM NAME:**

Accident and Injury Reporting System.

**SYSTEM LOCATION:**

Organizational elements of the U.S. Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Marine Corps military (to include recruits) or civilian personnel who are involved in accidents, injuries or illness which result in lost time, government or private property damage or destruction, personal injury or death.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, Social Security Number, rank, type of injury, illness, or accident (such as training or motor vehicle), accident injury report, and any restriction of activities, if any.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

**PURPOSE(S):**

To provide a record of all individuals involved in accidents for use in resolving the disposition of such accidents and to establishing appropriate safety programs. Information will be used as a management tool to improve accident prevention, training success rates, to prevent re-injury and reduce medical costs.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Marine Corps compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper and electronic records.

**RETRIEVABILITY:**

By name and Social Security Number.

**SAFEGUARDS:**

Paper files and computer terminals are located in limited access areas and handled only by authorized personnel who are properly screened, cleared and trained. Computer terminals are protected by password. System software contains partitions to limit access to appropriate organizational level. Authorized user list is maintained and updated by system administrator.

**RETENTION AND DISPOSAL:**

Records maintained 5 years after incident, then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual concerned, military police traffic accident investigation reports, accident injury reports, excerpts from medical documents, other records of the activity, witness, and other correspondents.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 02–10281 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Prepare an Environment Impact Statement (EIS) for Construction of the Cadet Library-Learning Center and Other Activities to the Cadet Zone Within the United States Military Academy (USMA), West Point, NY

**AGENCY:** U.S. Military Academy, Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** This announces the intention of the USMA, West Point, to prepare an EIS for the construction of a new Cadet Library-Learning Center to upgrade information access, teaching, and research facilities at the USMA. The purpose of this EIS is to evaluate the environmental impacts associated with the construction of the Cadet Library-Learning Center, and other activities within the Cadet Zone.

**ADDRESSES:** Written comments or suggestions on the scope of the EIS and questions concerning the proposed project may be forwarded to Mr. Alan B. Bjornsen, CEP, NEPA Coordinator, U.S. Military Academy, West Point, ATTN: MAEN–E–I, Directorate of Housing and

Public Works, Building 667, Ruger Road, West Point, New York 10996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bjornsen at (845) 938–4129; by fax at (845) 938–7046 or by email at *ya2303@exmail.usma.army.mil*.

**SUPPLEMENTARY INFORMATION:** The purposes of the proposed action are to construct a new Cadet Library-Learning Center, to demolish obsolete structures that no longer contribute to the USMA mission, and to construct new facilities to support the USMA mission and modernize the Cadet Zone. This action is needed to fulfill current and future needs for library and learning space to maintain institutional accreditation and academic excellence, to upgrade existing structures to meet life safety requirements, and to update existing cadet facilities that are over 30 years old.

The USMA is proposing to construct a new Library-Learning Center on the Plain and to modify Bartlett (Science) Hall and the existing library. This will modernize and expand teaching and research laboratories and classrooms to provide necessary floor space, information resources and support facilities. Improvements in the information resources and support facilities are needed to maintain USMA's accreditation as a college. As part of a general improvement of the Cadet Zone area, the USMA is also considering renovation or demolition of obsolete structures within the Cadet Zone, including barracks renovations, upgrades, refurbishment and renovation of Bartlett Hall to enhance classroom and laboratory facilities, and the continuation of on-going maintenance projects.

The no action alternative will be evaluated as well as other alternatives (options) developed as a result of public input and environmental analysis of the proposed projects during the preparation of the Draft EIS. These options may include alternative sites, alternative facility configuration, alternative size, whole and partial implementation, and other modifications.

Public involvement: An interested parties meeting was held in December 2001 at the USMA to discuss the scope of the EIS and any potential data gaps. It is also anticipated that USMA will hold a public scoping meeting at the USMA to solicit both oral and written comments from interested parties. Scoping documents will be made available two weeks in advance of the scheduled public scoping meeting. Public scoping meeting date and time will be advertised in advance in local newspapers and meeting announcement letters will be sent to potentially interested parties. USMA plans to issue a Draft EIS in the spring 2003 timeframe with the availability of the draft being announced in the **Federal Register** and other media, as well as being provided to the public, organizations and agencies.

Dated: April 22, 2002.

**Michael L. Cain,**

*Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).*

[FR Doc. 02–10270 Filed 4–25–02; 8:45 am]

**BILLING CODE 3710–08–M**

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## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds new categories of records being maintained, adds a new purpose for maintaining the records, and adds a new routine use to permit the release of records to Federal and state agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

In addition, DLA is amending an entry under the 'Category of individuals covered:' to clarify that this system of records does not cover 'active Postal employees'.

**DATES:** This action will be effective without further notice on May 28, 2002, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 18, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 22, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S322.10 DMDC**

**SYSTEM NAME:**

Defense Manpower Data Center Data Base (May 31, 2001, 66 FR 29552).

**CHANGES:**

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete the first, fourth, fifth, and seventh paragraphs and replace with 'All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the

Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

All Federal (non-postal) civilian employees and all Federal civilian retirees.'

Add a new paragraph to read 'Individuals who are authorized web access to DMDC computer systems and databases.'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Add a new paragraph to read 'Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.'

* * * * *

**PURPOSE(S):**

Add a new paragraph to read 'DMDC web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure that access is only for official purposes.'

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph '22. To Federal and state agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.'

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its record keeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.'

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## S322.10 DMDC

**SYSTEM NAME:**

Defense Manpower Data Center Data Base.

**SYSTEM LOCATION:**

**PRIMARY LOCATION:**

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

**BACK-UP LOCATION:**

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal (non-postal) civilian employees and all Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the

Department of Defense concerning such testing.

Individuals who are authorized web access to DMDC computer systems and databases.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, email address, phone number, of those having web access to DMDC computer systems and databases, to include dates and times of access.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

**PURPOSE(S):**

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with web access, and to ensure that access is only for official purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

**Note 1:** Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

**Note 2:** Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data

will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

**Note 3:** Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military

retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub. L. 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

**Note 4:** Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

22. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

**Note 5:** Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic storage media.

**RETRIEVABILITY:**

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

**SAFEGUARDS:**

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

**RETENTION AND DISPOSAL:**

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. Note: This disposition instruction applies only to record keeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its record keeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date

of birth, and current address and telephone number of the individual.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 02–10282 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency (DLA) proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a new purpose and a new routine use to the existing system of records, which will allow the Defense Logistics Agency to verify family income for fee assessment purposes for those who choose to use DLA day care services.

**DATES:** This action will be effective without further notice on May 28, 2002, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS-C, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 17, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 22, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S400.20**

**SYSTEM NAME:**

Day Care Facility Registrant and Applicant Records (June 1, 2001, 66 FR 29782).

**CHANGES:**

* * * * *

**PURPOSE(S):**

Delete entry and replace with 'The records are used to provide day care services and to verify family income for fee assessment purposes. Individualized data on total family income is provided to employing Defense components for fiscal planning purposes, for subsidy computation, and to reimburse DLA for day care services rendered under a support agreement.'

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph 'To Federal, state, and local agencies and private sector entities that employ individuals who are registered to use the day care center for the purpose of verifying income. Note: Only name and data pertaining to reported total family income is disclosed to employing agencies and entities.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Information is provided by the registrant, the registrant's sponsor, and employing entities.'

* * * * *

**S400.20**

**SYSTEM NAME:**

Day Care Facility Registrant and Applicant Records.

**SYSTEM LOCATION:**

Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals and their sponsors who are enrolled in, or have applied for admission to, DLA-managed day care facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains the registrant's or applicant's name, Social Security Number and birth data; home and emergency addresses; medical, dental, and insurance provider data; medical examination reports, health assessments, and screening results; immunization, allergy, medication, and injury records; physical abilities and limitations; physical, emotional, or other special care requirements; transportation requirements and schedules; parental disabilities, impairments, or special needs; authorization, consent, and agreement forms; incident reports; and sponsor, escort, and emergency contact name and data to include physical and electronic addresses and work, home, cell, and pager telephone numbers. The records may include family background, cultural, and ethnic data such as religion, native language, and family composition for cultural and social enrichment activities. For fee assessment purposes, the application records also include family income data.

**Note:** Any and all information relating to an individual's religious preference or religious activity is collected and maintained only if the individual has made an informed decision to voluntarily provide the information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental regulations; 5 U.S.C. 302, Delegation of authority; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 2809 and 2812, Military construction of child care facilities; 42 U.S.C. Chap. 127, Coordinated services for children, youth, and families; 40 U.S.C. 490b, Child care services for Federal employees; 42 U.S.C. Chap 67, Child abuse programs; Pub. L. 101–189, Title XV, Military Child Care Act of 1989; E.O. 9397 (SSN); and DoD Instruction 6060.2, Child Development Programs.

**PURPOSE(S):**

The records are used to provide day care services and to verify family income for fee assessment purposes. Individualized data on total family income is provided to employing Defense components for fiscal planning purposes, for subsidy computation, and to reimburse DLA for day care services rendered under a support agreement.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To physicians, dentists, medical technicians, hospitals, or health care providers in the course of obtaining emergency medical attention.

To Federal, state, and local officials involved with childcare or health services for the purpose of reporting suspected or actual child abuse.

To Federal, state, and local agencies and private sector entities that employ individuals who are registered to use the day care center for the purpose of verifying income.

**Note:** Only name and data pertaining to reported total family income is disclosed to employing agencies and entities.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in paper and computerized form.

**RETRIEVABILITY:**

Retrieved by registrant's or applicant's name or Social Security Number, and sponsor's name or Social Security Number.

**SAFEGUARDS:**

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their official duties. The computer files are password protected with access restricted to authorized users.

**RETENTION AND DISPOSAL:**

Enrollee records involving no serious accident or injury requiring emergency medical records are destroyed 1 year after enrollee withdraws from the program. Enrollee records involving a serious accident or injury requiring emergency medical records are destroyed 3 years after the incident or after the enrollee withdraws from the program, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, DLA Support Services Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the Commanders of the Defense Logistics Agency (DLA) Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–C, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Information is provided by the registrant, the registrant's sponsor, and employing entities.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 02–10283 Filed 4–25–02; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 10, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 25, 2002.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and

proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 23, 2002.

**John D. Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision.

*Title:* Indian Education Formula Grants to Local Educational Agencies (LEAs).

*Abstract:* Application for funding under the Indian Education Formula Grant Program to Local Educational Agencies. The application is used to determine applicant eligibility, amount of award, and appropriateness of project services for Indian students to be served. The application also includes the Indian Student Eligibility Certification Form that LEAs have parents complete to certify Indian student eligibility for the program.

*Additional Information:* The Department requests an emergency clearance for the Formula Grants to Local Educational Agencies (LEAs) Application (CFDA #84.060A) by May 10, 2002. Two new provisions in the No Child Left Behind Act neccessitate the revision of the existing information collection. One is the authority for LEAs, under Section 716 Integration of Services, to consolidate all funds for any Federal program exclusively serving Indian children or the funds reserved under any Federal program to exclusively serve Indian children under a statutory or administrative formula. The second new requirement in the legislation imposes a five percent limit on the use of grant funds for administrative costs. The program annually funds approximately 1,270 LEAs from July 1 to June 30. An emergency clearance is requested so that the revised applications may be completed and received from participating LEAs in time for the Department to process their funding by July 1. In our view, harm to the public would thus occur if this clearance is not approved in time.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 1,270.

Burden Hours: 25,825.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting ''Browse Pending Collections'' and clicking on link number. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–10286 Filed 4–25–02; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.144]**

## Migrant Education Program (MEP) Consortium Incentive Grants program

**ACTION:** Notice inviting applications for new awards for fiscal year 2002.

*Purpose of Program:* The purpose of the FY 2002 MEP Consortium Incentive Grants program is to provide incentive grants to State educational agencies (SEAs) that participate in consortium arrangements with another State or appropriate entity to improve the delivery of services to migrant children whose education is interrupted.

*Eligible Applicants:* SEAs receiving MEP Basic State Formula grants.

*Applications Available:* April 26, 2002.

*Deadline for Transmittal of Applications:* June 3, 2002.

*Deadline for Intergovernmental Review:* August 2, 2002.

*Available Funds:* $2,300,000.

*Estimated Range of Awards:* $25,000–$75,000.

*Estimated Average Size of Awards:* $57,500.

*Estimated Number of Awards:* 40.

*Project Period:* Up to 27 months.

**SUPPLEMENTARY INFORMATION:** The Migrant Education Program (MEP) is authorized under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). The MEP provides financial assistance to States to support high-quality and comprehensive educational programs so that migrant children are provided with appropriate educational and supportive services that (1) address their special needs in a coordinated and efficient manner, and (2) give migrant children the opportunity to meet challenging State content and student performance standards.

Section 1308(d) of the ESEA authorizes the Secretary to provide competitive incentive grants to SEAs that participate in consortium arrangements with another State or appropriate entity to improve the delivery of services to migrant children. Section 1308(d) also limits the size of each of these grants to not more than $250,000. For the FY 2002 competition, the Secretary plans to reserve $2.3 million for consortium incentive grant awards.

Through this notice the Secretary announces requirements and procedures to govern the competition for FY 2002 grant funds. So that existing consortia relationships that were established under the ESEA as previously authorized may be maintained and funded without disruption of services for migrant students, the Secretary has decided to announce these requirements and procedures at this time without first providing the public an opportunity for review and comment. Except for the new statutory requirement in Section 1308(d) that the consortium arrangements improve the delivery of services to migrant students whose education is interrupted, the requirements and procedures for the upcoming FY 2002 competition are the same as the Secretary has used for competitions conducted under the ESEA as previously authorized.

### Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, in order to make

timely grant awards in FY 2002, the Secretary has decided to issue these final requirements without first publishing them as proposals for public comment. These requirements will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

At a later date the Secretary plans to publish a notice of proposed requirements for this program and offer interested parties the opportunity to comment. The proposed requirements (or more specifically, the final requirements resulting from them) would apply to grant competitions under the program beginning in FY 2003.

**Requirements and Procedures To Govern the FY 2002 Grant Competition**

The Secretary will award consortium incentive grants for FY 2002 under section 1308(d) to SEAs that propose to form a consortium with another State or entity and demonstrate in accordance with section 1303(d)(3) of the ESEA that doing so will—

a. Reduce administrative costs or program function costs for State MEP programs; and

b. Make more MEP funds available for direct services to add substantially to the welfare or educational attainment of children to be served.

In addition, section 1308(d) requires that SEAs receiving grants form consortia to improve the delivery of services to migrant students whose education has been interrupted.

*Applicable Definitions*

For purposes of this program, ''administrative or program function costs'' include all costs that an SEA or its local operating agencies pay from MEP funds to support MEP activities other than direct educational or support services for migrant children. Administrative and program function costs include the costs of general program administration paid from funds reserved under section 1004 of ESEA as well as the costs of other, program-specific administrative activities, such as identification and recruitment; interstate, intrastate, and interagency coordination; and parent advisory councils. The term ''direct educational or support services'' means any instructional or support activities provided directly to migrant children, as well as training of instructional or support staff who provide instructional or support services directly to migrant children.

In addition, for purposes of section 1308(d) the term ''other appropriate entity'' can mean any public or private agency or organization.

*Application Requirements*

A single SEA may be part of more than one consortium arrangement. However, consistent with the provisions in section 1303(d) of the ESEA, for the FY 2002 competition each consortium arrangement that the Secretary approves must separately decrease the amount of MEP administrative or program function costs in total for the participating SEAs and, conversely, increase the amount of MEP funds available for direct services to migrant children in total for the participating SEAs. An SEA will submit the information that the Department needs in order to review the SEA's consortium arrangement and determine the size of the SEA's consortium incentive grant.

*Amount of Incentive Grants*

Each SEA with one or more consortium arrangements that the Secretary determines meet the criteria announced in this notice, and whose consortium arrangements increase the amount of MEP funds available for direct services to migrant children in its State, will receive one incentive award. In determining the size of an SEA's award, the Secretary will rank SEAs seeking incentive grants on the basis of the total percentage increase in MEP funds that the SEA will make available for direct services to migrant children in its State as a result of the SEA's participation in the consortium arrangements, as compared to the level of direct services that would be made available to migrant children in the State in the absence of the consortium.

*Example 1:* SEA A has one consortium arrangement that increases the amount of funds available for direct services in State A by ten percent, while SEA B has two consortium arrangements that increase the total amount of funds available for direct services in State B by eight percent. SEA A would be ranked higher than SEA B even if SEA B's consortium arrangements permit more total funds to be used for direct services.

*Example 2:* SEA C and SEA D participate together in one consortium, and this consortium is the only one in which each SEA participates. If the amount available for direct services increases in total across the two States due to their participation in the consortium, but the amount available for direct services in State C does not increase, the consortium arrangement will be approved, but only State D, and not State C, will receive an incentive grant.

From the information that an SEA submits, the Secretary will calculate, for each State, the total percentage increase in MEP funds available for direct services as a result of all the approved consortium arrangements in which the applicant SEA participates. The Secretary will then rank these percentages in descending order and divide the distribution into thirds (that is, into terciles). Each SEA ranked in the highest third of the distribution will receive an incentive grant that is three times the size of the grant received by each SEA ranked in the lowest third, while each SEA ranked in the middle third will receive an incentive grant that is twice the size of that provided to each SEA ranked in the lowest third. Within each third, grant awards will be of equal size, except that adjustments will be made so that no consortium incentive grant will be greater than $250,000 or 100 percent of the amount of funds awarded to the SEA under its formula grant allocation, whichever is less.

*Use of Consortium Incentive Grant Funds*

An SEA may use incentive grant funds awarded under section 1308(d) of the ESEA only to provide direct services to migrant children. These funds are in addition to, and not in place of, the funds awarded under the MEP formula grant.

**Applicable Regulations**

In view of the process that the Secretary proposes to use to obtain information on proposed SEA consortium arrangements, and the criteria it proposes to use to determine, by formula, the amount of the consortium incentive grant that each applicant SEA will receive, the regulations in 34 CFR part 75 (Direct Grant Programs) of the Education Department General Administrative Regulations (EDGAR) do not apply. Instead, the consortium incentive grant program will be administered, like the MEP itself, under the provisions of 34 CFR parts 76, 77, 79, 80, 82 and 85 of EDGAR.

*For Applications and Further Information Contact:* To obtain a copy of the application or to obtain information on the program, call or write James English, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Ave., SW., Room 3E315, FOB6, Washington, DC 20202–6135. Telephone: (202) 260–1394. Inquiries may be sent by e-mail to *james.english@ed.gov* or by FAX at (202) 205–0089. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. A copy of the application can be obtained

electronically at: *http://www.ed.gov/GrantApps.*

Individuals who use a telecommunications device for the deaf (TDD) may call 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) on request to the contact person listed in the preceding paragraph.

**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 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 this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at 202–512–1530.

**Note:** The official version of this 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. 6398(d).

Dated: April 22, 2002.

**Susan B. Neuman,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 02–10357 Filed 4–25–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Center for Education Statistics (NCES)

**AGENCY:** U.S. Department of Education.

**ACTION:** Notice of meeting of the Advisory Council on Education Statistics.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** May 23–24, 2002.

**TIMES:** May 23, 2002—Full Council meeting, 9 a.m.–4:30 p.m.; May 24, 2002—Full Council meeting 9 a.m.–1.

**LOCATION:** Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Laurence T. Ogle, National Center for Education Statistics, 1990 K Street, NW., Room 9115, Washington, DC 20006

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under section 46(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement (OERI) and is responsible for advising on standards to ensure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advice the Commissioner of NCES and the National Assessment Government Board on technical and statistical matters related to the National Assessment of Educational Progress (NAEP). This meeting of the Council is open to the public, with the exception of budget discussions. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternate format) should notify Laurence T. Ogle at (202) 502–7426 by no later than May 15, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. The proposed agenda includes the following:

- Review of Division activity within NCES.
- Legislative and budget updates.
- Ethics training.
- New NCES Standards.
- Adult literacy standards.

Records are kept of Council proceedings and are available for public inspection. Records are also available for public inspection at the Office of the Acting Executive Director, Laurence T. Ogle, Advisory Council on Education Statistics, National Center for Education Statistics, 1900 K Street, NW., Room 9115, Washington, DC 20006.

**Grover J. Whithurst,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 02–10258 Filed 4–25–02; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### National Energy Technology Laboratory

### Notice of Availability of a Financial Assistance Solicitation

**AGENCY:** National Energy Technology Laboratory, Department of Energy (DOE).

**ACTION:** Notice of Availability of a Financial Assistance Solicitation.

**SUMMARY:** Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT15376 entitled ''Advanced Technology Development by Independents for High Risk Domains.'' The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared development and demonstration projects using advanced technologies that address specific high risk domains in the United States. The proposed project can address a technical risk that impacts the technology's full acceptance by the independents working in one of three areas; the shallow shelf Gulf of Mexico, Alaska and the Rocky Mountain Frontier. Or the proposed project can address the critical problems associated with exploration of these regions. The goal is to provide technical solutions to issues that are limiting domestic on-shore or off-shore oil exploration and production by independent oil producing companies while providing the same or higher levels of environmental protection expected under the law.

Applications will either address: (1) Existing Fields—established production areas of the Gulf of Mexico and Alaska and Rocky Mountain Frontier regions, or (2) Exploration—in the very complicated environments of the Gulf of Mexico and Alaska and Rocky Mountain Frontier regions.

**DATES:** The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the ''Industry Interactive Procurement System'' (IIPS) webpage located at *http://e-center.doe.gov* on or about April 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Keith R. Miles, Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address:*miles@netl.doe.gov,* Telephone Number: 412–386–5984.

**SUPPLEMENTARY INFORMATION:** The mission of the Department of Energy's

Fossil Energy Oil Program is derived from the National need for increased oil production as a part of the national security, requirements for Federal Lands stewardship, and increased protection of the environment. The Oil Reservoir Life Extension Program supports those goals. In addition, the program supports the National Energy Policy goals to increase domestic oil and gas exploration through continued partnership with public and private entities and to promote enhanced oil and gas recovery from existing wells through new technology. By providing demonstrations of new technologies and approaches that improve the recovery and allow access and explorations to technologically difficult locations, the oil program will increase the domestic oil supply.

The Department of Energy Oil Program has, through funding by Congress focused on the needs of the Nation's independent oil operators. The Administration also addressed the needs of the independent oil producer in the National Energy Policy when they recognized that, ''Small independent businesses account for 50–65% respectively of domestic petroleum and natural gas production in the lower 48 states.'' Independent operators have rapidly moved operations into regions that were traditionally explored and operated by the major oil companies. Recently the many of the Nation's independent producers placed in the ranks of the top 20 producing companies in the United States. They currently maintain 63% of the oil reserves and 62% of the oil production. They control 50% of the gas reserves and 52% of the gas production. In the Gulf of Mexico, one of the regions addressed under this solicitation, independent producers control 25% of the oil production. Alaska has received the attention of independent operators in recent years as these companies have taken on larger and larger leaseholds and operations responsibilities. Based on these figures, it is important that the independent producers use the most effective and advanced technologies in their operations to maximize production and protection of the environment and the resource. It is our intention to partner with the independents who are pushing into new areas of activity either by addressing under explored areas of the State of Alaska and the Rocky Mountain Frontier region, or by testing the newest technologies as they move into greater operations in the shallow offshore Gulf of Mexico and the other two higher risk regions of Alaska and the Rocky Mountains.

Projects do not need to be limited to one area of operations. They may address exploration, drilling and completion, well stimulation, enhanced oil recovery or other operational issues. They can involve several processes and seek to test a management process. The proposed project must however address the identified problems in such a way that evaluation of the success or failure can occur and the reasons can be attributed clearly to the technology or some other identified factor.

The proposed projects must contain a field demonstration.

The solicitation targets projects in three areas: shallow offshore Gulf of Mexico, Alaska, and Rocky Mountain Frontier. Projects will be accepted that address problems affecting independent exploration and production in these areas. The program is not intended to simply provide additional government funding to a proposed capital or venture project operated by an independent operator. Projects should describe how the proposed project expects to increase the oil and gas production in one of the three identified high risk regions. The goal is to assist the operator in testing new technology or processes and extending their expertise into these high risk domains in an effort to create a broader reserve base for the Nation using its own entrepreneurs. The two areas of interest for this solicitation are:

Area of Interest 1—Existing Fields—The projects in this area will promote the goals of the National Energy Policy to use new technology to promote enhanced oil and gas recovery in established production areas of the Gulf of Mexico and Alaska and Rocky Mountain Frontier regions. It addresses the technical risk associated with developing, testing and deploying a new technology under actual field conditions. This program provides the connection between the laboratory and the field and applications are expected to provide documentation of the need for this technology and the problem that it will address. The program allows continued development of a technology to create evolutionary improvements in performance and then the demonstration of such improvements in actual field conditions.

Area of Interest 2—Exploration—The projects in this area target the National Energy Policy goal of advancing new exploration methodologies and technology through the partnership with the independent producers conducting exploration in very complicated environments. The DOE will partner with independent producer in an effort to push the limits of standard exploration technologies and to improve them. Applications are expected to describe the overall exploration problem in the exploration of deeper formations in the Shallow offshore Gulf of Mexico, the oil-prone areas of Alaska, or the Rocky Mountain Frontier and propose the technical solution to the identified problem. They should address the need of the independent operator with regard to this region and show that the project provides such a solution to the problem or problems.

DOE anticipates awarding approximately five (5) to seven (7) financial assistance (i.e., Cooperative Agreements) with a project performance period no less than three years in length and no more than five years in length. Approximately $7.0 million of DOE funding is planned over a 3-year period for this solicitation. The proposed projects will contain a field demonstration and as such under the Energy Policy Act of 1992 a minimum of 50% cost share of the total estimated project cost is required. The maximum DOE share of an award will be $1500K.

This competitive solicitation will be restricted to domestic independent operators. Moreover, for the purposes of this solicitation, an Independent operator shall be a non-integrated company which receives most of its revenue from crude oil or natural gas production at the wellhead. Independents are exclusively in the exploration and production segment of the industry with no retail outlets, marketing or refining operations. Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–02NT15376. (**Note:** The limit on participation by an M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost).

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The solicitation will

only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at *http://www.netl.doe.gov/business.* Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on April 19, 2002.

**Dale A. Siciliano,**

*Deputy Director, Acquisition and Assistance Division.*

[FR Doc. 02–10285 Filed 4–25–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[FE Docket No. 02–15–NG]**

## Office of Fossil Energy; Midland Cogeneration Venture Limited Partnership; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that on April 9, 2002, it issued DOE/FE Order No.1765 granting Midland Cogeneration Venture Limited Partnership (MCV) authority to import up to 10,000 Mcf per day of natural gas from Canada beginning on November 1, 2002, and extending through October 31, 2010. The gas will be imported from Anadarko Canada Corporation at Noyes, Minnesota. It will be used to generate electricity and process steam at a 1,370-megawatt, natural gas-fired, combined-cycle, cogeneration facility which MCV operates in Midland, Michigan.

This Order may be found on the FE Web site at *http://www.fe.doe.gov*, or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 18, 2002.

**Yvonne Caudillo,**

*Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

[FR Doc. 02–10284 Filed 4–25–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG02–119–000, et al.]**

### Celerity Energy of Colorado, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 19, 2002.

Take notice that the following filings have been made with the Commission:

**1. Celerity Energy of Colorado, LLC**

[Docket No. EG02–119–000]

Take notice that on April 17, 2002, Celerity Energy of Colorado, LLC (Applicant), having its principal place of business at 8455 SW Halter Terrace, Beaverton, Oregon 97008, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant, a Colorado limited liability company, seeks exempt wholesale generator status for its Networked Distributed Resource (ANDR) facilities. NDR facilities aggregate commercial and industrial standby generators to provide electric energy for sale at wholesale.

*Comment Date*: May 10, 2002.

**2. Big Cajun I Peaking Power LLC**

[Docket No. EG02–120–000]

Take notice that on April 17, 2002, Big Cajun I Peaking Power LLC (Big Cajun I Peaking) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA) and Part 365 of the Commission's regulations.

As more fully explained in the application, Big Cajun I Peaking is a limited liability company that states it will be engaged either directly or indirectly and exclusively in the business of owning and operating an electric generation facility located in Louisiana.

*Comment Date:* May 10, 2002.

**3. Duke Power, a Division of Duke Energy Corporation**

[Docket No. ER00–3454–000]

Take notice that on April 16, 2002, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing its quarterly transaction summaries of power marketing activity for transactions conducted pursuant to its market-based rate tariffs, FERC Electric Tariff Original Volume No. 3 and FERC Electric Tariff Original Volume No. 5, for the quarter ending March 31, 2002.

*Comment Date:* May 7, 2002.

**4. Southern Company Services, Inc.**

[Docket No. ER02–352–002]

Take notice that on April 2, 2002, Southern Company Services, Inc., as agent for Georgia Power Company (Applicant), filed in Docket No. ER02–352–002, a Motion for Leave to Answer and Answer of Southern Company Services, Inc. in Opposition to the Motion to Intervene and Protest of Calpine Construction Finance Company, L.P., Competitive Power Ventures, Inc., Duke Energy North America, LLC, and GenPower, LLC. Please note that because this pleading contains significant new information pertinent to the Applicant's earlier filings in this proceeding, it is being treated as an amendment to the filing and is assigned a new sub-docket. Issues raised by interested parties in answer to Applicant's April 2nd filing should be raised again with the Commission in order to be considered in this proceeding.

*Comment Date:* May 6, 2002.

**5. Puget Sound Energy, Inc.**

[Docket No. ER02–1553–000]

Take notice that on April 16, 2002, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a service agreement for Non-Firm Point-To-Point Transmission Service with Epcor Merchant and Capital (US) Inc. (Epcor), as Transmission Customer. A copy of the filing was served upon Epcor.

*Comment Date:* May 7, 2002.

**6. Cinergy Services, Inc.**

[Docket No. ER02–1554–000]

Take notice that on April 16, 2002, Cinergy Services, Inc. (Cinergy) and Entergy Power Marketing Corporation are requesting a cancellation of Service Agreement No. 206, under Cinergy Operating Companies, FERC Electric Cost-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.6.

Cinergy requests an effective date of April 17, 2002.

*Comment Date:* May 7, 2002.

**7. Cinergy Services, Inc.**

[Docket No. ER02–1555–000]

Take notice that on April 16, 2002, Cinergy Services, Inc. (Cinergy) and Entergy Power Marketing Corporation are requesting a cancellation of Service Agreement No. 54, under Cinergy Operating Companies, FERC Resale, Assignment or Transfer of Transmission Rights and Ancillary Service Rights Sales Agreement, FERC RTR Tariff Original Volume No.8.

Cinergy requests an effective date of April 17, 2002.

*Comment Date:* May 7, 2002.

**8. Cinergy Services, Inc.**

[Docket No. ER02–1556–000]

Take notice that on April 16, 2002, Cinergy Services, Inc. (Cinergy) and Entergy Power Marketing Corporation are requesting a cancellation of Service Agreement No. 209, under Cinergy Operating Companies, FERC Electric Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No.7.

Cinergy requests an effective date of April 17, 2002.

*Comment Date:* May 7, 2002.

**9. San Diego Gas & Electric Company**

[Docket No. ER02–1557–000]

Take notice that on April 16, 2002 San Diego Gas & Electric Company (SDG&E) tendered for filing its Final Costs and Operation & Maintenance (O&M) Rate Change in the above docket. The Final Costs and O&M rate apply to the generation plant owned by RAMCO, Inc. (RAMCO) and located in the city of Chula Vista, California.

By this filing, SDG&E requests approval of the $791,262.15 total costs of the interconnection facilities, which includes applicable taxes. In addition, SDG&E requests approval of a change in the monthly O&M rate to .00376 times the cost of the facilities minus the taxes.

SDG&E states that copies of the filing have been served on the service list established for this proceeding.

*Comment Date:* May 7, 2002.

**10. San Diego Gas & Electric Company**

[Docket No. ER02–1558–000]

Take notice that on April 16, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Final Costs and Operation & Maintenance (O&M) Rate Change in the above docket. The Final Costs and O&M rate apply to the generation plant owned by RAMCO, Inc. (RAMCO) and located in the city of Escondido, California.

By this filing, SDG&E requests approval of the $399,781.15 total costs of the interconnection facilities, which includes applicable taxes. In addition, SDG&E requests approval of a change in the monthly O&M rate to .00376 times the cost of the facilities minus the taxes.

SDG&E states that copies of the filing have been served on the service list established for this proceeding.

*Comment Date:* May 7, 2002.

**11. Florida Power & Light Company**

[Docket No. ER02–1560–000]

Take notice that on April 16, 2002, Florida Power & Light Company (FPL) filed a Service Agreement for Select Energy, Inc. for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on April 11, 2002.

*Comment Date:* May 7, 2002.

**12. Michigan Electric Transmission Company**

[Docket No. ER02–1561–000]

Take notice that on April 16, 2002, Michigan Electric Transmission Company (Michigan Transco) tendered for filing executed Service Agreements for Firm and Non-Firm Point to Point Transmission Service (Agreements) with Constellation Power Source, Inc. (Customer) pursuant to the Joint Open Access Transmission Service Tariff originally filed on February 22, 2001 by Michigan Transco and International Transmission Company (ITC).

The Service Agreements being filed are Nos. 167 and 168 under that tariff. Michigan Transco is requesting an effective date of April 1, for the Agreement. Copies of the Agreement were served upon the Michigan Public Service Commission, ITC and the Customer.

*Comment Date:* May 7, 2002.

**13. Southern California Edison Company**

[Docket No. ER02–1562–000]

Take notice, that on April 16, 2002, Southern California Edison Company (SCE) tendered for filing the Amended and Restated City—Edison Pacific Intertie DC Transmission Facilities Agreement (Amended Agreement) between SCE and the City of Los Angeles Department of Water and Power (LADWP). The Amended Agreement reflect SCE's and LADWP's (Parties) negotiations to amend the original agreement in order to incorporate into the Amended Agreement the additional rights and obligations of the Parties relating to the Sylmar Converter Station operations and management to reduce project operations and maintenance expenses by installing capital replacement facilities expected to be completed by 2005.

SCE requests the Commission to assign an effective date June 15, 2002 to the Amended Agreement. Copies of this filing were served upon the Public Utilities Commission of California and LADWP.

*Comment Date:* May 7, 2002.

**14. Southern Company Services, Inc.**

[Docket No. ER02–1563–000]

Take notice that on April 16, 2002, Southern Company Services, Inc. (SCS) as agent for Alabama Power Company (Alabama Power), Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), submitted for filing the First Revised Service Agreement No. 6, Generator Balancing Service Agreement between Calpine Energy Services, L.P. (Calpine) and Southern Companies (the First Revised Service Agreement). The First Revised Service Agreement reflects the assignment of the rights and obligations of Service Agreement No. 6, Generator Balancing Service Agreement between Coral Power Company, L.L.C. and Southern Companies dated as of May 1, 2001 to Calpine, pursuant to the Assignment and Assumption Agreement between Calpine and Coral Power dated as of September 10, 2001.

*Comment Date:* May 7, 2002.

**15. Ohio Valley Electric Corporation**

[Docket No. ER02–1564–000]

Take notice that on April 16, 2002, Ohio Valley Electric Corporation (OVEC) tendered for filing a Notice of Cancellation of the Amended and Restated Interconnection and Operation Agreement, dated as of June 19, 2001 (the Interconnection Agreement) between OVEC and Jackson County Power, LLC (JCP), designated as First Revised Service Agreement No. 47 under OVEC's FERC Electronic Tariff, Original Volume No. 1.

OVEC proposes an effective date of June 14, 2002. A copy of this filing was served upon JCP and the Public Utilities Commission of Ohio.

*Comment Date:* May 7, 2002.

**16. Progress Energy, Inc.**

[Docket No. ER02–1569–000]

Take notice that on April 12, 2002, Progress Energy, Inc. (Progress Energy), on behalf of Florida Power Corporation (FPC), tendered for filing an executed Facility Interconnection and Operating Agreement (Interconnection Agreement) between Carolina Power & Light Company (CP&L) and Cogentrix Eastern

Carolina, LLC (Cogentrix) under FPC's Open Access Transmission Tariff, Second Revised Volume No. 6. The Interconnection Agreement has previously been filed under CP&L's Open Access Transmission Tariff, Third Revised Volume No. 3 on March 1, 2002 in Docket No. ER02–1212–000 (March 1st Filing).

Progress Energy respectfully requests that the Interconnection Agreement become effective February 4, 2002, as originally requested in the March 1st Filing. Copies of the filing were served upon the North Carolina Utilities Commission, the Florida Public Service Commission and Cogentrix.

*Comment Date:* May 3, 2002.

**17. Nevada Power Company**

[Docket No. ER02–1570–000]

Take notice that on April 16, 2002, Nevada Power Company tendered for filing two Letter Agreements between Nevada Power Company and the following generators: (1) GenWest, LLC; and (2) Moapa Energy Center, LLC. The Letter Agreements are submitted as Service Agreement Nos. 114 and 115, respectively, to Nevada Power's Open Access Transmission Tariff. Nevada Power Company requests that the Letter Agreements be made effective as of the execution date of each agreement.

*Comment Date:* May 7, 2002.

**18. Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power LLC, and NRG Rockford II LLC**

[Docket No. ES02–29–000]

Take notice that on April 17, 2002, Bayou Cove Peaking Power, LLC, Big Cajun I Peaking Power LLC, and NRG Rockford II LLC submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur long-term indebtedness under an intercompany loan and to guarantee the bonds, in an aggregate amount of up to $330 million.

*Comment Date:* May 8, 2002.

**Standard Paragraph**

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–10253 Filed 4–25–02; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6628–7]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 11992).

**Draft EISs**

ERP No. D–FHW–D40316–WV Rating EC2, US–340 Transportation Corridor Improvement Study, Implementation, Proposal to Improve US 340 from the four-lane Section of the Charles-Town Bypass, Jefferson County, WV.

*Summary:* EPA has environmental concerns with the considerable amount of floodplain impacts along Bullskin Run, and the analysis of cumulative impacts. Additional information has been requested to show that floodplain impacts are indeed minimal, and that design features could be incorporated to minimize those impacts. EPA suggested that the cumulative impact analysis be done from a resource perspective, not a development perspective.

ERP No. D–FHW–E50293–00 Rating EO2, Louisville-Southern Indiana Ohio River Bridges Projects, To Improve Cross-River Mobility between Jefferson County, KY and Clark County, ID, Coast Guard Bridge and US Army COE Section 10 and 404 Permits Issuance, Jefferson County, KY and Clark County, IN.

*Summary:* Environmental issues exist regarding wetlands, streams, cultural/community impacts, traffic noise, and habitat. EPA requested additional information and clarification regarding these impacts and avoidance/mitigation measures.

ERP No. D–FHW–F40400–MN Rating EO2, Trunk Highway (TH) 169 Improvement Project, Improvements to TH–169 from TH–27 north of the City of Onamia to the Intersection of TH–18 and TH–6 northwest of the City of Garrison, Crow Wing and Mille Lacs Counties, MN.

*Summary:* EPA has identified issues with and requested information regarding the effectiveness of the alternatives; potential impacts to aquatic resources and compliance with the Section 404(b)(1) Guidelines; water quality, and pedestrian impacts.

ERP No. D–FHW–F59003–IL Rating EC2, Lake County Transportation Improvement Project, To Identify a System of Strategic Roadway, Rail, and Bus Improvements, Transportation Management Strategies, Lake County, IL.

*Summary:* EPA has environmental concerns with respect to aquatic resources/Clean Water Act Section 404(b)(1) Guidelines compliance, wetland functional assessment methodology, water quality, indirect land use effects, and about how either alternative may impact resources, since either build alternative will adversely impact a significant amount of wetlands, many of which are of high quality. However, we believe that appropriate avoidance and minimization measures have been taken at this stage in the analysis. EPA recommends that the FEIS provide specific information about what analysis and determinations are planned for Tier 1 versus Tier 2 NEPA documentation.

ERP No. D–IBR–K39072–00 Rating EC2, Implementation Agreement (IA), Inadvertent Overrun and Payback Policy (IOP), and Related Federal Actions, Implementation, Quantification Settlement Agreement (QSA), Lower Colorado River, in the States of AZ, CA and NV.

*Summary:* EPA expressed environmental concern with potential impacts to water and air quality, biological resources, Indian tribes, and potential cumulative impacts on water quality and the increased probability of more frequent and higher magnitude water shortages for other users of Lower Colorado River water, and with the related implementation of the

Quantification Settlement Agreement and Imperial Irrigation District/San Diego County Water Authority Water Transfer and significant information gaps in the environmental documentation.

ERP No. D–NOA–A91067–00 Rating EC2, Deep-sea Red Crab (*Chaceon quinquedens*) Fisheries, Fishery Management Plan, Development and Implementation, Norfolk Canyon in the south to the Haque Line in the north, Continental United States and Exclusive Economic Zone (EEZ).

*Summary:* EPA requested additional information on minimum size, holding bottom traps, and unauthorized sales.

ERP No. DS–GSA–K80037–CA Rating LO, San Diego-United States Courthouse Annex Project, Site Selection and Construction, New Information concerning Addition of the Union Street with Hotel San Diego Facade and Lobby Alternative, Central Business District (CBD), City of San Diego, San Diego County, CA.

*Summary:* EPA expressed a lack of objections with the DSEIS, but recommended that GSA's Final EIS address the applicability of Executive Orders on energy and water conservation, using environmentally preferable materials for facility construction, waste prevention, recycling, and other feasible pollution prevention measures; as well as the Council on Environmental Quality's handbook on analyzing cumulative effects under NEPA.

Dated: April 23, 2002.

**B. Katherine Biggs,**

*Associate Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 02–10342 Filed 4–25–02; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6628–6]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements

Filed April 15, 2002, through April 19, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020146, FINAL EIS, BLM, UT, 3R Minerals Coal Bed Canyon Mine Plan, Approval, Grand Staircase-Escalante National Monument, Garfield County, UT, Wait Period Ends: May 28, 2002, Contact: Paul Chapman (435) 644–4309.

EIS No. 020147, FINAL EIS, FHW, WI, US–14/61 Westby—Virogua Bypass Corridor Study, Transportation Improvements, Funding and COE Section 404 Permit, Cities of Virogua and Westby, Vernon County, WI, Wait Period Ends: May 28, 2002, Contact: Eugene Hoelker (608) 829–7512.

EIS No. 020148, DRAFT EIS, NPS, WV, National Coal Heritage Area, Strategic Management Action Plan, Implementation, Boone, Cabell, Fayette, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties, WV, Comment Period Ends: June 16, 2002, Contact: Peter Samuel (215) 597–1848.

EIS No. 020149, FINAL EIS, NRS, OK, Lower Clear Boggy Creek Watershed Project, Floodwater Retarding Structure (FWRS) Site 32B Construction, Atoka County, OK, Wait Period Ends: May 28, 2002, Contact: M.. Darrel Dominick (405) 742–1227.

EIS No. 020150, FINAL EIS, COE, NB, Platte West Water Production Facilities, Proposed New Drinking Water Production Facilities, Metropolitan Utilities District, Omaha District, Douglas, Saunders and Sarpy Counties, NB, Wait Period Ends: May 28, 2002, Contact: Rebecca Latka (402) 221–4602.

EIS No. 020151, FINAL EIS, FHW, PA, NY, US Route 15 Improvement Project, from PA–6015, Section G–20 and G–22 Tioga County, Pennsylvania and PIN 6008.22.123 Steuben County, New York, (US Route 15 between PA Route 287 and Presho, New York), Funding and COE Section 404 Permit, Tioga County, PA and Steuben County, NY, Wait Period Ends: May 28, 2002, Contact: James A. Cheatham (717) 221–3461.

EIS No. 020152, DRAFT EIS, NRC, VA, GENERIC EIS—Surry Power Station, Unit 1 and 2, Supplement 6 to NUREG–1437, License Renewal of Nuclear Plants, COE Section 404 Permit and NPDES Permit, James River, VA, Comment Period Ends: July 12, 2002, Contact: Andrew Kugler (301) 415–2828.

EIS No. 020153, DRAFT EIS, COE, KS, Tuttle Creek Dam Safety Assurance Program, To Assess Dam Safety and Performance, Big Blue River, Riley and Potawatomie Counties, KS, Comment Period Ends: June 10, 2002, Contact: William B. Empson (816) 983–3556. This document is available on the Internet at: http://www.nwk.usace.army.mil/tcdam.

EIS No. 020154, DRAFT EIS, NPS, NV, AZ, Lake Mead National Recreation Area, Long-Term Management of Lake Mead and Mohave and Associated Shoreline and Development Area, Lake Management Plan, Clark County, NV and Mohave County, AZ, Comment Period Ends: June 25, 2002, Contact: Jim Holland (702) 293–8986. This document is available on the Internet at: www.nps.gov/lame/lmpdraft/home.htm

EIS No. 020155, FINAL EIS, MMS, AL, MS, TX, WA, AL, FL, LA, CA, OR, Outer Continental Shelf Oil and Gas Leasing Program: From Mid-2002 Through Mid-2007, 5-Year Schedule Leasing Program for 20 Sales in 8 of the Outer Continental Shelf Planning Areas, AL, AK, CA, FL, LA, MS, OR, TX and WA, Wait Period Ends: May 28, 2002, Contact: Richard Wilderman (703) 787–1670.

EIS No. 020156, FINAL EIS, BLM, NV, Newmont Gold Mining, South Operations Area Project Amendment, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV, Wait Period Ends: May 28, 2002, Contact: Roger Congdon (775) 753–0200.

EIS No. 020157, FINAL SUPPLEMENT, MMS, ID, Smoky Canyon Mine Panels B and C, Propose to Mine Phosphate Ore Reserves in the Final Two Mine Panels, National Forest Systems Lands and Federal Mineral Leases, Caribou National Forest, Permit, Caribou County, ID, Wait Period Ends: May 28, 2002, Contact: Jeffrey Cundick (208) 478–6354.

### Amended Notices

EIS No. 020039, DRAFT EIS, JUS, CA, 14-Mile Border Infrastructure System Completion along the United States and Mexico Border, Areas I, V and VI, Pacific Ocean to just east of Tin Can Hill, San Diego County, CA, Comment Period Ends: May 02, 2002, Contact: Russell R. D'Hondt (202) 305–4386. Revision of FR Notice Published on 02/01/2002: CEQ Comment Period Ending 04/01/2002 has been extended to 05/02/2002.

EIS No. 020080, DRAFT EIS, COE, ND, Devils Lake Basin North Dakota Study, The Reduction of Flood Damages Related to the Rising Lake Levels and the Flood-Prone Areas Around Devils Lake and to Reduce the Potential for Natural Overflow Event, Sheyenne River and Red River of the North, ND, Comment Period Ends: May 07, 2002, Contact: David Loss (651) 290–5435. Revision of FR Notice Published on 03/08/2002: CEQ Review Period Ending on 04/22/2002 has been Extended to 05/07/2002.

EIS No. 020125, FINAL EIS, FTA, MN, Northstar Transportation Corridor Improvement Project, Downtown Minneapolis to the St. Cloud Area along Trunk Highway 10/47 and the

Burlington Northern Santa Fe Railroad Transcontinental Route connecting Hiawatha Light Rail Transit Line at a Multi-Modal Station, Minneapolis/St Paul International Airport and Mall of America, Bloomington, MN, Wait Period Ends: May 06, 2002, Contact: Joel Ettinger (312) 353–2865. Revision of FR Notice Published on 04/19/2002: Correction to Title.

EIS No. 020129, DRAFT EIS, BLM, OR, Kelsey Whisky Landscape Management Planning Area, Implementation, Associated Medford District Resource Management Plan Amendments, Josephine and Jackson Counties, OR, Comment Period Ends: July 12, 2002, Contact: Sherwood Tubman (541) 618–2399. Revision of FR notice published on 04/19/2002: Correction to County Joseph to Josephine County.

Dated: April 23, 2002.

**B. Katherine Biggs,**

*Associate Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 02–10343 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6628–4]**

## Notice of Intent: To Prepare a Supplemental Environmental Impact Statement (SEIS) on a Request To Modify a Memorandum of Agreement (MOA) Between EPA and Jefferson Parish (Parish), Louisiana Prohibiting the Parish From Providing Service From the Lafitte-Marrero Waterline to a Designated Area

**AGENCY:** U.S. Environmental Protection Agency (EPA), Region 6.

**PURPOSE:** To comply with the National Environmental Policy Act and evaluate the potential impacts of modifying the MOA. In addition, the U.S. Army Corps of Engineers (COE) may choose to rely on the SEIS in determining whether to modify a 1979 permit it issued to the Parish authorizing discharges of dredged and fill material incidental to construction of the Lafitte-Marrero Waterline.

**SUMMARY:** In settlement of a potential Council on Environmental Quality referral under Section 309(a) of the Clean Air Act, EPA Region 6 and Jefferson Parish entered into an MOA in 1979. In that MOA, the Parish agreed not to provide water service from the Lafitte-Marrero Waterline to a ''prohibited service area'' containing sensitive wetlands. The COE incorporated the MOA as a condition of a permit it issued to the Parish for construction of the waterline pursuant to Section 404 of the Clean Water Act (CWA) and violation of the MOA would thus violate that permit. In 1985, EPA Region 6 prohibited future discharges of dredged or fill material to wetlands in a designated portion of the restricted service area (the Bayou Aux Carpes Swamp) pursuant to Section 404(c) of the CWA. The Parish has requested EPA to modify the 1979 MOA to allow it to provide water service to an existing swamp tour facility and a proposed ''Jellystone Park'' campground in the prohibited service area. As proposed, these developments are or will be located in uplands within the area subject to the 404(c) designation. Before making a decision on the Parish's request, EPA will prepare a site specific ''second tier'' SEIS to evaluate potential environmental effects associated with the requested modification.

*Alternatives:* EPA may approve or deny the request to provide service to the Peach Orchard Jellystone Park campground, as proposed, or with modifications to mitigate or reduce adverse impacts to acceptable levels. Other reasonable alternatives, including those outside EPA's authority, may also be evaluated in the SEIS.

*Scoping:* EPA solicits written comments from interested parties regarding environmental issues to be addressed in the Draft SEIS. Interested parties are encouraged to submit their comments within fifteen (15) days of this notice. EPA will prepare a responsiveness summary of those issues determined to be within (and not within) the scope of the SEIS.

**FOR ADDITIONAL INFORMATION, OR TO BE PLACED ON EPA'S SEIS MAILING LIST:** Write or call Mr. Robert D. Lawrence, Chief of the Office of Planning and Coordination, EPA Region 6, 1445 Ross Ave., Dallas, TX 75202; tel: (214) 665–8150.

*Estimated Date of the Draft SEIS Release:* Summer 2002.

*Responsible Official:* Gregg A. Cooke, Regional Administrator.

Dated: April 23, 2002.

**Anne Norton Miller,**

*Director, Office of Federal Activities.*

[FR Doc. 02–10345 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6628–5]**

## Notice of Intent To Prepare an Environmental Impact Statement (EIS) on the Federal Funding, Construction, Operation and Monitoring of a Coastal Wetlands Restoration Project, Mississippi River Water Reintroduction Into the Maurepas Swamp

The U.S. Environmental Protection Agency, Region 6 (EPA), is developing the restoration project as the designated Federal member of the Task Force created by the Coastal Wetlands Planning, Protection and Restoration Act, Public Law 101–646 (CWPPRA).

**PURPOSE:** EPA has determined that the proposed wetlands restoration effort is a Major Federal Action significantly impacting the human environment. The purpose of the EIS is to ensure that decisions are made in accordance with the policies and purposes of the National Environmental Policy Act. The EIS will be considered by the CWPPRA Task Force in its decisions on funding and on alternative features and activities associated with carrying out the project.

**SUMMARY:** The proposed action provides for the reintroduction of Mississippi River water into the swamp south of Lake Maurepas in Louisiana for the purpose of restoring the ecological health and productivity of the swamp. Over time, hydrologic modifications to the riverine system have eliminated the natural inputs of fresh Mississippi River water, with its associated nutrients and sediments, that historically built and maintained the project area swamp. The swamp is now stressed and dying due to saltwater intrusion and excessive flooding due to subsidence and insufficient accumulation of sediment. The project will reintroduce approximately 1,500 cubic feet per second of Mississippi River water through a box-culvert structure constructed through the flood protection levee of the Mississippi River, then through an outflow channel for a distance of approximately five miles, and into the swamp south of Lake Maurepas. The outflow channel would be constructed near Garyville, Louisiana, and would connect to the existing Hope Canal north of U.S. Highway 61. As part of this alternative, the Hope Canal is proposed to be enlarged in order to accommodate the estimated project flow. The project is estimated to benefit more than 36,000 acres of cypress-tupelo swamp by increasing input of freshwater, sediments, and nutrients. The EIS will

consider impacts of this project with existing and/or proposed flood control measures of the foreseeable future. Efforts will be made to ensure that local drainage problems are not increased as a result of this project. Information will be provided in the EIS from reconnaissance level studies performed for preliminary project evaluation. These studies included site reviews; hydrologic modeling of existing conditions and basic reintroduction scenarios; baseline ecological field studies; and surveys of elevations and cross-sections.

**ALTERNATIVE ACTIONS:** The CWPPRA Task Force may determine to fund and construct the restoration project; the CWPPRA Task Force may deny funding and construction of the restoration project; or, the Task Force may determine to take no final action until additional funds and/or information are available. The EIS will be utilized in other actions such as the Clean Water Act Section 404 Permit which (1) may be issued as requested, (2) may be issued with conditions, or (3) may be denied.

**PUBLIC SCOPING MEETING:** The EPA will hold a public meeting to receive public input on the scope of issues to be addressed in the Draft EIS and to identify any significant issues of the proposed project. Interested individuals, groups, agencies and public officials will be encouraged to participate. The exact date and location will be provided by mailing list notice and will be published in major, local and periodic newspapers thirty days in advance.

**TO SUBMIT SCOPING COMMENTS, TO REQUEST ADDITIONAL INFORMATION, OR TO BE PLACED ON THE EIS MAILING LIST, CONTACT:** Mr. David McQuiddy, CWPPRA Coordinator, Marine and Wetlands Section, Water Quality Protection Division, U.S. EPA (6WQ–EM), 1445 Ross Avenue, Dallas, TX 75202–2733; telephone (214) 665–6722 , e-mail *mcquiddy.david@epa.gov,* or Ms. Jeanene Peckham, U.S. EPA, Water Quality Protection Field Office, 707 Florida Blvd, Suite B–21, Baton Rouge, LA, 70801; telephone (225) 389–0736, e-mail *peckham.jeanene@epa.gov.*

*Estimated Date for Release of Draft EIS:* Winter 2003.

*Responsible Official:* Gregg A. Cooke, Regional Administrator.

Dated: April 23, 2002.

**Anne Norton Miller,**

*Director, Office of Federal Activities.*

[FR Doc. 02–10344 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7202–5]**

## EPA Science Advisory Board; Notification of Public Advisory Committee Meetings: Affordability Criterion for Drinking Water Treatment Technologies for Small Systems

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a meeting of the Environmental Economics Advisory Committee (EEAC) of the EPA Science Advisory Board (SAB) to review the Agency's affordability criterion for small systems under the Safe Drinking Water Act Amendments of 1996. The SAB was established to provide independent scientific and technical advice to the EPA Administrator on Agency positions; in this case the methodology for developing and applying the affordability criterion. The EEAC is a standing committee of the SAB and is responsible for reviewing economic guidance and analyses that are used by EPA in carrying out its mission.

The review meeting will be held on June 13, 2002 at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314, telephone (703) 548–6300. The meeting will start at 9 a.m and conclude by 3 p.m. on that date. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first-come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The review will be conducted by the SAB's Environmental Economics Advisory Committee. Collectively, the appointed members of the EEAC have broad expertise in environmental economics and their expertise is appropriate to address EPA's charge which asks the SAB to address the economic aspects associated with development and application of the affordability criterion. The SAB will make use of Invited Experts to provide technical information and insights to inform the deliberations of the EEAC; however, these experts will not serve as members of this SAB Committee nor will they be signatories to the EEAC's report.

### Background

The 1996 Safe Drinking Water Act (SDWA) amendments include a number of provisions intended to help minimize the financial impact that new regulations will have on small drinking water systems. Several important provisions of SDWA (*e.g.,* compliance technologies, variance technologies, and variances) hinge on the concept of ''affordability'' as it applies to smaller communities across the country. The Agency currently assesses the affordability of new regulations on the basis of (a) an estimated affordability threshold (the upper limit for the costs of water bills, including the costs of treatment, distribution, and operation), which the Agency puts at a level of 2.5% of the median household income (MHI) and (b) baseline expenditures (derived from current annual water bills and MHI). Detailed information on the Agency's approach to affordability can be found in the *Report to Congress: Small System Arsenic Implementation Issues,* dated March 2002 (*see* the report on the EPA Web site at *http://www.epa.gov/safewater/arsenic.html*).

*The Charge*

The Agency is asking the SAB for advice on economic issues associated with its national-level affordability criterion, as well as the methodology used to establish the criterion. EPA asks that while taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, what is the Committee's opinion of the Agency's national level affordability criterion, methodology for deriving the criterion, and approach to applying those criteria to national primary drinking water regulations (NPDWRs)? Specifically, EPA is seeking the SAB's responses to the following questions:

1. What is the SAB's view of the Agency's basic approach of comparing average compliance costs for an NPDWR with an expenditure margin, which is derived as the difference between an affordability threshold and an expenditure baseline?

2. If the basic approach is retained, should a measure other than median income that captures the impact on more disadvantaged households be used as the basis for the affordability threshold? If so, what alternative measures (*e.g.,* 10th or 25th income percentile, poverty level income) should the Agency consider and why? What would be the likely effect of such alternatives on existing and future national level affordable technology determinations?

3. What alternatives should the Agency consider to 2.5% as the income percentage for the national level affordability threshold, and what would

be the likely effect of such alternatives on existing and future national level affordable technology determinations? What basis should the Agency use to select from among such alternatives? Should the Agency use costs of other household goods and services or risk reduction activities as a basis for setting the affordability threshold as was done in the development of the current criteria?

4. Does the Committee believe the Agency should consider approaches to calculating the national ''expenditure baseline'' other than those used by the Agency heretofore?

5. Does the Committee believe that separate national level affordability criterion should be developed for ground water and surface water systems?

6. Should the Agency include an evaluation of the potential availability of financial assistance (*e.g.,* Drinking Water State Revolving Fund) in its national level affordability criterion? If so, how could the potential availability of such financial assistance that reduces household burden be taken into consideration?

7. Is there a need for making affordable technology determinations on a regional rather than a national basis? Does adequate, readily available information exist to support such an approach? EPA is still exploring the degree of flexibility afforded by SDWA to make regional determinations, but would appreciate the Committee's advice on whether such determinations are feasible and warranted.

*Approach to Conducting the Review*

EPA has asked the Science Advisory Board for advice on economic issues associated with its national-level affordability criterion. In addition to its focused discussion on the economic aspects of this issue with the SAB, EPA intends to obtain input on broader aspects of the criterion and the process for its establishment, from its National Drinking Water Advisory Council (NDWAC) and through interactions with a broad group of stakeholders that it intends to convene subsequent to the SAB review.

The SAB has determined that the appropriate Panel for conducting this focused review is its Environmental Economics Advisory Committee (EEAC), complemented by Invited Experts who can provide EEAC members with information on and insights into drinking water treatment techniques. By this notice, the public is invited to suggest names of experts who are appropriate for use as invited experts in this regard. The Invited Experts will not be members of the Panel, per se, and will not be signatories to the EEAC's report, nor will they be a part of analysis of balance of bias on this topic for the EEAC itself. Suggestions for Invited Experts should include the individual's name, affiliation, position, contact information (telephone number, mailing address, and email address and/or Web site), a current resume (preferably in electronic form), and a statement regarding the nominee's background, experience, and qualifications to serve as an Invited Expert for this activity.

Biographical sketches of the EEAC members who are participating in this review can be found on the SAB Web site at *www.epa.gov/SAB/.* By this notice, the public is invited to provide the EPA Science Advisory Board with information or analyses pertinent to the service of any of these individuals on the review. Information, preferably in electronic form, must be received no later than May 10, 2002. Information should be sent by mail to Mr. Thomas O. Miller, Designated Federal Officer, SAB Environmental Economics Advisory Committee (see contact information below). A final roster of the participating EEAC members, along with the Invited Experts, will be placed on the SAB Website no later than May 14, 2002.

The EEAC will deliberate in public session on June 13, 2002 in Alexandria, VA at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314, telephone (703) 548–6300. The Meeting will convene at 9 a.m. and adjourn no later than 3 p.m. Eastern Daylight Time. Not later than four weeks prior to the meeting, the Agency will send the group background information that will be the focus of their discussion at the public meeting. Material distributed to the EEAC and Invited Experts will be available from the Agency, not the SAB itself. To obtain copies of materials provided to the SAB, members of the public should contact by mail Mr. Amit Kapadia, US Environmental Protection Agency, Office of Ground Water and Drinking Water, Standards and Risk Management Division (4607M), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; by e-mail *kapadia.amit@epa.gov*; by FAX at (202) 564–3760; or by telephone at (202) 564–4879.

Approximately four weeks after the face-to-face meeting, the EEAC and Invited Experts will have a contingency conference call to resolve any outstanding issues before sending their report to the SAB Executive Committee for action and subsequent transmittal to the Administrator. The date and time of the contingency conference call will be posted on the SAB Web site (*www.epa.gov/sab*) by June 15, 2002.

**FOR FURTHER INFORMATION:** Any member of the public wishing further information concerning this meeting or who wishes to submit brief oral comments must contact Mr. Thomas O. Miller, Designated Federal Officer, SAB Environmental Economics Advisory Committee, USEPA Science Advisory Board (1400A), Suite 6450CC, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0582; or via e-mail at *miller.tom@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time five business days prior to the meeting date (June 6, 2002). See below for time limitations on public comments.

Members of the public desiring additional information about the meeting location must contact Ms. Renee Cooper-Wilson, EPA Science Advisory Board (1400A), Suite 6450N, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4533; fax at (202) 501–0582; or via e-mail at *cooper.renee@epa.gov.*

A copy of the draft agenda for each meeting will be posted on the SAB Web site (*www.epa.gov/SAB/*) (under the AGENDAS subheading) approximately 10 days before that meeting.

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior

to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

*Meeting Access*

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

*General Information*

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in the *Science Advisory Board FY2001 Annual Staff Report* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: April 22, 2002.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 02–10338 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7201–9]**

## Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

**DATES:** The Meeting will be held on May 14, 2002. On Tuesday, May 14, the Meeting will begin at 8:30 a.m., and adjourn at 4:30 p.m. Times noted are Eastern Time.

**ADDRESSES:** The Meeting will be held at the Renaissance Washington Hotel, 999 Ninth Street, NW., Washington, DC 20001, (202) 898–9000.

**SUPPLEMENTARY INFORMATION:** Agenda items will include, but not be limited to: Discussion of BOSC Sub-Committee draft reports of ORD Labs/Centers site visits, Ad-hoc Subcommittee on Communications Progress Report, and Multi-year Planning Process.

Anyone desiring a draft agenda may fax their request to Shirley R. Hamilton at (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Board of Scientific Counselors, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564–6853. In general each individual making an oral presentation will be limited to a total of three minutes.

**FOR FURTHER INFORMATION CONTACT:** Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: April 19, 2002.

**Peter W. Preuss,**

*Director, National Center for Environmental Research.*

[FR Doc. 02–10337 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2002–0013; FRL–6833–8]**

## Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

**DATES:** Unless a request is withdrawn by October 23, 2002, unless indicated otherwise, orders will be issued canceling all of these registrations.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5761; e-mail address: hollins.james@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

*Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,''" Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

### II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 56 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration no. | Product Name | Chemical Name |
|---|---|---|
| 000004–00302 | Bonide Flea Beater | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000070–00260 | Rigo Fire Ant Killer | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000070–00270 | Rigo Insect Killer Dust | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000100 ID–96–0010 | Supracide 25WP Insecticide-Miticide | *O,O*-Dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2- |
| 000241 AZ–92–0007 | Prowl 3.3 EC Herbicide | *N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine |
| 000264 ID–93–0014 | Rovral Fungicide | 3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide |
| 000270–00320 | Bendiocarb 2.5 Insecticide Granules | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000400 AZ–81–0022 | Comite Agricultural Miticide | 2-(*p*-tert-Butylphenoxy)cyclohexyl 2-propynyl sulfite |
| 000524 OR–99–0047 | Mon-65005 Herbicide | Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine) |
| 000524 OR–99–0048 | Mon-65005 Herbicide | Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine) |
| 000524 WA–99–0029 | Mon-65005 Herbicide | Isopropylamine glyphosate (*N*- (phosphonomethyl)glycine) |
| 000524 WA–99–0031 | Mon-65005 Herbicide | Isopropylamine glyphosate (*N*-(phosphonomethyl)glycine) |
| 000707 AZ–79–0036 | Kerb 50-W Selective Herbicide | Propyzamide |
| 000769–00739 | Trac Bug Duster | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000769–00740 | Smcp Insect Dust | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000769–00899 | Pratt Ant and Termite Killer | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 000802–00570 | Lilly/Miller Casoran Granules | 2,6-Dichlorobenzonitrile |
| 000802–00581 | Lilly/Miller Funginil Lawn and Garden Fungicide | Tetrachloroisophthalonitrile |
| 000909–00095 | Cooke Daconil Lawn and Garden Fungicide | Tetrachloroisophthalonitrile |
| 001677–00170 | Monarch Super Kabon | Alkyl* dimethyl benzyl ammonium chloride *(50%$C_{14}$, 40%$C_{12}$, 10%$C_{16}$) |
| 003125–00402 | Sencor Solupak 75% Dry Flowable Herbicide | 1,2,4-Triazin-5(4H)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)- |
| 004581 AZ–87–0018 | Des-I-Cate | 7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, compd. with *N, N*- |
| 005887–00153 | Black Leaf Wasp & Hornet Killer | (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% |
| | | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 005905 AZ–93–0011 | 5IB Dimethoate Systemic Insecticide | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 007401–00067 | Ferti-Lome Rose Spray containing Diazinon & Daconil | *O,O*-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate |
| | | Tetrachloroisophthalonitrile |
| 007401–00113 | Ferti-Lome Citrus & Ornamental Spray | *O,O,O',O'*-Tetraethyl *S,S*'-methylene bis(phosphorodithioate) |
| | | Aliphatic petroleum hydrocarbons |
| 007401–00325 | Ferti-Lome Roach Powder | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 007401–00346 | Ferti-Lome Ant + Roach Powder | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 009779 AZ–96–0001 | Dimate 4E | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 009779 WA–87–0022 | Dimethoate 4E | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 009779 WA–92–0005 | Phorate 20-G | *O,O*-Diethyl *S*-((ethylthio)methyl) phosphorodithioate |

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration no. | Product Name | Chemical Name |
|---|---|---|
| 009779 WA–97–0019 | Dimate 4E | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 009779 WA–97–0031 | Dimate 4E | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 010163 AZ–80–0010 | Gowan Dimethoate E267 | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 010163 AZ–99–0002 | Supracide 25WP | *O,O*-Dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2- |
| 010163 ID–95–0001 | Metasystox-R Spray Concentrate | *S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate |
| 010163 ID–95–0002 | Metasystox-R Spray Concentrate | *S*-(2-(Ethylsulfinyl)ethyl) *O,O*-dimethyl phosphorothioate |
| 010163 ID–97–0005 | Savey Ovicide/Miticide 50-WP | trans-5-(4-Chlorophenyl)-*N*-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide |
| 010163 OR–99–0053 | Supracide 25W | *O,O*-Dimethyl phosphorodithioate, *S*-ester with 4-(mercaptomethyl)-2- |
| 010182 AZ–01–0004 | Cyclone Concentrate/Gramoxone Max | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010182 AZ–91–0008 | Stauffer Eptam 7-E Granules | *S*-Ethyl dipropylthiocarbamate |
| | | *S*-Ethyl dipropylthiocarbamate |
| 010182 AZ–95–0002 | Eptam (R) 20. G Granules | *S*-Ethyl dipropylthiocarbamate |
| 010182 AZ–98–0006 | Gramoxone Extra Herbicide | 1,1'-Dimethyl-4,4'-bipyridinium dichloride |
| 010707 NV–93–0006 | Magnacide H Herbicide | 2-Propenal |
| 012455 OR–85–0038 | Ditrac Rat and Mouse Bait | 2-(Diphenylacetyl)-1,3-indandione |
| 028293–00266 | Dursban Plus Resmethrin Concentrate | *O,O*-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| | | (5-Benzyl-3-furyl)methyl 2,2-dimethyl-3-(2-methylpropenyl)cyclopropanecarboxylate |
| 034704 AZ–81–0001 | Dimethogon 267 EC | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 034704 AZ–88–0007 | Clean Crop Dimethoate 400 | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 051036 AZ–89–0011 | Dimethoate 4E Systemic Insecticide | *O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate |
| 058185–00018 | Dycarb 76 WP Insecticide for Horticulture Plants | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |
| 062719–00384 | Karathane WD Fungicide/miticide | 2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and |
| 062719–00385 | Karathane Liquid Concentrate | 2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and |
| 062719–00390 | Karathane Technical | 2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and |
| 067959–00001 | Trifluralin Technical | Trifluralin (a,a,a-trifluro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine) |
| 071949–00013 | Ford's Ant, Roach and Insect Powder | Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate) |

Unless a request is withdrawn by the registrant within 180 days (unless indicated otherwise) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during the indicated comment period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

| EPA Company no. | Company Name and Address |
|---|---|
| 000004 | Bonide Products, Inc., 6301 Sutliff Rd., Oriskany, NY 13424. |

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

| EPA Company no. | Company Name and Address |
|---|---|
| 000070 | Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502. |
| 000100 | Syngenta Crop Protection, Inc., Box 18300, Greensboro, NC 27419. |
| 000241 | BASF Corp., Box 13528, Research Triangle Park, NC 27709. |
| 000264 | Aventis Cropscience USA LP, 2 T.W. Alexander Drive Box 12014, Research Triangle Park, NC 27709. |
| 000270 | Farnam Companies Inc., Box 34820, Phoenix, AZ 85067. |
| 000400 | Uniroyal Chemical Co Inc., A Subsidiary of Crompton Corp., 74 Amity Rd, Bethany, CT 06524. |
| 000524 | Monsanto Co, 600 13th Street, NW Suite 660, Washington, DC 20005. |
| 000707 | Rohm & Haas Co, Attn: James V. Hagan, 100 Independence Mall W., Philadelphia, PA 19106. |
| 000769 | Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502. |
| 000802 | Lilly Miller Brands, Agent For: Central Garden & Pet, 16201 SE 98th, Clackamas, OR 97015. |
| 000909 | Lilly Miller Brands, Agent For: Central Garden & Pet, 16201 SE 98th, Clackamas, OR 97015. |
| 001677 | Ecolab Inc., 370 Wabasha St. Ecolab Center, St Paul, MN 55102. |
| 003125 | Bayer Corp., Agriculture Division, 8400 Hawthorn Rd Box 4913, Kansas City, MO 64120. |
| 004581 | Cerexagri, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19046. |
| 005887 | Value Gardens Supply, LLC, Box 585, St. Joseph, MO 64502. |

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

| EPA Company no. | Company Name and Address |
|---|---|
| 005905 | Helena Chemical Co, 225 Schilling Blvd., Suite 300, Collierville, TN 38017. |
| 007401 | Brazos Associates, Inc., Agent For: Voluntary Purchasing Group In, 2001 Diamond Ridge Drive, Carrollton, TX 75010. |
| 009779 | Agriliance, LLC, Box 64089, St Paul, MN 55164. |
| 010163 | Gowan Co, Box 5569, Yuma, AZ 85366. |
| 010182 | Zeneca Ag Products, Inc., 1800 Concord Pike, Wilmington, DE 19850. |
| 010707 | Baker Petrolite Corp., 12645 W. Airport Blvd., Sugarland, TX 77487. |
| 012455 | Bell Laboratories Inc., 3699 Kinsman Blvd, Madison, WI 53704. |
| 028293 | Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762. |
| 034704 | Jane Cogswell, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632. |
| 051036 | Micro-Flo Co. LLC, Box 772099, Memphis, TN 38117. |
| 058185 | Scotts-Sierra Crop Protection Co., Attn: Vincent Snyder, Jr., 14111 Scottslawn Rd, Marysville, OH 43041. |
| 062719 | Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268. |
| 067959 | Tri Corp., 10260 Westheimer Rd - Ste 230, Houston, TX 77042. |
| 071949 | OMS Investments, Inc., c/o Delaware Corporate Management, 1105 N. Market Street, Wilmington, DE 19899. |

*There is a 30-day comment period on registrations for EPA company numbers 007401 and 071949.

## III. Loss of Active Ingredients

Unless the request for cancellations are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing the request for cancellation. The active ingredient is listed in the following Table 3, with the EPA company and CAS number.

TABLE 3.—ACTIVE INGREDIENT DISAPPEARING AS A RESULT OF REGISTRANT'S REQUEST TO CANCEL

| CAS No. | Chemical Name | EPA Company No. |
|---|---|---|
| 39300–45–3 | Dinocap | 062719 |

## IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## V. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 23, 2002, unless indicated otherwise. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

## VI. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of

June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 15, 2002.

**Linda Vlier Moos,**

*Acting Director, Information Resources Services Division, Office of Pesticide Programs.*

[FR Doc. 02–10340 Filed 4–25–02; 8:45 am]

BILLING CODE 6560–50–S

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 19, 2002.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Persons wishing to comment on this information collection should submit comments by June 25, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0309.

*Title:* Section 74.1281, Station Records.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit, not-for-profit institutions, state, local, or tribal government.

*Number of Respondents:* 3,600 FM translator and FM booster stations.

*Estimated Time Per Response:* 1 hour per station.

*Total Annual Burden:* 3,600 hours.

*Annual Reporting and Recordkeeping Cost Burden:* N/A.

*Frequency of Response:* Recordkeeping requirement.

*Needs and Uses:* Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with the Commission, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. They also include entries concerning any extinguishment or improper operation of tower structure lights. The data is used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 02–10364 Filed 4–25–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 02–7; FCC 02–118]**

### Common Carrier Services: In-Region InterLATA Services—Verizon New England Inc. et al.; Application To Provide Services in Vermont

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), Verizon Global Networks Inc., and Verizon Select Services Inc., Pursuant to Section 271 of the Telecommunications Act of 1996, For Authorization To Provide In-Region, InterLATA Service in the State of Vermont

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document 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 Vermont. The Commission grants Verizon's application based on its conclusion that Verizon has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

**DATES:** Effective April 29, 2002.

**FOR FURTHER INFORMATION CONTACT:** Julie Veach, Senior Attorney, Wireline Competition Bureau (WCB), at (202) 418–1580 or via the Internet at *jveach@fcc.gov.* The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (MO&O) in CC Docket No. 02–7, FCC

02–118, adopted April 17, 2002, and released April 17, 2002. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* It is also available on the Commission's website at http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/verizon_vt/welcome.html.

**Synopsis of the Order**

1. *History of the Application.* On January 17, 2002, Verizon filed an application (Vermont Application), pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Vermont.

2. *The Vermont Board's Evaluation.* The Vermont Public Service Board (Vermont Board) conducted a comprehensive evaluation of Verizon's compliance with section 271, which included five days of evidentiary hearings. The Vermont Board concluded that Verizon met the checklist requirements of section 271(c) and has taken the appropriate steps to open the local exchange and exchange access markets in Vermont in accordance with standards set forth in the Act. Consequently, the Vermont Board recommended that the Commission approve Verizon's in-region, interLATA entry in its (February 6, 2002) evaluation of the Vermont Application.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Verizon's Vermont Application on February 21, 2002, and recommended approval of the Vermont Application subject to the Commission satisfying itself as to pricing issues raised by commenters for UNEs in Vermont.

**Primary Issues in Dispute**

4. *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 Vermont. The record demonstrates that competitive LECs serve some business and residential customers using predominantly their own facilities.

5. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Verizon's Vermont UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and are based on cost plus a reasonable profit as required by section 252(d)(1). Thus, Verizon's Vermont UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either ''basic TELRIC principles are violated or the state commission make clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce.'' The Vermont Board concluded that Verizon's UNE rates satisfied the requirement of checklist item 2. While the Commission has not conducted a *de novo* review of the Vermont Board's pricing determinations, the Commission has followed the urging of the Department of Justice to examine commenters' complaints regarding UNE pricing.

6. After carefully reviewing these complaints, the Commission concludes that the Vermont Board followed basic TELRIC principles and the complaints do not support a finding that the Vermont Board committed clear error in adopting Verizon's switching and Daily Usage File (DUF) rates. Thus, the Commission concludes that Verizon's Vermont UNE rates satisfy the requirement of checklist item 2.

7. The Commission also concludes that Verizon meets its obligation to provide nondiscriminatory access to its operations support systems (OSS). Verizon provided evidence that its Massachusetts OSS and Vermont OSS are substantially the same; therefore the Commission finds that evidence concerning Verizon's Massachusetts OSS is relevant and should be considered in this proceeding.

8. Pursuant to this checklist item, Verizon must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Based on the evidence in the record, Verizon demonstrates that it provides to competitors combinations of already-combined network element as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

**Other Checklist Items**

9. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission concludes as did the Vermont Board that Verizon demonstrates that it provides interconnection and collocation in accordance with the requirements of section 251(c)(2) and as specified in section 271 and applied in the Commission's prior orders.

10. *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 stand alone xDSL-capable loops, high-capacity loops, and digital 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.

11. In the Commission's overview of Verizon's performance data, it relies primarily on Vermont performance data (supplemented with Massachusetts 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.

12. *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, as did the Vermont Board that based upon the evidence in the record, that Verizon demonstrates that it provides both shared and dedicated transport, including dark fiber, in compliance with the requirements of checklist item 5.

13. *Checklist Item 13—Reciprocal Compensation.* Based on the evidence in the record, the Commission concludes that Verizon demonstrates that it satisfies this checklist item. While one commenter claims that Verizon fails to meet the requirement of checklist 13 to provide reciprocal compensation for transport and termination of local calls to competing carriers, the Commission finds that the commenter's claim is not appropriately resolved in a section 271 proceeding.

14. Checklist Items 3, 6–12, 14. An applicant under section 271 must demonstrate that it complies with checklist item 3 (poles, ducts, conduits, and rights of way), 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), item 12 (local dialing parity), and item 14 (resale). 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 these checklist items in Vermont. The Vermont Board also concluded that Verizon complies with the requirements of each of these checklist items.

**Other Statutory Requirements**

15. *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 Vermont as it does in Pennsylvania, New York, Connecticut, and Massachusetts—states in which Verizon has already received section 271 authority.

16. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. The Commission views the public interest requirement as an opportunity to review the circumstances presented by the application 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 the applicant's entry into the in-region, interLATA market 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.

17. 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 its 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. The Commission also finds that the performance monitoring and enforcement mechanisms developed in Vermont, 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.

18. Commenters urge the Commission to perform a price squeeze analysis. The Commission has reviewed the commenters' evidence of a price squeeze, however, and determined that, even if the Commission accepted their assertions that a price squeeze analysis is mandated by section 271's public interest requirement, no price squeeze is present here. The commenters' price squeeze claims, focusing solely on entry into the residential market using the UNE-Platform, are insufficient to demonstrate the existence of a price squeeze that dooms them to failure under the standard articulated by the D.C. Circuit in *Sprint* v. *FCC.* Therefore, the Commission concludes that there is no evidence in the record that warrants disapproval of this application based on allegations of a price squeeze, whether couched as discrimination under checklist item two or a violation of the public interest standard.

19. *Section 271(d)(6) Enforcement Authority.* Working with the Vermont Board, the Commission intends to monitor closely post-entry compliance and to enforce the provisions of section 271 using the various enforcement tools Congress provided in the Communications Act.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

[FR Doc. 02–10112 Filed 4–25–02; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–02–44–B (Auction No. 44); DA 02–563]**

## Auction of Licenses in the 698–746 MHz Band Scheduled for June 19, 2002; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the 698–746 MHz band scheduled for June 19, 2002 (Auction No. 44). This document is intended to familiarize prospective bidders with the Commission's rules relating to the lower 700 MHz band auction.

**DATES:** Auction No. 44 is scheduled for June 19, 2002.

**FOR FURTHER INFORMATION CONTACT:** Auctions and Industry Analysis Division: Howard Davenport, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Linda Sanderson, Auctions Operations Branch, at (717) 338–2888, Media Contact: Meribeth McCarrick at (202) 418–0654, Commercial Wireless Division: Amal Abdallah and Gary Oshinsky, Policy and Rules Branch, or Joanne Epps and Melvin Spann, Licensing and Technical Analysis Branch, at (202) 418–0620.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction No. 44 Procedures Public Notice* released March 20, 2002. The complete text of the *Auction No. 44 Procedures Public Notice,* including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 44 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

**I. General Information**

*A. Introduction*

1. By the *Auction No. 44 Procedures Public Notice,* the Wireless Telecommunications Bureau (''Bureau'') announces the procedures and minimum opening bids for the upcoming auction of licenses in the 698–746 MHz (''Lower 700 MHz'') band scheduled for June 19, 2002 (Auction No. 44). On January 24, 2002, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 44. The Bureau received eight comments and thirteen reply comments in response to the *Auction No. 44 Comment Public Notice,* 67 FR 5123 (February 4, 2002).

i. Background of Proceeding

2. On January 18, 2002, the Commission released a *700 MHz Report & Order,* 67 FR 5491 (February 6, 2002), which adopted allocation and service rules for the Lower 700 MHz Band. Specifically, the Commission reallocated the entire 48 megahertz of spectrum in the Lower 700 MHz Band to fixed and mobile services and retained the existing broadcast allocation for both new broadcast services and incumbent broadcast services during their transition to digital

television (''DTV''). The Commission established technical criteria designed to protect incumbent television operations in the band during the DTV transition period, allowed low power television (''LPTV'') and TV translator stations to retain secondary status and operate in the band after the transition, and set forth a mechanism by which pending broadcast applications may be amended to provide analog or digital service in the core television spectrum or to provide digital service on TV Channels 52–58.

3. In its service rules, the Commission divided the Lower 700 MHz Band into three 12-megahertz blocks, with each block consisting of a pair of 6-megahertz segments, and two 6-megahertz blocks of contiguous, unpaired spectrum. The Commission will license the five blocks in the Lower 700 MHz Band plan as follows: the two 6-megahertz blocks of contiguous unpaired spectrum, as well as two of the three 12-megahertz blocks of paired spectrum, will be assigned over six Economic Area Groupings (''EAGs''); the remaining 12 megahertz block of paired spectrum will be licensed over 734 Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs''). For the Lower 700 MHz band, the Commission adopted MSAs and RSAs as defined by it in a previous rulemaking proceeding, with the following modifications: (i) the service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline; and (ii) the service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. See 47 CFR 27.6(c)(2).

4. All operations in the Lower 700 MHz Band will be generally regulated under the framework of part 27's technical, licensing, and operating rules. To permit both wireless services and certain new broadcast operations in the Lower 700 MHz Band, however, the Commission has amended the maximum power limits in part 27 to permit 50 kW effective radiated power (''ERP'') transmissions in the Lower 700 MHz Band, subject to certain conditions. Finally, the Commission established competitive bidding procedures and voluntary band-clearing mechanisms for the Lower 700 MHz Band.

5. With respect to the MSA and RSA licenses, the Bureau notes that MSAs and RSAs are collectively known as Cellular Market Areas (CMAs). CMAs 1–306 are based on MSAs; CMAs 307–734 are based on RSAs. The CMA designation, not MSA/RSA, is used in the FCC Automated Auction System and in the Universal Licensing System.

ii. Licenses To Be Auctioned

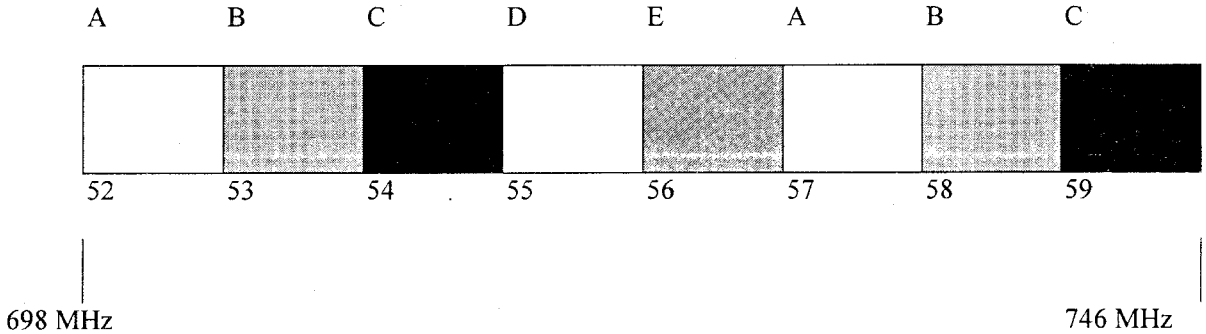
6. The licenses available in Auction No. 44 will include 758 licenses in the Lower 700 MHz band. In the *Auction No. 44 Comment Public Notice,* the Bureau offered two options for grouping the 758 licenses. The Bureau sought comment on (1) grouping all 758 licenses together in Auction No. 44, or (2) including only the 734 MSA/RSA licenses in Auction No. 44 and including the 24 Lower 700 MHz EAG licenses in Auction No. 31 with the 12 EAG licenses in the 747–762 and 777–792 MHz bands (''Upper 700 MHz'' bands). The Bureau also sought comment on this issue in a public notice addressing procedures for Auction No. 31.

2. Commenters were divided on whether to include the 24 Lower 700 MHz band EAG licenses in Auction No. 31. Commenters favoring the inclusion of the Lower 700 MHz band EAG licenses in Auction No. 31 tended to focus on separating the Lower 700 MHz band EAG licenses from the 734 Lower 700 MHz band MSA/RSA licenses rather than on combining the 24 Lower 700 MHz band EAG licenses with the 12 Upper 700 MHz band EAG licenses. Commenters opposing inclusion tended to focus on the possibility that continuing rule making proceedings in the Lower 700 MHz band might delay auction of those licenses and any other licenses grouped with them, including the Upper 700 MHz band licenses.

8. After careful review of the comments, the Bureau concludes that it will not include the 24 Lower 700 MHz EAG licenses in Auction No. 31 with the Upper 700 MHz EAG licenses. The Bureau is not persuaded that grouping the MSA/RSA licenses in an auction with the Lower 700 MHz EAG licenses will create a disadvantage to small businesses and rural telephone companies. The Bureau does not agree with those commenters that believe that separating the 734 MSAs/RSAs from the 24 EAGs would provide greater opportunities for small businesses and rural telephone companies. Larger entities that do not qualify for bidding credits would continue to be eligible to participate in an auction of the 734 MSA/RSA licenses. In the *Lower 700 MHz Report and Order,* the Commission adopted MSAs/RSAs as the licensing area for a portion of the Lower 700 MHz band to promote opportunities for a wide variety of applicants, including small and rural wireless providers, to obtain spectrum. However, the Commission did not decide to restrict eligibility for these licenses to small and rural service providers. Because the Commission adopted licensing rules for the Lower 700 MHz band that provide for open eligibility, the Bureau declines to consider license groupings for the purpose of discouraging participation in the auction by any particular class of bidders. The Bureau disagrees with those commenters who suggest that grouping the MSA/RSA licenses with the EAG licenses in the Lower 700 MHz band may discourage many smaller carriers from participating in Auction No. 44. The Commission has sought to provide small businesses with an opportunity to successfully compete against larger, well-financed bidders by defining three tiers of small-businesses that are eligible for bidding credits. As the Commission noted in the Lower *700 MHz Report & Order,* the use of a third small entity definition may result in the dissemination of licenses among an even wider range of small business entities, consistent with its obligations under section 309(j)(3)(B) of the Act.

9. Therefore, Auction No. 44 will include all 758 licenses in the Lower 700 MHz band. Two 12-megahertz blocks consisting of a pair of 6-megahertz segments and two 6-megahertz blocks of contiguous, unpaired spectrum will be offered in each of the six 700 MHz band EAGs. Additionally, one 12-megahertz block consisting of a pair of 6-megahertz segments will be offered in each of 734 MSAs/RSAs. A complete list of licenses available in Auction No. 44 and their descriptions is included in Attachment A of the *Auctions No. 44 Procedures Public Notice.*

10. The following table contains the block/frequency cross-reference for the 698–746 MHz band and also shows the current television channelization:




| Block | Frequencies | Bandwidth | Pairing | Geographic Area Type | No.of Licenses |
|---|---|---|---|---|---|
| A | 698-704, 728-734 | 12 MHz | 2 x 6 MHz | 700 MHz EAG | 6 |
| B | 704-710, 734-740 | 12 MHz | 2 x 6 MHz | 700 MHz EAG | 6 |
| C | 710-716, 740-746 | 12 MHz | 2 x 6 MHz | MSA/RSA | 734 |
| D | 716-722 | 6 MHz | unpaired | 700 MHz EAG | 6 |
| E | 722-728 | 6 MHz | unpaired | 700 MHz EAG | 6 |

*B. Rules and Disclaimers*

i. Relevant Authority

1. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the Lower 700 MHz band contained in Title 47, Part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in this Public Notice; the *Auction No. 44 Comment Public Notice;* and the *Part 1 Fifth Report & Order,* 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

12. Auction participants bidding on licenses in the 698–746 MHz spectrum band should also be familiar with the *Lower 700 MHz Notice of Proposed Rule Making,* 66 FR 19106 (April 13, 2001), and the *Lower 700 MHz Report & Order.*

3. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554 or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 01–364 for the *Lower 700 MHz Report & Order*).

ii. Prohibition of Collusion

14. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

15. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. In Auction No. 44, for example, the rule would apply to any applicants bidding for the same MSA/RSA or EAG. Furthermore, the rule would apply to an applicant bidding for an EAG and another applicant bidding for an MSA/RSA within that EAG. In addition, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants until after the down payment deadline. However, applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as

they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

16. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

17. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules as identified in Attachment G of the *Auction No. 44 Procedures Public Notice,* are available for public inspection and copying during normal reference room hours at: Consumer & Governmental Affairs Bureau (CGB), Reference Operations Division, 445 12th Street, SW., Room CY–C314, Washington, D.C. 20554.

iii. Interference Protection of Television Services

18. Among other licensing and technical rules, new Lower 700 MHz licensees must comply with the interference protection requirements set forth in § 27.60 of the Commission's rules. Generally, § 27.60 establishes standards for protection of co- and adjacent-channel analog TV and DTV facilities. Thus, for example, a new licensee seeking to operate on the 698–740 MHz portion of the Lower 700 MHz band must provide co-channel protection to nearby TV and DTV operations on Channel 59 and adjacent-channel protection to stations on Channels 58 and 60. In addition, Appendix D of the *Lower 700 MHz Report and Order* describes additional adjacent-channel interference considerations that are designed to mitigate the possibility of base-to-base interference that may arise at base receive stations that are in close proximity to high power transmitters operating on adjacent channels. Moreover, licensees intending to operate a facility at a power level of greater than 1 kilowatt must provide advance notice to the Commission and to licensees authorized in their area of operation. New Lower 700 MHz licensees also will have to comply with any additional technical requirements or interference protection requirements that may be adopted in the future as a result of pending and future rulemaking proceedings.

19. Potential bidders should recognize that the interference protection requirements for the Lower 700 MHz band are more stringent in certain respects relative to the interference standards that apply to the Upper 700 MHz band. These interference obligations will remain in force until the end of the DTV transition period at which time analog TV and DTV broadcasters will be required to vacate both the Upper and Lower 700 MHz bands.

20. Potential bidders should be aware that a greater number of broadcast incumbents exist in the Lower 700 MHz band relative to the Upper 700 MHz band. The Commission has also observed that, although there is approximately the same number of analog incumbents in both the Upper and Lower 700 MHz bands, the Lower 700 MHz consists of less spectrum and, therefore, incumbent licensees are more densely situated across the band. Further, there is a significantly greater number of DTV assignments on the eight television channels in the Lower 700 MHz band, including licenses, construction permits, pending applications, and pending allotment petitions, than exist in the Upper 700 MHz band. The Commission may also permit certain Channel 60–69 broadcasters to relocate temporarily into Channels 52–58 pursuant to a voluntary clearing arrangement.

a. Negotiations With Incumbent Broadcast Licensees

21. The Commission has established a policy of facilitating voluntary clearing of the 700 MHz bands to allow for the introduction of new wireless services and to promote the transition of incumbent analog television licensees to DTV service. Generally speaking, this policy provides that the Commission will consider specific regulatory requests needed to implement voluntary agreements between incumbent broadcasters and new licensees to clear the Lower 700 MHz Band early, if consistent with the public interest. The fundamentals of the Commission's voluntary clearing policy for the 700 MHz bands were established in a series of decisions beginning with the adoption of the *Upper 700 MHz First Report and Order* in January 2000, 65 FR 3139 (January 20, 2000). However, in light of certain differences between the Upper and Lower 700 MHz Bands, the Commission decided not to extend certain aspects of its voluntary clearing policy to the Lower 700 MHz band, including the presumptions that were established in the Upper 700 MHz Band for analyzing voluntary band-clearing proposals and the extended DTV construction period that was provided to certain single-channel broadcasters in connection with the arrangements for early clearing of the Upper 700 MHz band. In considering such regulatory requests, the Commission will consider whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers or deploying wireless service to rural or other underserved communities. The Commission intends to weigh these benefits against any likely public interest costs, such as the loss of any of the four stations in the designated market area with the largest audience share, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service, or a negative effect on the pace of the DTV transition in the market.

b. Canadian and Mexican Border Regions (Auction # 44)

22. The United States has bilateral agreements with both Canada and Mexico setting forth allotment and assignment plans for TV broadcast stations covering the 698–746 MHz band (Channels 52–59). While the U.S. has identified this band for reallocation to new services, neither Canada nor Mexico has done so to date. Pursuant to these agreements, the U.S. must protect the signals of Canadian and Mexican TV broadcast stations located in the border areas, and such operations will therefore affect U.S. non-broadcast use and services in this band. Accordingly, licenses issued for this band will be subject to whatever future agreements the U. S. develops with these two countries. Furthermore, until such time as existing agreements are replaced or modified to reflect the new uses, licensees in the band will be subject to existing agreements and the condition that harmful interference not be caused

to, and must be accepted from, television broadcast operations in those countries.

iv. Due Diligence

23. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already licensed and operating in the 698–746 MHz band (television Channels 52–59) that will be subject to the upcoming auction. As discussed, the Commission made clear that geographic area licensees operating on the spectrum associated with Channels 52, 53, 54, 55, 56, 57, 58 and 59 must comply with the co-channel and the adjacent channel provision of § 27.60 of the Commission's rules. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas.

24. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 44.

25. To aid potential bidders, the Bureau will issue Due Diligence Announcement listing incumbent licensees operating in these bands. The Commission makes no representations or guarantees that the matters listed in this Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

26. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority (''STA''), waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain decisions reached in this proceeding may be subject to judicial appeal and may be the subject of additional reconsideration or appeal. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum in Auction No. 44. In addition, although the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction. To aid potential bidders, the Bureau will issue shortly a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in these services.

27. In addition, potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which frequencies are already licensed to incumbent licensees. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

28. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the EAG, MSA, or RSA for which they plan to bid.

29. Licensing records for the Mass Media Bureau are contained in the Mass Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb*. Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the *Help* file.

30. Potential bidders should direct questions regarding the search capabilities of CDBS to the Mass Media Bureau help line at (202) 418–2662, or via e-mail at *mbinfo@fcc.gov.*

v. Bidder Alerts

31. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

32. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

33. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 44 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

34. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction

No. 44 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vi. National Environmental Policy Act (''NEPA'') Requirements

35. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305 through 1.1319. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

*C. Auction Specifics*

i. Auction Date

36. The auction will begin on Wednesday, June 19, 2002. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

37. Auction No. 44—Lower 700 MHz Band

iii. Bidding Methodology

38. The bidding methodology for Auction No. 44 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

Auction Seminar—May 1, 2002
Short-Form Application (FCC FORM 175)—May 8, 2002; 6 p.m. ET
Upfront Payments (via wire transfer)—May 28, 2002; 6 p.m. ET
Mock Auction—June 14, 2002
Auction Begins—June 19, 2002

v. Requirements for Participation

39. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, May 8, 2002.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, May 28, 2002.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

40. The following is a list of general contract information relating to Auction No. 44.

General Auction Information: General Auction Questions Seminar Registration—FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.—5:30 p.m. ET
Auction Legal Information: Auction Rules, Policies, Regulations—Auctions and Industry Analysis Division, Legal Branch (202) 418–0660
Licensing Information: Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency—Issues, Commercial Wireless Division, (202) 418–0620
Technical Support: Electronic Filing, Automated Auction System— FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY), Hours of service: Monday through Friday 7 a.m. to 10 p.m. ET, Saturday, 8 a.m. to 7 p.m., Sunday, 12 noon to 6 p.m.
Payment Information: Wire Transfers Refunds— FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)
Telephonic Bidding: Will be furnished only to qualified bidders
FCC Copy Contractor: Additional Copies of Commission Documents—Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax) *qualexint@aol.com* (E-mail)
Press Information: Maribeth McCarrick (202) 418–0654
FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) *http://www.fcc.gov/formpage.html*
FCC Internet Sites: *http://www.fcc.gov*
*http://wireless.fcc.gov/auctions*
*http://wireless.fcc.gov/uls*

**II. Short-form (FCC Form 175) Application Requirements**

41. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 44 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small, very small business or entrepreneur bidding credit eligibility, identification of the license(s) sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.E (Provisions Regarding Defaulters and Former Defaulters), that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

*A. License Selection*

42. In Auction No. 44, Form 175 will include a mechanism that allows an applicant to filter the licenses by License Area (either ''EAG'' or ''CMA''), Market Number, and/or Block to create customized lists of licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may apply for all the licenses in the customized list by using the ''Save all filtered licenses'' option; select and save individual licenses separately from the list; or create a second customized list without selecting any of the licenses from the first list. Applicants also will be able to select licenses from one customized list and then create a second customized list to select additional licenses.

*B. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)*

43. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

*C. Consortia And Joint Bidding Arrangements (FCC Form 175 Exhibit B)*

44. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid. As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants for the same geographic license area(s) after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an ''Exhibit B'' to the FCC Form 175.

45. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for licenses in the same geographic license area provided that (i) The attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

*D. Eligibility*

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

46. Bidding credits will be available to small and very small businesses and entrepreneurs, or consortia, thereof, as defined in 47 CFR 27.702 for the Lower 700 MHz band. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years (''small business'') receives a 15 percent discount on its winning bids for the Lower 700 MHz licenses;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years (''very small business'') receives a 25 percent discount on its winning bids for the Lower 700 MHz licenses;
- A bidder with attributed average annual gross revenues of not more than $3 million for the preceding three years (''entrepreneur'') receives a 35 percent discount on its winning bids for the 734 MSA/RSA licenses in the Lower 700 MHz band. This definition applies only with respect to licenses in Block C (710–716 MHz and 740–746 MHz) as specified in 47 CFR 27.5(c)(1).

47. A bidder that qualifies as an entrepreneur may bid on EAG licenses, but will receive a 25 percent bidding credit on any EAG license that it wins. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one of them per license.

ii. Tribal Land Bidding Credit

48. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* Part V.C. *of the Auction No. 44 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

49. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order,* in which the Commission, *inter alia,* adopted a ''controlling interest'' standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various part 1 orders would result in discrepancies and/or redundancies between certain of the new part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the part 1 proceeding. Part 1 rules that superseded inconsistent service-specific rules will control in Auction No. 44. *Accordingly, the ''controlling interest'' standard as set forth in the part 1 rules will be in effect for Auction No. 44, even if conforming edits to the CFR are not made prior to the auction.*

50. *Control.* The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- the entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- the entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- the entity plays an integral role in management decisions.

51. *Attribution for small, very small business and entrepreneur eligibility.* In determining which entities qualify as small, very small businesses or entrepreneur, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

52. A consortium of small, very small businesses or entrepreneurs is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms,'' each of which *individually* must satisfy the definition of small, very small business and entrepreneur in §§ 1.2110(f), 27.702. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small, very small business or entrepreneur credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

53. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small, very small businesses or entrepreneurs (or consortia of small, very small businesses or entrepreneurs) for this auction.

54. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

55. *Small business, very small business, or entrepreneur eligibility (Exhibit C).* Entities applying to bid as small or very small businesses or entrepreneurs (or consortia of small or very small businesses or entrepreneurs) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small, very small businesses or entrepreneur, this information must be provided for each consortium member.

*E. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)*

56. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*). Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

57. ''Former defaulters''—*i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 44, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.3, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

*F. Installment Payments*

58. Installment payment plans will not be available in Auction No. 44.

*G. Other Information (FCC Form 175 Exhibits E and F)*

59. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

*H. Minor Modifications to Short-Form Applications (FCC Form 175)*

60. After the short-form filing deadline (May 8, 2002), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections or proposed service areas, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction44@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 44. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

61. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

**I. Maintaining Current Information in Short-Form Applications (FCC Form 175)**

62. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

**III. Pre-auction Procedures**

*A. Auction Seminar*

63. On Wednesday, May 1, 2002, the FCC will sponsor a free seminar for Auction No. 44 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the lower 700 MHz and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

64. To register, complete Attachment B of the *Auction No. 44 Procedures Public Notice* and submit it by Monday,

April 29, 2002. Registrations are accepted on a first-come, first-served basis.

*B. Short-Form Application (FCC Form 175)—Due May 8, 2002*

65. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6:00 p.m. ET on May 8, 2002. Late applications will not be accepted.

66. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D.

i. Electronic Filing

67. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on May 1, 2002, until 6 p.m. ET on May 8, 2002. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on May 8, 2002.

68. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 44 Procedures Public Notice.* Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 7:00 AM to 10:00 PM ET, Saturday, 8:00 AM to 7:00 PM ET, and Sunday, 12:00 noon to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded.*

69. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

70. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 44 Procedures Public Notice.* Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 44 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

71. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

**Note:** Applicants should not include sensitive information (*i.e.,* TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment C of the *Auctions No. 44 Procedures Public Notice* for details on accessing the review system.

*C. Application Processing and Minor Corrections*

72. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

73. As described more fully in the Commission's rules, after the May 8, 2002, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.,* change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

*D. Upfront Payments—Due May 28, 2002*

74. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6:00 p.m. ET on May 28, 2002.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 44 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 28, 2002, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

75. Wire transfer payments must be received by 6:00 p.m. ET on May 28, 2002. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

*ABA Routing Number:* 043000261
*Receiving Bank:* Mellon Pittsburgh
*Beneficiary:* FCC/Account # 910–1182
*OBI Field:* (Skip one space between each information item) ''AUCTIONPAY''
*FCC Registration Number (FRN):* (same as FCC Form 159, block 11 and/or 21)
*Payment Type Code:* (same as FCC Form 159, block 24A: A44U)
*FCC CODE 1:* (same as FCC Form 159, block 28A: ''44'')
*Payer Name* (same as FCC Form 159, block 2)
*Lockbox No.* # 358415

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

76. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 44.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

77. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 44 Procedures Public Notice.* An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

78. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making,* 62 FR 13540 (March 21, 1997), the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order,* the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.'' For purposes of this calculation, the ''applicant'' includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

79. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on a license, otherwise qualified bidders who applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

80. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed upfront payments on a license-by-license basis using the following formula:

$0.0125 * MHz * License Area Population with a minimum of $1,000 per license.

81. The Bureau did not receive any comments on the general levels of the upfront payments. The Bureau notes that there are numerous factors affecting the relative costs of build-out, and elects to adopt the proposed formula for determining upfront payments.

82. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No 44 Procedures Public Notice.*

83. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: LOWER 700 MHZ BAND UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

| Market No. | Block | Market name | Population | Bidding units | Upfront payment |
|---|---|---|---|---|---|
| CMA153 | C | Columbus, GA–AL | 243,072 | 36,000 | $36,000 |
| CMA311 | C | Alabama 5—Cleburne | 206,735 | 31,000 | $31,000 |

Note.—If a bidder wishes to bid on both licenses in a round, it must have selected both on its FCC Form 175 and purchased at least 67,000 bidding units (36,000 + 31,000). If a bidder only wishes to bid on one, but not both, purchasing 36,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time.* If the bidder purchased only 31,000 bidding units, it would have enough eligibility for the Alabama 5—Cleburne license but not for the Columbus, GA–AL license.

84. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

**Note:** An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

85. The Commission will use wire transfers for all Auction No. 44 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by May 28, 2002. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.E.

*E. Auction Registration*

86. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

87. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the

contact address listed in the FCC Form 175.

88. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, June 12, 2002, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

89. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

*F. Electronic Bidding*

90. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, i.e., over the Internet or the FCC's Wide Area Network at $2.30 per minute. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 44. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175.

91. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

*G. Mock Auction*

92. All qualified bidders will be eligible to participate in a mock auction on Friday, June 14, 2002. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

**IV. Auction Event**

93. The first round of bidding for Auction No. 44 will begin on Wednesday, June 19, 2002. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

*A. Auction Structure*

i. Simultaneous Multiple Round Auction

94. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed to award all licenses in Auction No. 44 in a single, simultaneous multiple round auction. Taking all the commenters submissions into account, the Bureau concludes that it is operationally feasible and appropriate to auction the licenses in the Lower 700 MHz band through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Bureau believes, allows bidders to take advantage of any synergies that exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

95. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

96. For Auction No. 44 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids during any given round. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license.

97. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction.

98. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* ''Bid Increments and Minimum Accepted Bids'' in Part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under ''Auction Stages'' in Part IV.A.iii and ''Stage Transitions'' in Part IV.A.iv), the Bureau adopts them for Auction No. 44.

iii. Auction Stages

99. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed to conduct the auction in three stages and employ an activity rule. The Bureau further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, the Bureau proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility. The Bureau received no comments on this proposal.

100. The Bureau adopts its proposals for the activity rules. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

*Stage One:* During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by five-fourths (5/4).

*Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by ten-ninths (10/9).

*Stage Three:* During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and valid bids during the current round) by fifty-fortyninths (50/49).

*Caution:* Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding system's bidding module.

101. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Bureau adopts them for Auction No. 44.

iv. Stage Transitions

102. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed that the auction would generally advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 20 percent for three consecutive rounds of bidding in each Stage. The Bureau further proposed that it would retain the discretion to change stages unilaterally by announcement during the auction. This determination, the Bureau proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau received no comments on this subject.

103. The Bureau adopts its proposal. Thus, the auction will start in Stage One and it will advance to the next stage (*i.e.,* from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 20 percent or less of the licenses being auctioned (as measured in bidding units). In addition, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 44.

v. Activity Rule Waivers and Reducing Eligibility

104. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed that each bidder in the auction would be provided five activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. The Bureau received no comments on this issue.

105. Based upon its experience in previous auctions, the Bureau adopts its proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Bureau is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

106. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating them from the auction.

107. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in ''Auction Stages'' (*see* Part IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

108. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new valid bids or withdrawals will not keep the auction open. Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

109. For Auction No. 44, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The

auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

110. The Bureau also proposed retaining discretion to implement a modified version of the simultaneous stopping rule. The modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule.

111. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

112. In addition, the Bureau proposed that it reserves the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

113. A Commenter recommends that the Bureau retain its current stopping rule. Another commenter suggests that the Bureau not utilize its discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round, claiming that any additional rounds impose monitoring costs on small businesses. The Bureau emphasizes that it will only utilize an alternative stopping rule when unusual circumstances suggest that the public interest is better served by deviating from the standard simultaneous stopping rule. Therefore, the Bureau adopts the proposals concerning the auction stopping rules. Auction No. 44 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. The Bureau believes that these stopping rules are most appropriate for Auction No. 44, because its experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

114. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

115. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

*B. Bidding Procedures*

i. Round Structure

116. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice referenced in this paragraph.

117. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

118. *Background.* The Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.,* because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

119. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 44. Specifically, for Auction No. 44, the Bureau proposed the following license-by-license formula for calculating minimum opening bids:

$0.0250 * MHz * License Area Population with a minimum of $1,000 per license.

120. In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by

having no minimum opening bid or reserve price.

121. Following consideration of comments received, the Bureau adopts its proposed minimum opening bids for Auction No. 44. The Bureau believes the minimum opening bids are well below the levels of the likely winning bids, and are not so high as to discourage competition. The commenters have provided no evidence to support their contention that the Bureau's proposed minimum opening bids are too high. Moreover, the Commission has sought to provide small businesses with an opportunity to successfully compete against larger, well-financed bidders for the Lower 700 MHz band, defining three tiers of small businesses for MSA/RSA licenses, and two tiers of small businesses for EAG licenses, that are eligible for bidding credits. Because the Bureau is not persuaded that the proposed minimum opening bids are unreasonable, the Bureau adopts its proposal.

122. The specific minimum opening bids for each license are set forth in Attachment A of the *Auction No. 44 Procedures Public Notice.*

123. The minimum opening bids the Bureau adopts are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.,* before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain requests to reduce the minimum opening bid on specific licenses.

iii. Minimum Accepted Bids and Bid Increments

124. In the *Auction No. 44 Comment Public Notice,* the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

125. Several commenters requested that the Bureau use a simple percentage increment to calculate minimum acceptable bids, rather than the smoothing formula. While the Bureau recognizes that the smoothing methodology is computationally more complex, it is the Bureau that performs the calculations and provides the appropriate bid increment amounts to bidders. Furthermore, regardless of whether the smoothing formula or a simple percentage increment is used, minimum acceptable bid amounts depend upon the bids actually placed in the previous round, and therefore cannot be predicted in advance.

126. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included in Attachment F of the *Auction No. 44 Procedures Public Notice.*

127. The Bureau adopts its proposal of initially setting the weighing factor at 0.5, the minimum percentage increment at 0.1 (10 percent), and the maximum at 0.2 (20 percent). The Bureau retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 44 if circumstances warrant.

iv. High Bids

128. At the end of each bidding round, the Automated Auction System determines the standing high bid for each license based on the gross dollar amounts of the bids received for each license.

129. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

130. During a bidding round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

131. All bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 44.

132. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (ii) the licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

133. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations *after* they submit their bids.

134. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts. The Automated Auction System also includes an import function that allows bidders to upload text files containing their bid information.

135. Once there is a standing high bid on a license, the Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the *bid increment.* The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.,* the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

136. Until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its

minimum opening bid. The additional bid amounts for licenses that have not yet received a bid are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.1, the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent; the third, thirty percent; etc.

137. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

138. *See* Attachment F of the *Auction No. 44 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

139. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

140. In the *Auction No. 44 Comment Public Notice*, the Bureau proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Bureau proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Bureau proposed, would be at the bidder's discretion. The Bureau received no comments on this issue.

141. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.,* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which the Bureau received no comments, will enhance bidder flexibility during the auction. Therefore, the Bureau adopts these procedures for Auction No. 44.

142. Once a round closes, a bidder may no longer remove a bid. However, in later rounds, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Note: Once a withdrawal is placed during a round, that withdrawal cannot be unsubmitted.

143. In previous auctions, the Bureau has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureau continues to recognize the important role that bid withdrawals play in an auction, *i.e.,* reducing risk associated with efforts to secure various licenses in combination, the Bureau concludes that, for Auction No. 44, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureau believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Bureau's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or ''gaming'' in this auction.

144. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the minimum accepted bid in the next round will be the prior round's second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid. The Commission will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

145. Calculation. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. *See* 47 CFR 1.2104(g) and 1.2109. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the net high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureau retains the discretion to scrutinize multiple bid withdrawals on a single license for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

146. In the *Part 1 Fifth Report and Order*, the Commission modified § 1.2104(g)(1) of the rules regarding assessments of interim bid withdrawal payments. As amended, § 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

147. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility

status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 44 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

148. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

149. As noted in Part II.H., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction44@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 44. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

150. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

## V. Post-auction Procedures

### *A. Down Payments and Withdrawn Bid Payments*

151. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

152. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable small, very small business or entrepreneur bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in ''Bid Removal and Bid Withdrawal,'' Part IV.B.vi. (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

### *B. Auction Discount Voucher*

153. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher (''ADV'') in the amount of $125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 44.

### *C. Long-Form Application*

154. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 44. Winning bidders that are small, very small businesses or entrepreneurs must include an exhibit demonstrating their eligibility for small, very small business or entrepreneur bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

### *D. Tribal Land Bidding Credit*

155. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

156. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit *after* winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

157. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on *Tribal Land Credits*.

### *E. Default and Disqualification*

158. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.,* fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

### *F. Refund of Remaining Upfront Payment Balance*

159. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 44 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer

of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

160. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

161. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

**Note:** Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

**Margaret Wiener,**

*Chief, Auctions and Industry Analysis Division, WTB.*

[FR Doc. 02–10239 Filed 4–25–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 02–918]**

## Public Safety National Coordination Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document advises interested persons of a meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the sixteenth meeting of the Public Safety National Coordination Committee.

**DATES:** May 31, 2002 at 9:30 a.m.–12:30 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail *mwilhelm@fcc.gov.* Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail *mmccarri@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** Following is the complete text of the Public Notice: This Public Notice advises interested persons of the sixteenth meeting of the Public Safety National Coordination Committee (''NCC''), which will be held in Washington, DC The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

*Date:* May 31, 2002.

*Meeting Time:* General Membership Meeting—9:30 a.m.–12:30 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

The NCC Subcommittees will meet from 9 a.m. to 5:30 p.m. the previous day. The NCC General Membership Meeting will commence at 9:30 a.m. and continue until 12:30 p.m.

The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Action on Subcommittee Recommendations, including Public Safety Base Station Signal Contour Level Increase
7. Public Discussion
8. Other Business
9. Upcoming Meeting Dates and Locations
10. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the sixteenth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at *jalford@fcc.gov.* Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this sixteenth meeting.

The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at *jalford@fcc.gov.* The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: *http://wireless.fcc.gov/publicsafety/ncc.*

Federal Communications Commission

**Jeanne Kowalski**

*Deputy Division Chief for Public Safety, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.*

[FR Doc. 02–10365 Filed 4–25–02; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 10, 2002.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

*1. Alvin Gibson*, Gainesville, Georgia; to retain voting shares of Georgia Central Bancshares, Inc., Social Circle, Georgia, and thereby indirectly retain voting shares of Georgia Central Bank, Social Circle, Georgia.

Board of Governors of the Federal Reserve System, April 22, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–10241 Filed 4–25–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

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 20, 2002.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. North State Bancorp*, Raleigh, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of North State Bank, Raleigh, North Carolina.

**B. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Brooke Holdings, Inc.; Brooke Corporation, Inc.; and Brooke Bancshares, Inc.*, all of Overland Park, Kansas; to become bank holding companies by acquiring 100 percent of the voting shares of Centerville State Bank, Overland Park, Kansas.

Board of Governors of the Federal Reserve System, April 22, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–10242 Filed 4–25–02; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2002.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. First Banks, Inc.*, St. Louis, Missouri; to engage *de novo* through its subsidiaries, Allegiant Community Development Corporation, Clayton, Missouri, and Allegiant Capital Corporation, Saint Louis, Missouri, in community development activities and real estate and personal property appraising, financial and investment advisory activities, and private placement of securities services, as agent, pursuant to §§ 225.28(b)(2)(i), (b)(6)(iii), (b)(7)(iii), (b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 22, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.02–10240 Filed 4–25–02; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Meeting; Postponement

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES): the meeting originally planned for May 6, 2002, has been postponed until June 18, 2002.

The items originally scheduled for discussion on May 6th will be presented and discussed when the subcommittee meets in Oak Ridge on June 18, 2002.

**FOR FURTHER INFORMATION CONTACT:** La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE., M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 22, 2002.

**Alvin Hall,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–10271 Filed 4–25–02; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–2149–N]**

### Medicaid Program; Infrastructure Grants Program To Support the Design and Delivery of Long Term Services and Supports That Permit People of Any Age Who Have a Disability or Long Term Illness To Live in the Community

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of funding availability for continuation of systems change grants awards process.

**SUMMARY:** This notice announces the availability of an additional $55 million in grant funding through our ''Systems Change Grants for Community Living''. The Systems Change grants include four distinct competitive grant opportunities: (1) Nursing Facility Transitions; (2) Community-integrated Personal Assistance Services and Supports; (3) Real Choice Systems Change; and (4) The Community Living Exchange Collaborative: A National Technical Assistance Program (The Collaborative) (formerly, The National Technical Assistance Exchange for Community Living). The four grants are designed to assist States in developing enduring systems improvements that support people of any age who have a disability or long-term illness to live and participate in their communities. These grants are a part of the President's *New Freedom Initiative* to eliminate barriers to equality and grant a ''New Freedom'' to children and adults of all ages who have a disability or long term illness so that they may live and prosper in their communities. This notice also contains information about the manner in which we will continue the award process that originally started in FY 2001. *We will not accept any new applications for Systems Change Grants in FY 2002.*

**DATES:** *Deadline for Submitting Response Form:* Qualified Applicants (see ''Definition of Qualified Applicants'' in section II.D. of this notice) who submitted an application in FY 2001, and received from us written notification dated March 28, 2002 of a ''preliminary award'' must submit the Response Form (that was enclosed with their written notification) no later than May 9, 2002, indicating whether they wish to receive an award in FY 2002.

*Deadline for Submitting Responses to Draft Terms and Conditions and Project Feedback of Preliminary Grant Award:* Qualified Applicants must respond to the draft terms and conditions and project feedback of the preliminary grant award by July 10, 2002.

**ADDRESSES:** *Response Form:* The addresses for submitting completed Response Forms are listed in order by our preferred means of submission; they are as follows: by e-mail to *jsilanskis@cms.hhs.gov,* by facsimile to Jeremy Silanskis (410–786–9004), or by mail to Jeremy Silanskis, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, DEHPG/DASI, Mailstop: S2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Applications mailed through the U. S. Postal Service or a commercial delivery service will be considered ''on time'' if received by close of business on the closing date, or postmarked (first class mail) by the date specified and received within five business days. If express, certified, or registered mail is used, the Qualified Applicant should obtain a legible dated mailing receipt from the U. S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailings. Response Forms that do not meet the above criteria will be considered late.

Qualified Applicants who wish to obtain an electronic copy of the Response Form or have questions regarding the Response Form, please contact Jeremy Silanskis at: 410–786–1592; or by e-mail to *jsilanskis@cms.hhs.gov.*

*Response to Draft Grant Terms and Conditions and Project Feedback:* We will include with the draft grant terms and conditions and requests for project feedback that we send to the Qualified Applicants the name, address, and phone number of the CMS project officer to whom the responses to the draft grant terms and conditions must be submitted.

*Web Site:* To obtain additional information about the Systems Change grants, please visit our web site at: *http://www.hcfa.gov/medicaid/systemschange/default.htm.*

**FOR FURTHER INFORMATION CONTACT:** Questions about the Systems Change grants may be directed to: Mary Guy, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, DEHPG/DASI, Mail Stop: S2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–2772; or by e-mail to: *Mguy@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. General*

People of all ages who have a disability or long-term illness generally express the same desire to live in the community, as do most other Americans. They express a desire to live in their own homes, make their own decisions about daily activities, work, learn, and maintain important social relationships. They express a desire to contribute and participate in their communities and family life.

In 1990, the Congress enacted the Americans with Disabilities Act (ADA) (Pub. L. 101–336). The ADA recognized that ''society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem'' (42 U.S.C. 12101(a)(2)). The ADA gave legal expression to the desires and rights of Americans to lead lives as valued members of their own communities despite the presence of disability.

Over the past few years, a consensus for assertive new steps to improve the capacity of our long-term support systems to respond to the desires of our citizenry has been building. Federal, State, and local governments have begun to take actions to renew and reaffirm a commitment to improving the systems that will support people of all ages with disabilities or long-term illnesses who wish to live in their communities. The President invigorated these efforts in 2001 through his *New Freedom Initiative* and Executive Order 13217. The Executive Order directs

Federal agencies to provide assistance to States and to identify federal policy barriers that might be removed in order to achieve fulfillment of the ADA. For additional information about the *New Freedom Initiative* and Executive Order 13217, please visit the web site at: *http://www.whitehouse.gov.*

*B. FY 2001 Systems Change Grants for Community Living*

On May 22, 2001, we published a Notice of Funding Availability for the Systems Change Grants for Community Living in the **Federal Register** (66 FR 28183). Under this notice, we invited proposals from States and others, in partnership with their disability and aging communities, to design and implement effective and enduring improvements in community long term support systems. Grant applications were due in July 2001. The response of States, and other eligible entities, to these grant opportunities was extraordinary. The response revealed a strong interest on the part of States and their citizens to improve their community-based systems, and a vital role for federal technical and resource assistance. We received 161 applications for these Systems Change grants from 51 States and Territories (48 States, the District of Columbia, and 2 Territories) requesting funding totaling approximately $240 million.

In September 2001, we announced the award of grants in 37 States and one territory totaling approximately $70 million. In FY 2001, we awarded: 25 Real Choice Systems Change grants; 10 Community-integrated Personal Assistance Services and Supports grants; 12 Nursing Facility Transitions, State Program Grants; and 5 Nursing Facility Transitions, Independent Living Partnership grants. In FY 2001, we also awarded two grants for the National Technical Assistance Exchange for Community Living. For further information on the selection process of the grants awarded in FY 2001, please see our web site at: *http://www.hcfa.gov/medicaid/systemschange/selproc.pdf.* In addition, the solicitation from FY 2001 is available at: *http://www.hcfa.gov/medicaid/systemschange/backgrnd.htm.*

Due to the extraordinary response we received in FY 2001 to the Systems Change Grants for Community Living solicitation, we will not accept any new applications in FY 2002. Instead, we will continue to process the ranked applications submitted in 2001, beginning with the highest-ranked applications that were not funded in FY 2001. On March 28, 2002, we sent a notice of preliminary award and a Response Form to those Qualified Applicants, as explained below. We will also furnish draft grant terms and conditions (including project feedback) to those Qualified Applicants. (See section II.B. of this document for additional information on ''Requirements to Receive Notice of Grant Award''.)

**II. Overview of FY 2002 Systems Change Grants Award Process**

In FY 2002, the Congress appropriated an additional $55 million in funds for these Systems Change grants specifically to improve community-integrated services (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002 Pub. L. 107–116). In a Press Release dated March 25, 2002, the Secretary announced that these funds will enable the Department to help States improve community-based services. (To review this Press Release, please visit: http://www.hhs.gov/news/press/2002pres/20020325a.html.)

Since we received far more applications in FY 2001 than we were able to fund, we are announcing our intention to continue the award process for Qualified Applicants. (See section ''II.D. Definition of Qualified Applicants'' of this notice.) We have used the review panel scores from FY 2001, to determine the ranking of all applications in each grant category. We will attempt to provide funding for applications where funding was previously unavailable. In addition, we reserve the right to make ''supplemental'' awards in FY 2002 to certain States or other eligible entities that received awards in FY 2001; these ''supplemental'' awards will ensure fair treatment between Grantees awarded funds in FY 2001 and 2002 while ensuring that the purposes of these grants are met. In the event that we received more than one application for any grant solicitation for which the ''one per State'' standard applies, we reserve the right to select which application will be considered for funding. We also reserve the right to ensure reasonable balance in awarding grants in FY 2002, in terms of key factors (such as geographic distribution and broad target group representation) as noted in the FY 2001 grant solicitation.

We reserve the right to reallocate those funds to the next highest-ranked Qualified Applicant(s) or to supplement entities that previously received funding, if Qualified Applicants are subsequently determined not to have met all of the requirements of our May 22, 2001 Notice of Funding Availability (66 FR 28183), the grant terms and conditions, or otherwise fail to submit a Response Form to us by the date indicated above.

We have determined that we will be able to fund in FY 2002 approximately: 25 new Real Choice Systems Change grants; 8 new Community-integrated Personal Assistance Services and Supports grants; 11 new Nursing Facility Transitions, State Program grants; and 5 new Nursing Facility Transitions, Independent Living Partnership grants. We will also attempt to make supplemental awards to the two Grantees for the Community Living Exchange Collaborative: A National Technical Assistance Program. Additionally, we will attempt to make supplemental awards to 5 States that received Real Choice Systems Change grants in FY 2001 to ensure that these 5 Grantees are not disadvantaged in the amount of the award received as compared to States receiving awards in FY 2002. (See ''Chart 1—Qualified Applicants for FY 2002 Systems Change Grants and Amount of Preliminary Awards''). We anticipate that these grants will be officially awarded on or before September 30, 2002. (See ''Chart 2—Key Dates for 2002 Systems Change Grants Process''.) We will notify, in writing, the Qualified Applicants described above of this award process.

*A. Timing and Duration of Awards*

We expect all Notice of Grant Awards to be made on or before September 30, 2002. New Grantees may expend grant funds over a 36-month period from the date of the award. Existing Grantees receiving ''supplemental awards'' will be able to use the ''supplemental award'' during the existing 36-month budget period of their original grants.

*B. Requirements To Receive Notice of Grant Award*

Qualified Applicants before receiving an official Notice of Grant Award (Form CMS 6–U6–PG (9–84)) will receive draft grant terms and conditions of the proposed award. These draft grant terms and conditions will contain criteria the entity must meet and will specify any additional information required. These draft grant terms and conditions will ask Qualified Applicants, among other things, to provide us with: (1) An updated budget and budget narrative reflecting the amount of proposed award; (2) an updated proposed project abstract and abbreviated project narrative describing the project's goals, activities and expected outcomes, given the proposed amount of funding; and (3) a description, in the abbreviated narrative, of how people with

disabilities and long-term illnesses and their representatives will be involved in all stages of planning, implementation, monitoring and evaluation activities for the proposed project. The deadline for submission of this information is noted in ''Chart 2—Key Dates for 2002 Systems Change Grants Process''. These dates will also be posted on the CMS Systems Change web site at: *http://www.hcfa.gov/medicaid/systemschange/default.htm.*

Specific requirements of Grantees, including the non-financial recipient contribution, as stated in the Notice of Funding Availability, dated May 22, 2001 (66 FR 28183) will continue to apply to all Qualified Applicants that receive awards in FY 2002.

*C. Indirect Costs*

Reimbursement of indirect costs under each of the four types of grants is governed by the provisions of the U. S. Department of Health and Human Services, Grants Policy Directive (GPD) Part 3.01: Post-Award—Indirect Costs and Other Cost Policies. We recommend that Qualified Applicants review the provisions of this policy directive and applicable Office of Management and Budget (OMB) circulars in preparing budget information. This information is available in the solicitation and online at: *http://www.hhs.gov/grantsnet/adminis/gpd/gpd301.htm.*

*D. Definition of Qualified Applicants*

We will not accept any new applications in FY 2002, due to the extraordinary number of unfunded applications received in FY 2001. Instead, we will continue to process the ranked applications submitted in 2001, beginning with the highest-ranked applications that were not funded in FY 2001. We have offered funding to those Qualified Applicants. Qualified Applicants are those Applicants who (1) submitted an application in FY 2001 *and* (2) received from us written notification dated March 28, 2002 of a ''preliminary'' award indicating that their application received a score from the review panel in a range that will permit us to make a ''preliminary'' award in FY 2002. Additional information on the award process is available in section II (Overview of FY 2002 Systems Change Grant Award Process). Through our technical assistance efforts, we will continue to work with all States and Territories, as well as other non-Grantees, to improve community-integrated long term services and supports.

*E. Involvement of Consumers, Stakeholders, and Public-Private Partnerships*

For all Qualified Applicants, we expect continuous and active involvement of consumers in project design, implementation, and evaluation. We encourage processes that promote the active involvement of all other stakeholders. In addition, we encourage the development of public-private partnerships that make the most effective use of each partner's expertise.

For the FY 2001 and FY 2002 Real Choice Systems Change grants, the Congress expressed its preference that the grant applications ''be developed jointly by the State and the Consumer Task Force'' (H. Conf. Rep. No. 106–1033 at 150 and H. Conf. Rep. No. 107–342 at 101, adopting S. Rep. No. 107–84 at 17). The task force should be composed of individuals with disabilities from diverse backgrounds (including the elderly), representatives from organizations that provide services to individuals with disabilities, consumers of long-term services and supports, and those who advocate on behalf of such individuals (H. Conf. Rep. No. 106–1033 at 150 and H. Conf. Rep. No. 107–342 at 101, adopting S. Rep. No. 107–84 at 17). Each Qualified Applicant is encouraged to continue to involve its task force in the process of developing a response to the draft grant terms and conditions.

We encourage collaboration with public-private partnerships and with a broad range of public and private organizations whose primary purpose is improving access and services for people with disabilities or long-term illnesses. Examples of these organizations include State Independent Living Councils, Area Agencies on Aging, Developmental Disabilities Councils, State Mental Health Planning Councils, State Assistive Technology Act Projects, and other national and statewide consumer, disability and aging organizations. We also encourage Qualified Applicants to partner with volunteer groups, employers, faith-based service providers, private philanthropic organizations, and other community-based organizations.

*F. Executive Order 12372*

Applications for these grants are not subject to review by States under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' (45 CFR part 100).

*G. Information Collection Requirements*

The information collection requirements associated with the Notice of Funding Availability published on May 22, 2001 (66 FR 28183) have been reviewed and approved by the Office of Management and Budget (OMB No.: 0938–0836 Expiration Date: 02/28/2005).

**Authority:** These grants are authorized under section 1110 of the Social Security Act. Funding and direction from the Congress was provided in the Departments of Labor, Health and Human Services, and Education and Related Appropriation Bill, for FY 2002, Pub. L. 107–116, and in the accompanying Report, H. Conf. Rep. No. 107–342 at 101. In addition, funding and Congressional language was provided in the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) (including H.R. 5656 Labor, HHS, and Education Appropriations), and in the accompanying Report, H. Conf. Rep. No. 106–1033. CMS is the designated HHS agency with administrative responsibility for this grant program. (Catalog of Federal Domestic Assistance Number: 93.779; Research and Demonstrations)

Dated: April 1, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

## Addendum 1—Qualified Applicants for FY 2002 Systems Change Grants and Amount of Preliminary Awards

### I. New Awards

Below are the States/Eligible Entities that were offered new awards as described in section II of this notice.

CHART 1.—QUALIFIED APPLICANTS—FY 2002 REAL CHOICE SYSTEMS CHANGE GRANTS

| State/eligible entity | Amount of preliminary award |
|---|---|
| Alaska | $1,385,000 |
| California | 1,385,000 |
| Colorado | 1,120,147 |
| Commonwealth of Northern Mariana Islands | 1,385,000 |
| Connecticut | 1,385,000 |
| District of Columbia | 1,385,000 |
| Georgia | 1,385,000 |
| Indiana | 1,385,000 |
| Kansas | 1,385,000 |
| Louisiana | 1,385,000 |
| Mississippi | 1,385,000 |
| Montana | 1,385,000 |
| New Mexico | 1,385,000 |
| Nevada | 1,385,000 |
| New York | 1,385,000 |
| North Dakota | 900,000 |
| Ohio | 1,385,000 |
| Oklahoma | 1,385,000 |
| Pennsylvania | 1,385,000 |
| Rhode Island | 1,385,000 |
| Texas | 1,385,000 |
| Utah | 1,385,000 |
| Washington | 1,385,000 |
| Wisconsin | 1,385,000 |
| West Virginia | 1,313,996 |

CHART 2.—QUALIFIED APPLICANTS—FY 2002 COMMUNITY-INTEGRATED PERSONAL ASSISTANCE SERVICES AND SUPPORTS GRANTS

| State/eligible entity | Amount of preliminary award |
|---|---|
| Colorado | $725,000 |
| District of Columbia | 725,000 |
| Hawaii | 725,000 |
| Indiana | 725,000 |
| Kansas | 725,000 |
| North Carolina | 725,000 |
| Tennessee | 725,000 |
| West Virginia | 725,000 |

CHART 3.—QUALIFIED APPLICANTS—FY 2002 NURSING FACILITY TRANSITIONS, STATE PROGRAM GRANTS

| State/eligible entity | Amount of preliminary award |
|---|---|
| Alabama | $770,000 |
| Arkansas | 598,444 |
| California | 600,000 |
| Delaware | 566,772 |
| Nebraska | 600,000 |
| New Jersey | 600,000 |
| North Carolina | 600,000 |
| Ohio | 600,000 |
| Rhode Island | 600,000 |
| South Carolina | 600,000 |
| Wyoming | 600,000 |

CHART 4.—QUALIFIED APPLICANTS—FY 2002 NURSING FACILITY TRANSITIONS, INDEPENDENT LIVING PARTNERSHIP GRANTS

| State/eligible entity | Organization | Amount of preliminary award |
|---|---|---|
| California | Community Resources for Independence. | 337,500 |
| Minnesota | Metropolitan Center for Independent Living. | 400,000 |
| Delaware | Independent Resources, Inc. | 270,000 |
| New Jersey | Resources for Independent Living, Inc. | 400,000 |
| Utah | Utah Independent Living Center. | 400,000 |

## II. Supplemental Awards

Below are the States/Eligible Entities that were offered supplemental awards as described in section II of this notice.

CHART 1.—QUALIFIED APPLICANTS—FY 2002 REAL CHOICE SYSTEMS CHANGE GRANTS

| State/eligible entity | Amount awarded FY 2001 | Amount of preliminary award |
|---|---|---|
| Maryland | $1,025,000 | $360,000 |
| Arkansas | 1,025,000 | 360,000 |
| Massachusetts | 1,025,000 | 360,000 |
| Virginia | 1,025,000 | 360,000 |
| Iowa | 1,025,000 | 360,000 |

CHART 2.—QUALIFIED APPLICANTS—FY 2002 THE COMMUNITY LIVING EXCHANGE COLLABORATIVE: A NATIONAL TECHNICAL ASSISTANCE PROGRAM

| Organization/eligible entity | Amount FY 2001 award | Amount of preliminary award |
|---|---|---|
| Rutgers Center for State Health Policy | $2,435,621 | $1,886,500 |
| ILRU " Independent Living Research Utilization | 2,435,621 | 1,886,500 |

**Addendum 2—Key Dates for 2002 Systems Change Grants Process**

| Date(s) | Action |
|---|---|
| May 9, 2002 | Response Form is due from Qualified Applicants. |
| March 22–July 9, 2002 | Qualified Applicants partner with consumer advisory groups and stakeholders to do the following:<br>• Reprioritize proposed grant projects based on revised budgets;<br>• Reconsider proposed budget based on amount of preliminary award; and<br>• Respond to draft grant terms and conditions of award and requests for feedback. |
| July 10, 2002 | Deadline for Qualified Applicants to submit their responses to the draft grant terms and conditions of award and project feedback. |
| September 30, 2002 | Notice of Grant Awards sent to FY 2002 Systems Change Grantees. |

[FR Doc. 02–10204 Filed 4–25–02; 8:45 am]
BILLING CODE 4120–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**[CMS–2137–N]**

# State Children's Health Insurance Program (SCHIP); Redistribution and Continued Availability of Unexpended SCHIP Funds From the Appropriation for FY 1999

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of the statutory provisions concerning the redistribution and availability of unexpended funds appropriated for fiscal year (FY) 1999 for the State Children's Health Insurance Program under title XXI of the Social Security Act. It sets forth the amounts available for each of the 50 States, the District of Columbia, and the Commonwealths and Territories from the FY 1999 appropriation for a second period of availability under the statutory formula. It specifies amounts of allotments that may remain available (''retained allotments'') to the States to which those amounts were originally allotted during the initial period, and the amounts of allotments that are redistributed from the States to which they were allotted during the initial period to be available to other States (''redistributed allotments'').

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786–2019.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. In this notice, unless otherwise indicated, the use of the terms ''State'' and ''States,'' refers to any or all

of the 50 States, the District of Columbia, and the Commonwealths and Territories. States may implement SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both. Under section 2104 of the Act, the SCHIP allotments for a fiscal year (FY) are available to match expenditures under an approved State child health plan for a 3-fiscal year ''period of availability,'' including the fiscal year for which the allotment was provided. After the initial period of availability, the amount of unspent allotments is subject to a second period of availability. With the exception described below for the allotments made in FYs 1998 and 1999, allotments unspent in the initial period of availability are to be redistributed from States that did not fully spend these allotments to States that fully spent their allotments for that fiscal year.

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), enacted as part of Pub. L. 106–554 on December 21, 2000, amended title XXI of the Act, in part by establishing new requirements for the second period of availability of amounts of FYs 1998 and 1999 allotments unspent during the initial period of availability. These requirements limit the redistribution of unspent allotments to States that fully spent their FY 1998 or 1999 allotments (redistributed amounts). These requirements also provide that amounts of unspent allotments not redistributed as a result of these limits would remain available to States that did not fully expend their FY 1998 or 1999 allotments (retained allotments). These requirements prescribe a methodology and process for determining the FY 1998 and FY 1999 redistributed and retained allotment amounts.

## II. Provisions of This Notice

This notice announces the application of the statutory provisions concerning the redistribution and availability of unexpended funds appropriated for the FY 1999 SCHIP program. Section 2104 of the Act provides an allotment for each fiscal year for Federal matching payments for an initial 3-year period for the States. Section 801 of BIPA added section 2104(g) to the Act to provide for a methodology to redistribute or continue availability of all unexpended amounts for FYs 1998 and 1999 at the end of the initial 3-year period.

Section 2104 of the Act requires the Secretary to calculate allotments for each State with an approved State child health plan based on available appropriated funds for each fiscal year. All States had approved plans in order to have access to their final FY 1999 SCHIP allotments, which were published on May 24, 2000 in the **Federal Register** (65 FR 33634). The final rule setting forth the methodologies and procedures to determine the allotment of Federal funds for each fiscal year and the grant award and payment process was also published on May 24, 2000 in the **Federal Register** (65 FR 33616).

BIPA amended the SCHIP statute to add a new section 2104(g) to the Act, which requires the Secretary to redistribute limited amounts of the unexpended allotments for FYs 1998 and 1999 to States that fully expended their allotments for those years, and extended the availability of remaining unexpended allotments for those years, in accordance with a specified formula. This notice sets forth the results of the statutory formula to the unexpended allotments for FY 1999, and describes the methodology for the redistribution and continued availability of unexpended SCHIP allotments. The FY 1998 redistributed and retained allotment amounts were published in the **Federal Register** on June 21, 2001 (66 FR 33257).

## III. Application of the Provisions of Section 2104(g) of the Act to the Unexpended FY 1999 SCHIP Allotments To Determine the Redistribution and Continued Availability of Allotments for Each State

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for matching allowable State expenditures for a 3-year initial period of availability; the fiscal year for which the funds are allotted, and the two following fiscal years. For FY 1999, the 3-year initial period of availability is October 1, 1998 through September 30, 2001. With the exception of the methodology specified in BIPA for treating unspent FY 1998 and 1999 allotments, section 2104(f) of the Act requires redistribution of the entire amount of unspent allotments after the initial period of availability has expired. Section 2104(e) of the Act provides that redistributed funds are available for matching State expenditures through the end of the fiscal year in which they are reallotted. Any redistributed funds for the fiscal year that remained unexpended at the end of the fiscal year in which they were reallotted would have reverted to the Federal Treasury.

BIPA did not repeal or delete sections 2104(e) and (f) of the Act. However, BIPA added a new section 2104(g) of the Act that established a formula for redistributing and continuing the availability of unexpended allotments for FYs 1998 and 1999 and references the provisions of sections 2104(e) and (f) of the Act. This formula replaces the redistribution that otherwise would have been required under section 2104(f) of the Act.

Section 2104(g) of the Act requires the Secretary to redistribute and continue availability of the unexpended FYs 1998 and 1999 allotments under section 2104(f) of the Act. Section 2104(g) also provides that both FYs 1998 and 1999 redistribution amounts and FYs 1998 and 1999 retained amounts, under sections 2104(g)(1)(B)(ii) and 2104(g)(2)(A)(i) of the Act, respectively, shall remain available to the States through the end of FY 2002; that is, through September 30, 2002.

The availability of retained allotment funds is determined in accordance with requirements related to the ordering of expenditures. Section 2105(a)(2) of the Act, as amended by BIPA, requires that expenditures be applied against a State's available fiscal year SCHIP allotment amounts in the following order:

(1) Title XIX SCHIP related expenditures for which payment is made at the enhanced Federal medical assistance percentage (FMAP) (section 2105(a)(1)(A) of the Act);

(2) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);

(3) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (section 2105(a)(1)(C) of the Act);

(4)(a) Other child health assistance for targeted low-income children and health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children) (section 2105(a)(1)(D)(i and ii) of the Act);

(4)(b) Outreach expenditures (section 2105(a)(1)(D)(iii) of the Act); and

(4)(c) Administration expenditures (section 2105(a)(1)(D)(iv) of the Act).

In general, States' expenditures will be applied against the FY 1999 redistribution and retained amounts in accordance with existing SCHIP regulations on allotments (42 CFR parts 447 and 457). These regulations, however, do not directly address the treatment of redistributed allotments because they do not make clear whether these expenditures will be applied to these allotments based on the fiscal year

of the initial allotment, the fiscal year of the redistribution, or the fiscal year of the allotment whose expiration date matches the redistribution. This notice permits States the option to decide the order of application of expenditures against the redistribution amounts and other available fiscal year allotment amounts. Under this option, a redistribution State may have a maximum of four possible choices for the order of the application of FY 1999 redistribution funds in FY 2002, depending on what other fiscal year allotments are available in FY 2002: (1) Before FY 2000 allotments; (2) after FY 2000 and before FY 2001 allotments; (3) after FY 2001 and before FY 2002 allotments; and (4) after FY 2002 allotments. Furthermore, if a FY 1999 redistribution State also has FY 1998 redistribution funds available in FY 2002, it can choose whether the FY 1999 redistribution funds will be used before or after the FY 1998 redistribution amounts.

We believe that States should be afforded the flexibility to decide whether redistributed funds would be used before or after other available allotment funds to allow them to optimize the use of the funds. Therefore, in implementing the BIPA legislation, we offered States that will receive FY 1999 *redistributed funds* the option of choosing the order of when the funds would be expended during FY 2002 among the other available allotments during FY 2002. All of the redistribution States have responded to us with their decision regarding this option. Under this option, *once a State chooses the order of the FY 1999 redistribution amounts, it cannot change that order at a later date.*

Both the redistribution amounts and the retained amounts for FY 1999 will be available for allowable SCHIP expenditures reported for the period of October 1, 2001 through September 30, 2002. This will ensure that the redistribution and retained allotment amounts will be available for SCHIP expenditures for the entire period, October 1, 2001 through September 30, 2002, even though this notice is being published after October 1, 2001.

We have made provisions on the Form CMS–21C in the Medicaid and State Children's Health Insurance Program Budget and Expenditure System (MBES/CBES), Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment, which is used for tracking States' expenditures against their allotments, to include the States' FY 1999 redistributed and retained amounts. The redistributed and retained allotment amounts will be automatically entered on this form and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for the period of October 1, 2001 through September 30, 2002 to the FY 1999 redistributed and retained amounts available through September 30, 2002. Except as provided above regarding the option for States to choose the ordering of fiscal year *redistribution* amounts, expenditures reported by States during this period will be applied against retained, redistributed or other available allotments in chronological order from earlier to more recent, in accordance with the SCHIP regulations published on May 24, 2000 in the **Federal Register** (65 FR 33616). Thus, for example, States' expenditures would be applied first against any remaining FY 1998 retained allotments, then against available FY 1999 retained allotments, and then against any other available fiscal year allotments in chronological order; however, if applicable, the available redistribution amounts would be ordered in accordance with those redistribution States' choices under the option for ordering such redistribution amounts.

## IV. Determination of Redistribution or Continued Availability of Unexpended FY 1999 Allotments

In Table 1 of this notice, we set forth the amount of unexpended allotments as of November 30, 2001, as specified in section 2104(g) of the Act. We also set forth the retained amounts that, under the statutory formula, are subject to continued availability by States that did not fully expend their FY 1999 allotments, and the amounts that are redistributed for availability to States that fully expended their FY 1999 allotments. The formula for determining the redistributed and retained amounts of the FY 1999 SCHIP allotments is described below.

### *Establishing the Amount of Unexpended FY 1999 Allotments*

The amount of States' unexpended allotments are established based on the SCHIP related expenditures, as reported and certified by States to CMS on the quarterly expenditure reports. To determine the amounts of unexpended FY 1999 allotments remaining at the end of the initial period of availability, or to identify States that have fully expended their FY 1999 allotments, section 2104(g)(3) of the Act provides that the Secretary use expenditures reported as of November 30, 2001 on the Form CMS–64 or CMS–21, as approved by the Secretary. These expenditures are applied and tracked against the States' FY 1999 allotments (as published on May 24, 2000 in the **Federal Register** (65 FR 33634)), and other available allotments, on the Form CMS–21C, Allocation of the XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2001, all States did report and certify their FY 2001 fourth quarter expenditure reports (representing the last quarter of the 3-year period of availability for FY 1999). Expenditures reflected in Table 1 below were taken from our MBES/CBES ''masterfile,'' which represent the State's official certified SCHIP and Medicaid expenditure reporting system records.

Based on States' expenditure reports submitted and certified through November 30, 2001, the total amount of unexpended FY 1999 SCHIP allotments is $2,818,627,105. This amount includes the amounts of reduction to the States' FY 1999 allotments based on the application of the ''maintenance of effort'' (MOE) provisions specified in the SCHIP statute at section 2105(d)(2) of the Act.

### *Application of the Maintenance of Effort Provision*

Under section 2105(d)(2) of the Act, the amount of the fiscal year allotments for certain States, beginning with FY 1999, are reduced if the States' expenditures do not meet the specified MOE requirements. The application of the MOE provisions resulted in one State's FY 1999 allotment being reduced by $2,216,553; in effect, the amount of the MOE reduction to its FY 1999 SCHIP allotment was not available to that State for expenditure. However, this MOE reduction amount is available and is included in the total amount available nationally for redistribution and continued availability of the FY 1999 allotments.

Initially, the total amount of FY 1999 unexpended allotments was effectively reduced because it did not include the reduction amount related to the MOE provision. However, the MOE reduction amount is available for purposes of the redistribution. Therefore, the MOE reduction amount is applied to decrease the amount of the total unexpended FY 1999 allotments needed for redistribution to the States that have fully spent their FY 1999 allotments. By applying the MOE reduction amount to the amount needed for redistribution, the amount of unexpended FY 1999 allotments that can be retained by States that did not fully expend their allotments is larger.

*Redistribution for the States and the District of Columbia*

Section 2104(g)(1)(i)(I) of the Act specifies the FY 1999 redistribution for the 50 States and the District of Columbia that have fully expended their FY 1999 allotments. Specifically, under this section, the redistribution amounts are equal to these States' ''excess'' expenditures during the FY 1999 period of availability; this amount is the difference between the States' total reported applicable expenditures for the period FYs 1999 through 2001, and the States' FY 1999 SCHIP allotments.

*Redistribution for the Commonwealths and Territories*

Section 2104(g)(1)(ii) of the Act specifies the FY 1999 redistribution for the Commonwealths and Territories that have fully expended their FY 1999 allotments. Under this provision, first the total Commonwealths and Territories redistribution amount is calculated by multiplying the total amount of the allotments available for redistribution and continued availability, including the MOE provision reduction amounts, by 1.05 percent; for the FY 1999 redistribution calculation, this amount is $29,595,585 (1.05 percent of $2,818,627,105). Second, only those Commonwealths and Territories that have fully expended their FY 1999 allotments will receive an amount equal to a specified percentage of the 1.05 percent amount. That percentage is determined by dividing the FY 1999 SCHIP allotment for each Commonwealth or Territory that has fully expended its FY 1999 allotment, by the total of all the FY 1999 allotments for those Commonwealths and Territories that fully expended their FY 1999 allotments.

*Continued Availability of Unexpended FY 1999 Allotments*

Section 2104(g)(2)(B) of the Act specifies the formula for determining the amount of the unexpended FY 1999 allotments that will be retained by States. First the total amount of the unexpended FY 1999 allotments (not including the MOE provision amounts) for all States is determined. Next, the total amount needed for redistribution, as described above, is determined. The total amount needed for redistribution is reduced by the MOE provision reduction amounts; the result (representing the amount of the redistribution that will be covered by the unexpended FY 1999 allotment amounts) is then subtracted from the total amount of unexpended FY 1999 allotments. This remainder represents the total FY 1999 retained allotment amounts. Next, a percentage is calculated by dividing the total FY 1999 retained allotment amounts by the total amount of the unexpended FY 1999 allotments (not including the MOE reduction amounts). Finally, each State's specific retained amount is calculated by multiplying this percentage by the amount of the State's unexpended FY 1999 SCHIP allotment.

**V. Table of SCHIP FY 1999 Redistribution and Continued Availability of Unexpended FY 1999 Allotments**

A description of the formula used to determine the amount of the unexpended FY 1999 SCHIP allotments for redistribution or continued availability is described below. Following the description in Table 1, which presents each State's FY 1999 SCHIP allotment redistribution or retained amount.

A total of $4,247,000,000 was allotted nationally for FY 1999, representing $4,204,312,500 in allotments to the 50 States and the District of Columbia, and $42,687,500 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, which States submitted and certified by November 30, 2001, 13 States fully expended their FY 1999 allotments, 38 States including the District of Columbia did not fully expend their FY 1999 allotments, and all of the Commonwealths and Territories fully expended their FY 1999 allotments. For the States, including the District of Columbia, that did not fully expend their FY 1999 allotments, their total FY 1999 allotments (not including the MOE provision reduction amounts) were $3,371,650,523, and the total expenditures applied against their FY 1999 allotments were $555,239,971. Therefore, the total amount of unexpended FY 1999 allotments available for redistribution (not including the MOE amounts) is $2,816,410,552 ($3,371,650,523 minus $555,239,971). In addition, the FY 1999 MOE provision reduction amount of $2,216,553 is available for redistribution. Therefore the total amount of the FY 1999 allotments available for redistribution is $2,818,627,105 ($2,816,410,552, the total unexpended FY 1999 allotments, plus $2,216,553, the MOE amount).

In accordance with the redistribution calculation for FY 1999 described above, $1,608,256,691 is needed for redistribution for 13 States, and $29,595,585 is needed for redistribution to the 5 Commonwealths and Territories. Therefore, a total of $1,637,852,276 is needed for redistribution. The States' total unexpended FY 1999 allotments (not including the MOE provision amounts) totaled $2,816,410,552. The MOE provision amount of $2,216,553 is applied against the needed redistribution amounts. Therefore, $1,635,635,723 ($1,637,852,276, the total needed redistribution amount, minus $2,216,553, the MOE amount) is the remaining redistribution that will be covered by the unexpended FY 1999 allotment amounts. As a result, $1,180,774,829 ($2,816,410,552, the total unexpended FY 1999 allotments (not including the MOE amounts) minus $1,635,635,723, the remaining redistribution) is the total FY 1999 retained allotment amounts for the States, including the District of Columbia. Both the $1,637,852,276 redistribution amount and the $1,180,774,829 retained amounts will remain available through the end of FY 2002.

*Key to Table 1—CALCULATION OF THE SCHIP FY 1999 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 1999 ALLOTMENTS*

Column/Description

Column A = *STATE*. Name of State, District of Columbia, the Commonwealth or Territory.

Column B = *FY 1999 ALLOTMENT*. This column contains the FY 1999 SCHIP allotments for all States, which were published on May 24, 2000 in the **Federal Register** (65 FR 33634).

Column C = *EXPENDITURES APPLIED AGAINST FY 1999 ALLOTMENT*. This column contains the cumulative expenditures applied against the FY 1999 allotments, as reported and certified by all States through November 30, 2001.

Column D = *UNEXPENDED FY 1999 ALLOTMENTS OR ''REDISTRIBUTION.''* This column contains the amounts of unexpended FY 1999 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 1999 (FYs 1999 through 2001), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 1999 allotments during the period of availability, the entry in this column is ''REDISTRIBUTION.'' The amounts in each of the State lines in this column do not include the MOE provision amount of $2,216,553; the MOE amount is added to the total of the amounts of

the States' unexpended FY 1999 allotments in this column at the bottom of Column D. The total amount of $2,818,627,105 ($2,816,410,552, the total unexpended FY 1999 allotments, plus $2,216,553, the MOE provision amounts) represents the total amount available for redistribution and continued availability for FY 1999.

Column E = *FOR REDISTRIBUTION STATES ONLY FY 1999–2001 EXPENDITURES*. For those States that have fully expended their FY 1999 allotments, this column contains the amounts of the States' reported SCHIP related expenditures for each of the years FY 1999 through FY 2001, representing the FY 1999 3-year period of availability. For those States, Commonwealths and Territories that did not fully expend their FY 1999 allotments during the period of availability, the entry in Column E is ''NA.''

Column F = *FY 1999 REDISTRIBUTED AMOUNTS*. This column contains the amounts of States' unexpended FY 1999 SCHIP allotments that are being redistributed to those States that have fully expended their FY 1999 allotments. For the States that have fully expended their FY 1999 SCHIP allotments, the amount in Column F is the difference between Column E, the States' FY 1999–FY 2001 expenditures, and Column B, the States' FY 1999 allotments. For the 13 States that have fully expended their FY 1999 allotments, the FY 1999 redistribution amounts total $1,608,256,691. For the Commonwealths and Territories that have fully expended their FY 1999 allotments, the amounts in Column F represents their respective proportionate shares of $29,595,585 based on their FY 1999 allotments (1.05 percent of the total amount for redistribution and continued availability of $2,818,627,105). For those States, Commonwealths and Territories that did not fully expend their FY 1999 allotments during the period of availability, the entry in Column F is ''NA.''

Column G = *FY 1999 RETAINED ALLOTMENT AMOUNTS*. For the States that did not fully expend their FY 1999 allotments, this column contains the amounts of the States' FY 1999 unexpended allotments after the application of the proportionate reduction to account for the total redistribution amounts needed for the States that did fully expend their FY 1999 allotments. As indicated at the top of Column G, the proportionate reduction is approximately 41.92 percent. This percentage is multiplied by the unexpended amounts of the States' FY 1999 allotments in Column D; the result is the amount of the States' unexpended FY 1999 allotments that the States will retain. As indicated at the bottom of Column G, the total FY 1999 retained allotment amount is $1,180,774,829.

Column H = *UNEXPENDED FY 1999 ALLOTMENT AMOUNTS USED IN REDISTRIBUTION*. For the States that did not fully expend their FY 1999 allotments, this column contains the amounts of the States' FY 1999 unexpended allotments (not including the MOE provision amount) that were used in the redistribution in Column F; these amounts are no longer available to these States. The amount in Column H is equal to the difference between Columns D, the Unexpended FY 1999 Allotments, and G, the FY 1999 Retained Allotment Amounts. For States that did fully expend their FY 1999 allotments, the entry in Column H is ''NA.''

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TABLE 1 - CALCULATION OF THE SCHIP FY 1999 REDISTRIBUTION AND CONTINUED AVAILABILITY OF THE UNEXPENDED FY 1999 ALLOTMENTS

| | |
|---|---|
| UNEXPENDED FY 1999 ALLOTMENTS (Not Including MOE Amount) (1): | $2,816,410,552 |
| TOTAL NEEDED FOR FY 1999 REDISTRIBUTION: | $1,637,852,276 |
| MOE APPLIED TO REDISTRIBUTION: | $2,216,553 |
| REMAINING REDISTRIBUTION COVERED BY UNEXPENDED FY 1999 ALLOTMENTS (2): | $1,635,635,723 |
| TOTAL FY 1999 RETAINED ALLOTMENTS (3): | $1,180,774,829 |
| FY 1999 RETAINED ALLOTMENTS AS A PERCENTAGE OF UNEXPENDED FY 1999 ALLOTMENTS (4): | 41.92% |

| STATE | FY 1999 ALLOTMENT | EXPENDITURES APPLIED AGAINST FY 1999 ALLOTMENT | UNEXPENDED FY 1999 ALLOTMENTS OR "REDISTRIBUTION" | FOR REDISTRIBUTION STATES ONLY FY 1999-2001 EXPENDITURES | FY 1999 REDISTRIBUTED AMOUNTS | FY 1999 RETAINED ALLOTMENT AMOUNTS | UNEXPENDED FY 1999 ALLOTMENT AMOUNTS USED IN REDISTRIBUTION |
|---|---|---|---|---|---|---|---|
| A | B | C | D | E | F | G | H |
| Alabama | $85,569,176 | $23,136,256 | $62,432,920 | NA | NA | $26,174,884 | $36,258,036 |
| Alaska | $6,856,760 | $6,856,760 | REDISTRIBUTION | $45,470,836 | $38,614,076 | NA | NA |
| Arizona | $116,246,196 | - | $116,246,196 | NA | NA | $48,735,999 | $67,510,197 |
| Arkansas | $47,681,702 | - | $47,681,702 | NA | NA | $19,990,464 | $27,691,238 |
| California | $850,608,561 | - | $850,608,561 | NA | NA | $356,616,040 | $493,992,521 |
| Colorado | $41,593,182 | $9,416,342 | $32,176,840 | NA | NA | $13,490,080 | $18,686,760 |
| Connecticut | $34,793,973 | $6,788,232 | $28,005,741 | NA | NA | $11,741,354 | $16,264,387 |
| Delaware | $8,015,429 | - | $8,015,429 | NA | NA | $3,360,453 | $4,654,975 |
| District of Columbia | $12,018,971 | $1,521,695 | $10,497,276 | NA | NA | $4,400,963 | $6,096,313 |
| Florida | $268,938,576 | $138,922,871 | $130,015,705 | NA | NA | $54,508,840 | $75,506,865 |
| Georgia | $124,071,402 | $32,849,632 | $91,221,770 | NA | NA | $38,244,556 | $52,977,214 |
| Hawaii | $8,903,057 | - | $8,903,057 | NA | NA | $3,732,590 | $5,170,467 |
| Idaho | $15,804,712 | $10,982,266 | $4,822,446 | NA | NA | $2,021,801 | $2,800,645 |
| Illinois | $121,949,905 | - | $121,949,905 | NA | NA | $51,127,268 | $70,822,637 |
| Indiana | $70,179,422 | $70,179,422 | REDISTRIBUTION | $175,382,843 | $105,203,421 | NA | NA |
| Iowa | $32,307,161 | $20,888,693 | $11,418,468 | NA | NA | $4,787,171 | $6,631,297 |
| Kansas | $30,511,738 | $18,735,496 | $11,776,242 | NA | NA | $4,937,167 | $6,839,075 |
| Kentucky | $49,696,709 | $49,696,709 | REDISTRIBUTION | $145,993,675 | $96,296,966 | NA | NA |
| Louisiana | $101,256,366 | - | $101,256,366 | NA | NA | $42,451,541 | $58,804,825 |
| Maine | $12,428,004 | $12,428,004 | REDISTRIBUTION | $31,156,457 | $18,728,453 | NA | NA |
| Maryland | $61,336,309 | $61,336,309 | REDISTRIBUTION | $198,471,826 | $137,135,517 | NA | NA |
| Massachusetts | $42,633,928 | $42,633,928 | REDISTRIBUTION | $129,807,029 | $87,173,101 | NA | NA |
| Michigan | $91,152,976 | $11,772,293 | $79,380,683 | NA | NA | $33,280,202 | $46,100,481 |
| Minnesota | $28,261,873 | - | $28,261,873 | NA | NA | $11,848,737 | $16,413,136 |
| Mississippi | $55,752,550 | $31,665,238 | $24,087,312 | NA | NA | $10,098,560 | $13,988,752 |
| Missouri | $51,429,086 | $51,429,086 | REDISTRIBUTION | $113,216,150 | $61,787,064 | NA | NA |
| Montana | $11,684,948 | $9,429,823 | $2,255,125 | NA | NA | $945,457 | $1,309,668 |
| Nebraska | $14,792,732 | $6,231,469 | $8,561,263 | NA | NA | $3,589,293 | $4,971,970 |
| Nevada | $30,263,463 | $3,280,643 | $26,982,820 | NA | NA | $11,312,497 | $15,670,323 |
| New Hampshire | $11,404,289 | - | $11,404,289 | NA | NA | $4,781,227 | $6,623,062 |
| New Jersey | $88,000,326 | $88,000,326 | REDISTRIBUTION | $195,349,848 | $107,349,522 | NA | NA |
| New Mexico | $62,675,303 | - | $62,675,303 | NA | NA | $26,276,503 | $36,398,800 |
| New York | $254,419,158 | $254,419,158 | REDISTRIBUTION | $984,191,553 | $729,772,395 | NA | NA |
| North Carolina | $79,132,966 | $79,132,966 | REDISTRIBUTION | $171,279,846 | $92,146,880 | NA | NA |
| North Dakota | $5,016,935 | $425,096 | $4,591,839 | NA | NA | $1,925,120 | $2,666,719 |
| Ohio | $115,187,783 | $88,430,119 | $26,757,664 | NA | NA | $11,218,100 | $15,539,564 |
| Oklahoma | $85,294,328 | $3,659,648 | $81,634,680 | NA | NA | $34,225,186 | $47,409,494 |
| Oregon | $38,936,902 | $2,539,232 | $36,397,670 | NA | NA | $15,259,655 | $21,138,015 |
| Pennsylvania* | $114,685,254 | $96,243,040 | $18,442,214 | NA | NA | $7,731,864 | $10,710,350 |
| Rhode Island | $10,633,962 | $10,633,962 | REDISTRIBUTION | $31,015,178 | $20,381,216 | NA | NA |
| South Carolina | $63,257,653 | $63,257,653 | REDISTRIBUTION | $138,312,171 | $75,054,518 | NA | NA |
| South Dakota | $8,500,886 | $2,720,031 | $5,780,855 | NA | NA | $2,423,613 | $3,357,242 |
| Tennessee | $65,840,660 | - | $65,840,660 | NA | NA | $27,603,573 | $38,237,087 |
| Texas | $558,680,510 | - | $558,680,510 | NA | NA | $234,225,754 | $324,454,756 |
| Utah | $24,126,675 | $20,359,242 | $3,767,433 | NA | NA | $1,579,489 | $2,187,944 |
| Vermont | $3,518,748 | $1,319,003 | $2,199,745 | NA | NA | $922,239 | $1,277,506 |
| Virginia | $67,992,282 | $16,178 | $67,976,104 | NA | NA | $28,498,854 | $39,477,250 |
| Washington | $46,440,845 | - | $46,440,845 | NA | NA | $19,470,237 | $26,970,608 |
| West Virginia | $23,495,256 | $13,907,433 | $9,587,823 | NA | NA | $4,019,677 | $5,568,146 |
| Wisconsin | $40,441,141 | $40,441,141 | REDISTRIBUTION | $79,054,703 | $38,613,562 | NA | NA |
| Wyoming | $7,675,218 | - | $7,675,218 | NA | NA | $3,217,821 | $4,457,397 |
| TOTAL STATES ONLY | $4,202,095,947 | 1,385,685,395 | $2,816,410,552 | $2,438,702,115 | $1,608,256,691 | $1,180,774,829 | $1,635,635,723 |
| COMMONWEALTHS AND TERRITORIES | | | | | | | |
| Puerto Rico | $39,101,750 | $39,101,750 | REDISTRIBUTION | NA | $27,109,556 | NA | NA |
| Guam | $1,494,063 | $1,494,063 | REDISTRIBUTION | NA | $1,035,846 | NA | NA |
| Virgin Islands | $1,109,875 | $1,109,875 | REDISTRIBUTION | NA | $769,485 | NA | NA |
| American Samoa | $512,250 | $512,250 | REDISTRIBUTION | NA | $355,147 | NA | NA |
| N. Mariana Islands | $469,562 | $469,562 | REDISTRIBUTION | NA | $325,551 | NA | NA |
| TOTAL | $42,687,500 | $42,687,500 | - | NA | $29,595,585 | - | - |
| | | | | | (1.05% OF $2,818,627,105) | | |
| NATIONAL TOTAL | $4,244,783,447 | $1,428,372,895 | $2,816,410,552 | $2,438,702,115 | $1,637,852,276 | $1,180,774,829 | $1,635,635,723 |
| *FY 1999 MOE AMOUNT | $2,216,553 | - | $2,216,553 | | TOTAL FY 1999 REDISTRIBUTED AMOUNTS | TOTAL FY 1999 RETAINED AMOUNTS | TOTAL FY 1999 UNEXPENDED AMOUNTS USED IN REDISTRIBUTION |
| TOTAL WITH MOE AMOUNT | $4,247,000,000 | $1,428,372,895 | $2,818,627,105 | | | | |

Footnotes:

(1) The total amount available for redistribution is $2,818,627,105, calculated as $2,816,410,552 (unexpended FY 1999 allotments, not including maintenance of effort (MOE) amount) plus $2,216,553 (the MOE amount)

(2) $1,635,635,723 is the amount of the redistribution that will be covered by the unexpended FY 1999 allotments, calculated as $1,637,852,276 (the total amount needed for redistribution) reduced by $2,216,553 (the MOE amount)

(3) $1,180,774,829 is the amount of the unexpended FY 1999 allotments retained by states, calculated as $2,816,410,552 (the unexpended FY 1999 allotments) reduced by $1,635,635,723 (the amount of the redistribution covered by the unexpended FY 1999 allotments)

(4) 41.92% is the percentage of unexpended FY 1999 allotments retained by states, calculated as $1,180,774,829 (total retained FY 1999 allotments) divided by $2,816,410,552 (total unexpended FY 1999 allotments not including the MOE amount)

BILLING CODE 4120–01–C

## VI. Impact Statement

*A. Overall Impact*

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). We have determined that this rule is not a major rule for the reasons discussed below.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 to $25 million or less annually. For purposes of the RFA, all hospices are considered to be small entities. Individuals and States are not included in the definition of a small entity. The notice of redistribution and continued availability of SCHIP funds is the result of a statutory formula that does not involve any agency discretion or policy. While this notice also sets forth CMS policy under which the States decide on the ordering of these funds and other available SCHIP funds in the application of States' SCHIP expenditures against such funds, we do not believe this policy will have a significant economic impact. We note that the same option was available to States for the FY 1998 redistribution and therefore this policy represents no change from that. We do not expect that the availability of this option will affect the operation of States' SCHIP programs or the amount or type of expenditures in such programs. Therefore, we do not believe further regulatory analysis is necessary.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We do not believe further regulatory analysis is necessary because this notice will not have a significant economic impact on small rural hospitals or a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule does not require any change in State expenditures; rather it notifies States of additional Federal funding that is available to pay for a share of State expenditures. This notice will not impose an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of these regulations.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities.

This notice informs the States of additional amounts of Federal funds that are available for part of State expenditures in accordance with the statute. This notice does not affect State rights or change the States' costs. It will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 1999 allotment redistribution and retained amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: February 10, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

Dated: April 9, 2002.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 02–10260 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–4047–N]**

## Medicare Program; Risk Adjustment Training, June 3–4, 2002, Las Vegas, NV; June 6–7, 2002, St. Louis, MO; June 10–11, 2002, Philadelphia, PA; and June 13–14, 2002, Orlando, FL

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces risk adjustment training sessions that will provide Medicare+Choice (M+C) organization staff (technical, operations, and provider relations) with the necessary knowledge to improve the quality and quantity of risk adjustment data. The specific training objectives are to understand data and diagnosis coding requirements, risk score calculation, the submission process and schedule, and the new risk adjustment processing system. These training sessions will build on the overview provided at the January 16, 2002 public meeting held at CMS.

**DATES:** Training sessions are scheduled for the locations and dates listed below:

*Las Vegas:* Monday, June 3, 2002, Tuesday, June 4, 2002

*St. Louis:* Thursday, June 6, 2002, Friday, June 7, 2002

*Philadelphia:* Monday, June 10, 2002, Tuesday, June 11, 2002

*Orlando:* Thursday, June 13, 2002, Friday, June 14, 2002

**ADDRESSES:** The training sessions will be held at the addresses listed below:

*Las Vegas:* Harrah's Las Vegas Hotel & Casino, 3475 Las Vegas Boulevard South, Las Vegas, NV 89109

*St. Louis:* Radisson Hotel & Suites St. Louis Downtown, 200 North Fourth Street, St. Louis, MO 63102

*Philadelphia:* Crowne Plaza Philadelphia Center City, 1800 Market Street, Philadelphia, PA 19103

*Orlando:* Wyndham Orlando Resort, 8001 International Drive, Orlando, FL 32819

**FOR FURTHER INFORMATION CONTACT:** Kim Slaughter at (301) 519–5388 or e-mail your questions to *encounterdata@aspensys.com.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established the Medicare+Choice (M+C) program that significantly expanded the health care

options available to Medicare beneficiaries. Under the BBA, the Secretary of the Department of Health and Human Services (the Secretary) must implement a risk adjustment methodology that accounts for variations in per capita costs based on health status and other demographic factors for payment to M+C organizations. The BBA also gives the Secretary the authority to collect inpatient hospital data for discharges on or after July 1, 1997, and additional data for other services occurring on or after July 1, 1998. Risk adjustment implementation began January 1, 2000 based on the principal inpatient discharge diagnosis. Payments to M+C organizations are made at 10 percent risk adjusted rates and 90 percent demographically adjusted rates for years 2000 through 2003. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000, enacted on December 21, 2000, stipulates that the risk adjustment methodology for 2004 and succeeding years should be based on data from inpatient hospital and ambulatory settings. BIPA contains a provision that phases in future risk adjusted payments as follows: 30 percent in 2004; 50 percent in 2005; 75 percent in 2006; and 100 percent in 2007.

The collection of physician encounter data, which began on October 1, 2000, and hospital outpatient encounter data, which began on April 1, 2001, was suspended from May 25, 2001 through July 1, 2002. The Secretary suspended the submission of physician and hospital outpatient encounter data in May 2001 and directed us to develop a risk adjustment approach that balances payment accuracy with data burden. Since then, we have worked extensively with M+C organizations, their associations, and other interested parties to develop a risk adjustment approach that reduces the burden of data collection for M+C organizations by about 98 percent. We have reduced the burden by decreasing the number of data elements (from 50 to only 5 elements) to be submitted, only requiring submission of diagnoses that are needed for calculating payments, and creating a simplified data submission format and processing system. Submission of ambulatory risk adjustment data will resume on October 1, 2002 for dates of service beginning July 1, 2002. Instructions on this process will be provided to M+C organizations in April 2002. A new processing system will be operational on October 1, 2002 for all types of risk adjustment data (hospital inpatient, physician, and hospital outpatient).

We are announcing this training to provide individuals and M+C organizations an opportunity to obtain the necessary training to submit risk adjustment data accurately, timely, and in accordance with our requirements. The training objectives are to understand data coding and requirements, risk score calculation, the submission process and schedule, and the new risk adjustment processing system. The agenda will include presentations by our staff and Aspen Systems Corporation staff, and question-and-answer sessions.

The training will consist of the following topics:

- Background of risk adjustment methodology.
- Overview of the risk adjustment process.
- Data collection.
- Risk adjustment processing system file format.
- Risk adjustment processing system edits.
- Reports/error resolutions.
- Health plan management system overview.

A copy of the training agenda is available at: *www.aspenxnet.com/meetingagenda.htm*

This training is designed for M+C organization staff responsible for collection and submission of risk adjustment data, third party contractors that submit risk adjustment data on behalf of an M+C organization, and M+C provider training staff.

**Registration**

Registration for this training is required. Each training site has a limited number of spaces available for participants. Therefore, registration for M+C organizations is limited to two attendees for all locations and is on a first come, first served basis. M+C organization staff will receive priority registration consideration due to training space limitations. If an M+C organization has contracted with a third party to submit risk adjustment data and the third party wants to attend the training, indicate this information under ''Type of Organization'' on the registration form. A waiting list will be available for additional requests.

Registration can be completed via the Internet at the following Web site: *www.aspenxnet.com/registration.* A confirmation notice with additional training location information will be sent to attendees upon finalization of registration. Attendees will be responsible for the cost and arrangement of their own transportation, lodging, and meals.

Attendees will be provided with training materials at the time of the training. After the scheduled training sessions, materials will be available at *www.hcfa.gov* and *www.cms.hhs.gov.*

(Authority: Sections 1851 through 1859 of the Social Security Act (42 U.S.C. 1395w–21 through 1395w–28)).

Dated: April 23, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–10322 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3097–N]**

### Medicare Program; Meeting of the Medical and Surgical Procedures Panel of the Medicare Coverage Advisory Committee—June 12, 2002

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a public meeting of the Medical and Surgical Procedures Panel (the Panel) of the Medicare Coverage Advisory Committee (the Committee). The Panel provides advice and recommendations to the Committee about clinical issues. The Committee advises us on whether adequate evidence exists to determine whether specific medical items and services are reasonable and necessary under Medicare law. The panel will discuss the quality of evidence regarding the use of deep brain stimulation for the treatment of Parkinson's disease. In addition, the panel will make recommendations concerning the issues presented. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

**DATES:** *Meeting Date:* The public meeting announced in this notice will be held on Wednesday, June 12, 2002, from 7:30 a.m. to 3 p.m., E.D.T.

*Deadline for Presentations and Comments:* May 31, 2002, 5 p.m., E.D.T.

*Special Accommodations:* Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary,

CMS Office of Clinical Standards and Quality, by May 24, 2002 (see **FOR FURTHER INFORMATION CONTACT**).

**ADDRESSES:** *The Meeting:* The meeting will be held at the Baltimore Convention Center, Room 337–338, One West Pratt Street, Baltimore, MD 21201.

*Presentations and Comments:* Submit formal presentations and written comments to Michelle Atkinson, Executive Secretary, CMS Office of Clinical Standards and Quality at telephone number (410) 786–2881, or e-mail address *matkinson@CMS.hhs.gov,* or via regular mail at: Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, Maryland 21244.

*Website:* You may access current information about this meeting at *www.hcfa.gov/coverage/8b1.htm.*

*Hotline:* You may access current information about this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

**FOR FURTHER INFORMATION CONTACT:** Michelle Atkinson, (410) 786–2881, *matkinson@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (the Committee), which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the Medical and Surgical Procedures Panel (the Panel) of the Committee.

*Current Panel Members*

Alan M. Garber, M.D., Ph.D.; Michael D. Maves, M.D., M.B.A.; Angus M. McBryde, M.D., F.A.C.S.; H. Logan Holtgrewe, M.D., F.A.C.S.; Kenneth P. Brin, M.D., Ph.D.; Les J. Zendle, M.D.; Bruce Sigsbee, M.D.; James P. Rathmell, M.D.; Phyllis E. Greenberger, M.S.W.; and Marshall S. Stanton, M.D.

*Meeting Topic*

The Panel provides advice and recommendations to the Committee about clinical issues. The Committee advises us on whether specific medical items and services are reasonable and necessary under Medicare law. The panel will discuss the evidence, hear presentations and public comment, and make recommendations regarding the use of deep brain stimulation for the treatment of Parkinson's disease. Background information about this topic, including panel materials, is available on the internet at *http://www.hcfa.gov/coverage/8b3-jjj.htm.*

*II. Meeting Format*

This meeting is open to the public. The Panel will hear oral presentations from the public for approximately 45 minutes. The Panel may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section, and submit the following by the *Deadline for Presentations and Comments* date listed in the **DATES** section of this notice: a brief statement addressing the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of time required to make the presentation. A written copy of your presentation must be provided to each Panel member before offering your public comments. We will request that you disclose at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

The Panel will deliberate openly about the issues discussed after public and CMS presentations. Interested persons may observe the deliberations, but the Panel will not hear further comments during this time except at the request of the chairperson. The Panel will also allow a 15-minute unscheduled open public session for attendees to address issues specific to the topic. At the conclusion of the day, the members will vote and the Panel will make its recommendation.

**Authority:** 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 11, 2002.

**Jeffrey L. Kang,**

*Director, Office of Clinical Standards and, Quality, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–10200 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–4036–N]**

### Medicare Program: Meeting of the Advisory Panel on Medicare Education—May 23, 2002

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Public Law 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on May 23, 2002. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

**DATES:** *The Meeting:* The meeting is scheduled for May 23, 2002, from 9 a.m. to 5 p.m., Eastern Daylight Savings Time.

*Deadline for Presentations and Comments:* May 16, 2002, 12 noon, Eastern Daylight Savings Time.

**ADDRESSES:** The meeting will be held at the Wyndham Washington, DC, 1400 M Street, NW., Washington, DC, 20005, (202) 429–1700.

**FOR FURTHER INFORMATION CONTACT:** Nancy Caliman, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, S2–23–05, Baltimore, MD, 21244–1850, (410) 786–5052. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.hcfa.gov/events/apme/homepage.htm*) for additional information and updates on committee activities, or contact Ms. Caliman via e-mail at *ncaliman@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

**SUPPLEMENTARY INFORMATION:** Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on

January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 18, 2001. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program:

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

*The current members of the Panel are:* David Baldridge, Executive Director, National Indian Council on Aging; Carol Cronin, Chairperson, Advisory Panel on Medicare Education; and Jennie Chin Hansen, Executive Director, On Lok Senior Health Services.

The agenda for the May 23, 2002 meeting will include the following:

- Swearing in and introduction of new members.
- Recap of the previous (February 13, 2002) meeting.
- CMS update/issues.
- *Medicare & You* overview and update.
- Long Term Care Quality Initiative.
- Update on the Fall Medicare Campaign.
- Annual report of the Advisory Panel on Medicare Education.
- Public comment.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should contact Ms. Caliman by 12 noon, May 16, 2002. A written copy of the oral presentation should also be submitted to Ms. Caliman by 12 noon, May 16, 2002. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Caliman by 12 noon, May 16, 2002. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodations should contact Ms. Caliman at least 15 days before the meeting.

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 23, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–10323 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Medicare & Medicaid Services

**[CMS–1215–N]**

## Medicare Program; June 3, 2002, Meeting of the Practicing Physicians Advisory Council

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council). The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). These meetings are open to the public.

**DATES:** The meeting is scheduled for June 3, 2002, from 8:30 a.m. until 5 p.m. e.s.t.

**ADDRESSES:** The meeting will be held in the Multipurpose Room, at CMS Headquarters, 7500 Security Blvd., Baltimore, MD 21244–1850.

**MEETING REGISTRATION:** Persons wishing to attend this meeting must contact Diana Motsiopoulos, The Council Administrative Coordinator, at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379, at least 72 hours in advance to register. Persons not registered in advance will not be permitted into the building and will not be permitted to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

**FOR FURTHER INFORMATION CONTACT:** Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Blvd., Mail Stop C5–17–14, Baltimore, MD 21244–1850, 410–786–3379. News media representatives should contact the CMS Press Office, (202) 690–6145. Please refer to the CMS Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.hcfa.gov/medicare/ppacsite.htm* for additional information and updates on committee activities.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Secretary is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of fifteen physicians, each of whom must have submitted at least two hundred fifty claims for physicians' services under Title XVIII in the previous year. Members shall include both participating and nonparticipating physicians and physicians practicing in rural and underserved urban areas. At least eleven members of the Council shall be physicians as described in section 1861(r)(1) of the Act (that is, M.D.s or D.O.s). The remaining four members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action prior to its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Richard Bronfman, D.P.M.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Joseph Heyman, M.D.; Stephen A. Imbeau, M.D.; Joe Johnson, D.O.; Christopher Leggett, M.D.; Dale Lervick, O.D.; Barbara McAneny, M.D.; Angelyn L.

Moultrie-Lizana, D.O.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Victor Vela, M.D.; and Douglas L. Wood, M.D.

The meeting will commence with a Council update on the status of prior recommendations, followed by discussion and comment on the following agenda topics:

- Physician's Regulatory Issues Team (PRIT) update
- Medicaid Overview
- Evaluation and Management Guidelines
- Update Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
- Claims Processing
- Beneficiary Access
- Physician Fee Schedule

For additional information and clarification on these topics, contact the Executive Director, listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual physicians or medical organizations that represent physicians wishing to make a 5-minute oral presentation on agenda issues should contact the Executive Director by 12 noon, May 24, 2002, to be scheduled. Testimony is limited to agenda topics only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks must be submitted to Diana Motsiopoulos, Administrative Coordinator no later than 12 noon, May 24, 2002, for distribution to Council members for review prior to the meeting. Physicians and medical organizations not scheduled to speak may also submit written comments to the Administrative Coordinator for distribution. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379 at least 10 days before the meeting.

**Authority:** (Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)).

Dated: April 17, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–10203 Filed 4–25–02; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 62, No. 85, pp. 24121–24122 dated May 2, 1997 and **Federal Register**, Vol. 67, No. 17, p. 3721 dated January 25, 2002) is amended to reflect changes to the Office of Strategic Planning (OSP), Office of Communications and Operations Support (OCOS), and the Office of Information Services (OIS). Specifically, OSP is retitled as the Office of Research, Demonstration, and Information and the Division of Freedom of Information (DFI) is realigned from OIS to OCOS. The transfer of DFI will consolidate responsibility for coordination and oversight of all public inquiry functions within OCOS.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Public Affairs Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Research, Demonstration, and Information (FAK)
7. Office of Communications and Operations Support (FAL)
8. Office of Clinical Standards and Quality (FAM)
9. Office of the Actuary (FAN)
10. Center for Medicaid and State Operations (FAS)
11. Northeastern Consortium (FAU)
12. Southern Consortium (FAV)
13. Midwestern Consortium (FAW)
14. Western Consortium (FAX)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statements in their entirety for the Office of Communications and Operations Support and the Office of Information Services. The new functional statements read as follows:

**7. Office of Communications and Operations Support (FAL)**

- Serves a neutral broker coordination role, including scheduling meetings and briefings for the Administrator and coordinating communications between and among central and regional offices, in order to ensure that emerging issues are identified early, all concerned components are directly and fully involved in policy development/decision making, and that all points of view are presented.
- Coordinates and monitors assigned Agency initiatives which are generally tactical, short-term, and cross-component in nature (e.g., legislative implementation).
- Provides operational and analytical support to the Senior Leadership.
- Manages speaking and meeting requests for or on behalf of the Administrator and Deputy Administrator and researches and writes speeches.
- Coordinates agency-wide communication policies for correspondence, manuals, regulations, and responses to audits.
- Coordinates the preparation of manuals and other policy instructions to insure accurate and consistent implementation of the Agency's programs.
- Manages the Agency's system for developing, clearing and tracking regulations, setting regulation priorities and corresponding work agendas; coordinates the review of regulations received for concurrence from departmental and other government agencies and develops routine and special reports on the Agency's regulatory activities.
- Manages the agency-wide clearance system to insure appropriate involvement from Agency components and serves as a primary focal point for liaison with the Executive Secretariat in the Office of the Secretary.
- Operates the agency-wide correspondence tracking and control system and provides guidance and technical assistance on standards for content of correspondence and memoranda.
- Provides management and administrative support to the Office of the Attorney Advisor and staff.
- Acts as audit liaison with the General Accounting Office (GAO) and the HHS Office of Inspector General (OIG).
- Develops and maintains agency-wide executive management information reporting and tracking systems (including the Management

Reform Initiative and Reports to Congress) significant item reports, legislative (Balanced Budget Act) implementation, and management information reports for the Office of the Administrator.

• Acts as the Committee Management Official for CMS under the Federal Advisory Committee Act (FACA).

• Develops standard processes for all CMS FACA committees and provides operational and logistical support to CMS components for conferences and on all matters relating to Federal Advisory Committees.

• Conducts activities necessary to the receipt, management, response, and reporting requirements of the Department under the Freedom of Information Act (FOIA) regarding all requests received by CMS.

• Maintains a log of all FOIA requests received by the central office, refers requests to the appropriate components within headquarters, the regions or among carriers and intermediaries for the collection of the documents requested. Makes recommendations and prepares replies to requesters, including denials of information as permitted under FOIA, and drafts briefing materials and responses in connection with appeals of denial decisions.

• Directs the maintaining and amending of CMS-wide records for confidentiality and disclosure to the Privacy Act to include: planning, organizing, initiating and controlling privacy matching assignments.

**10. Office of Information Services (FBB)**

• Serves as the focal point for the responsibilities of the Agency's Chief Information Officer in planning, organizing, and coordinating the activities required to maintain an agency-wide Information Resources Management (IRM) program.

• Ensures the effective management of the Agency's information technology, and information systems and resources (e.g., implementation and administration of a change management process).

• Provides workstation, server, and local area network support for CMS-wide activities. Works with customer components to develop requirements, needs and cost benefit analysis in support of the LAN infrastructure including hardware, software and office automation services.

• Serves as the lead for developing and enforcing the Agency's information architecture, policies, standards, and practices in all areas of information technology.

• Develops and maintains enterprise-wide central databases, statistical files, and general access paths, ensuring the quality of information maintained in these data sources.

• Directs Medicare claims payment systems activities, including CWF operation, as well as systems conversion activities.

• Develops ADP standards and policies for use by internal CMS staff and contractor agents in such areas as applications development and use of the infrastructure resources.

• Manages and directs the operation of CMS hardware infrastructure, including the Agency's Data Center, data communications networks, enterprise infrastructure, voice/data switch, audio conferencing and other data centers supporting CMS programs.

• Leads the coordination, development, implementation and maintenance of health care information standards in the health care industry.

• Provides Medicare and Medicaid information to the public, within the parameters imposed by the Privacy Act.

• Performs information collection analyses as necessary to satisfy the requirements of the Paperwork Reduction Act.

• Directs CMS's ADP systems security program with respect to data, hardware, and software.

• Directs and advises the Administrator, senior staff, and components on the requirements, policies, and administration of the Privacy Act.

Dated: March 27, 2002.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 02–9206 Filed 4–25–02; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. OCS 2002–08]**

### Request for Applications Under the Office of Community Services Fiscal Year 2002 Assets for Independence Demonstration Program (IDA Program)

**AGENCY:** Office of Community Services (OCS), ACF, DHHS.

**ACTION:** Notice; correction.

**SUMMARY:** This notice corrects the announcement of availability of funds and request for competitive applications under the Office of Community Services' Assets for independence Demonstration Program published on April 15, 2002 (67 FR 18312).

**FOR FURTHER INFORMATION CONTACT:** Sheldon Shalit (202) 401–4807, *sshalit@acf.dhhs.gov,* or Richard Saul (202) 401–9341 *rsaul@acf.dhhs.gov.* Department of Health of Human Services, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington DC 20447.

**Correction**

In the **Federal Register** issued April 15, 2002 (67 FR 18312), make the following corrections:

1. On page 18333 near the bottom of the 2nd column, under A. SF–424–Application for Federal Assistance (Attachment A) remove:

''Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations: I—Individual projects under Priority Area 1.0'';

and replace with:

''Item 11. Enter a brief descriptive title of the project.''

2. On page 18333 at the top of the 3rd column, remove:

''Item 15a. This amount should be no greater than $1,000,000 for applications under Priority Area 1.0, and in any case no greater than $1,000,000 less any previous AFIA grants awarded to the applicant.'';

and replace with:

''Item 15a. This amount should be no greater than $1,000.000 and in no case can it be greater than the committed cash non-Fedral share.''

3. On page 18333 near the top of the 3rd column, under B. SF–4244–Budget Information—Non-Construction Progams (Attachment B), remove:

''Column (e)–(g): enter that appropriate amounts in items 1. and 5. (Totals). Column e should not be more than $1,000,000 applications under Priority Area 1.0, and in no case can it be more than the committed non-Federal matching cash contributions or more than $1,000,000 less any previous AFIA grants awarded to the applicant.'';

and replace with:

''Columns (e)–(g): enter the appropriate amounts in items 1, and 5. (Totals). Column (e) should not be more than $1,000,000, and in no case can it be more than the committed cash non-Federal share.''

4. On page 18334 at the top of the 1st column, remove:

''Column 5. Enter not less than 85% of OCS grant funds for the five year budget by Class Categories under 'other', showing a total of not more than $1,000,000 less any previous AFIA grants awarded to the applicant.'';

and replace with:

''Column 5: enter not less than 85% of OCS grant funds for the five year budget by Class Categories under 'other', showing a total of not more than $1,000,000.''

Dated: April 19, 2002.

**Clarence H. Carter,**

*Director, Office of Community Services.*

[FR Doc. 02–10265 Filed 4–25–02; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Emergency Medical Service for Children; Cooperative Agreement for Emergency Medical Services for Children Central Data Management and Coordinating Center Demonstration Project

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that up to $450,000 in fiscal year (FY) 2002 funds is available to fund one cooperative agreement for a demonstration project to establish, administer, and manage a Central Data Management and Coordinating Center (CDMCC) for the Emergency Medical Services for Children Network Development Demonstration Project (EMSC–NDDP). This cooperative agreement would demonstrate the feasibility and value of integrating data collection, data management, and data analysis guidelines, to serve as a central repository for generated data, and as central resource network databases for the EMSC–NDDP, and the public. The cooperative agreement (CFDA #93.127L) will be made under the program authority of the Public Health Service Act, Title XIX, Section 1910 (42 U.S.C. 300w–9), Emergency Medical Services for Children, and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. The Project will be approved for up to a 3-year period, with an average yearly award of $450,000. However, funding beyond FY 2002 is contingent upon the availability of funds.

**DATES:** Applicants are expected to notify MCHB of their intent by June 14, 2002. The deadline for receipt of applications is July 15, 2002. Applications will be considered ''on time'' if they are either received on or before the deadline date or postmarked on or before the deadline date. The projected award date is September 3, 2002.

**ADDRESSES:** To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) or register on-line at: *http://www.hrsa.gov/_order3.htm* directly. The Central Data Management and Coordinating Center Program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use Catalog of Federal Domestic Assistance (CFDA) #93.127L when requesting application kits. The CFDA is a Government wide compendium of enumerated Federal programs, project services, and activities that provide assistance. All applications must be mailed or delivered to Grants Management Officer, MCHB: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879: telephone 1–877–477–2123: e-mail: *hrsagac@hrsa.gov.*

Necessary application forms and an expanded version of this **Federal Register** notice may be downloaded in either Microsoft Office 2000 or Adobe Acrobat format (.pdf) from the MCHB home page at *http://www.mchb.hrsa.gov.* Please contact Joni Johns, at 301/443–2088, or *jjohns@hrsa.gov/,* if you need technical assistance in accessing the MCHB home page via the Internet.

This notice will appear in the **Federal Register** and/or HRSA home page at *http://www.hrsa.gov/.* **Federal Register** notices are found on the World Wide Web by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

*Letter of Intent:* Applicants are expected to notify MCHB of their intent by June 14, 2002. Notification of intent to apply can be made in one of three ways: telephone, Kishena Wadhwani, Ph.D., 301–443–2927; e-mail, *kwadhwan@hrsa.gov;* mail, Research Branch, MCHB Division of Research, Training and Education; Parklawn Building, Room 18A–55; 5600 Fishers Lane; Rockville, MD 20857, or Cindy Doyle, R.N., telephone 301–443–3888; e-mail, *cdoyle@hrsa.gov;* mail EMSC Program, MCHB Division of Injury and EMS; Parklawn Building, Room 18A–38; 5600 Fishers Lane; Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Kishena Wadhwani, Ph.D., 301–443–2927, e-mail: *kwadhwan@hrsa.gov/* or Cindy Doyle, R.N. 301–443–3888, e-mail: *cdoyle@hrsa.gov* (for questions specific to project objectives and activities of the program; or the required Letter of Intent, which is further described in the application kit); Jamie King, 301–443–1123, e-mail *jking@hrsa.gov* for grants policy, budgetary, and business questions).

**SUPPLEMENTARY INFORMATION:** Improving the care of ill and injured pediatric patients has been a major goal of the EMSC program since its inception in 1984. This program is administered by MCHB in collaboration with the National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation. Almost every State has received EMSC funding for demonstration projects to expand and improve pediatric emergency care and many new methods have been implemented, including system development, education of emergency providers, integration of pediatric components into adult emergency medical services (EMS) systems, and data collection and analysis to delineate existing and emergent problems and develop cause-and-effect hypotheses.

Despite the many advances in creating and improving EMS systems and incorporating pediatric components into them, relatively little empirical data has been collected about how EMS and EMSC systems operate, about the efficacy of the clinical procedures being employed at the hospital level to treat and manage children who have experienced an emergency event, or about the efficacy of the transport systems and clinical procedures used to treat and manage children prior to their arrival at the hospital. Information on the cost effectiveness of the various EMS and EMSC system configurations and of the various ways being used to handle clinical pediatric emergencies is also lacking.

The dearth of nationwide, science-based knowledge about pediatric emergencies and how to best manage them has not gone unnoticed. The issue has been raised by professionals in the field since 1991, who have found that it constitutes a major barrier to the reduction of the annual toll in mortality and morbidity. More recently, in 2001, a joint report from the National Association of EMS Physicians and NHTSA delineates what areas—unspecified as to adult or children—need to be addressed. This report emphasizes that because the incidence rates for all emergency events are relatively small, more so for children, the pooling of data in sites and treatment experiences is highly desirable.

The MCHB/HRSA has established EMSC–NDDP Cooperative Agreements with four (4) academic medical centers

throughout the United States, to act as regional centers or ''nodes.'' Under these cooperative agreements, Regional Nodes are working together to design and implement multi-site studies of pediatric emergencies and best practices for their management. The Steering Committee, which is composed of the principal investigators of the four cooperative agreements, representatives from each hospital emergency department affiliated with the principal investigators within Regional Nodes, MCHB/HRSA program staff, and the Principal Investigator for the Central Data Management and Analysis Center (under this cooperative agreement), will provide leadership and direction for the overall governance of the EMSC–NDDP.

This announcement provides for the establishment of a Central Data Management and Coordinating Center (CDMCC) to provide statistical, clinical coordination, technical, regulatory, and administrative support for the EMSC-NDDP. The period of performance for this cooperative agreement is three years.

**Authorization:** Title XIX, Section 1910, Public Health Service Act (42 U.S.C. 300w–9).

**Purpose**

The purpose of this cooperative agreement is to support the establishment, administration, and management of a Central Data Management and Coordinating Center (CDMCC) to provide EMSC–NDDP with data collection, data management, data analysis guidelines, in order to demonstrate how it can serve as a central repository for generated data and serve as a central resource network of data bases for the EMSC–NDDP and the public. The purpose of the EMSC–NDDP is to demonstrate the feasibility and value of an infrastructure or network designed to be the platform from which to conduct investigations on the efficacy of treatments, transport, and care responses, including those preceding the arrival of children to hospital emergency departments.

**Eligibility**

Eligibility is open to State governments and accredited schools of medicine. The term ''schools of medicine'' for the purpose of this announcement is defined as having the same meaning as set forth in section 799B(1)(A) of the PHS Act (42 U.S.C. 295p(1)(A)). ''Accredited'' in this context has the same meaning as set forth in section 799B(1)(E) of the PHS Act (42 U.S.C. 295p(1)(E)).

**Funding Level/Project Period**

The administrative and funding instrument to be used for the national CDMCC will be a cooperative agreement, in which substantial MCHB scientific and/or programmatic involvement with the awardees is anticipated during the performance of the project. Under the terms of this cooperative agreement, in addition to the required monitoring and technical assistance, Federal responsibilities will include:

(1) Provision of services of experienced federal personnel as participants in the planning and development of all phases of this activity.

(2) Participation, as appropriate, in meetings conducted during the period of the cooperative agreement.

(3) Ongoing review and concurrence with activities and procedures to be established and implemented for accomplishing the scope of work.

(4) Participation in the preparation of project information prior to dissemination.

(5) Participation in the presentation of information on project activities.

(6) Assistance with the establishment of contacts with Federal and State agencies, MCHB grant projects, and other contacts that may be relevant to the project's mission; and referrals to these agencies.

Approximately $450,000 in FY 2002 funds is available to support this cooperative agreement. A single award will be made in FY 2002, with a project period of up to three years. The initial budget period is expected to be 12 months, with subsequent budget periods being 12 months. Continuation of any project from one budget period to the next is subject to satisfactory performance, availability of funds, and program priorities.

**Review Criteria**

Applications that are complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HRSA grants management policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval will be discussed fully by the ad hoc peer review group and assigned a priority score for funding.

Applications will be reviewed using a set of criteria covering the following areas:

1. Soundness and practicality of the technical approach for executing the requirements as specified in the Terms and Conditions of the Award

2. Principal Investigator's documented history of leadership in the conduct of multi-site clinical and observational studies and a publication record.

3. Documented availability, training, qualifications, expertise, relevant experience, education and competence of the clinical, analytical, technical, and administrative staff and any other proposed personnel (including proposed subcontractors and consultants), to perform the requirements of the work activities

4. Adequacy of the administrative and organizational framework

5. Budget requests commensurate with the complexities involved in what is being proposed and carefully justified;

6. Positive evaluation of pre-award site visit (if recommended by the review panel).

Final criteria used to review and rank applications for this competition are included in the application kit. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged.

**Paperwork Reduction Act**

If the cooperative agreement described in this announcement involves data collection activities that fall under the purview of the Paperwork Reduction Act of 1995, OMB clearance will be sought prior to collection of data.

Dated: April 19, 2002.

**Elizabeth M. Duke,**

*Administrator.*

[FR Doc. 02–10278 Filed 4–25–02; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2002 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, DHHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must*

obtain a copy of the Guidance for Applicants (GFA), including Part I, *Targeted Capacity Expansion Grants to Address Mental Health Service Needs of Public Safety Workers Responding to Terrorist Attacks (SM 02–00)*, and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.*

| Activity | Application deadline | Est. funds FY 2001 | Est. number of awards | Project period (years) |
|---|---|---|---|---|
| Targeted Capacity Expansion Grants to Address Mental Health Service Needs of Public Safety Workers Responding to Terrorist Attacks. | June 19, 2002 ..... | $2,200,000 | 6 | 3 |

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the Federal Register (Vol. 58, No. 126) on July 2, 1993.

**General Instructions**

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015. 800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov*.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

*Purpose*

The Substance Abuse and Mental Health Services Administration (SAMHSA), The Center for Mental Health Services (CMHS), announces the availability of fiscal year 2002 funds to support the provision of mental health services to public safety workers who respond to major national disasters such as the September 11, 2001, terrorist attacks.

The purpose of this program is to provide high-quality community-based mental health services for fire and rescue personnel, police officers, and other workers directly involved in recovery efforts resulting from such events. In particular, the program is aimed at addressing the needs of workers engaged in rescue efforts or in searches for the missing and deceased. Emphasis will be placed on services that build upon the available evidence of effective ways to promote healthy coping behaviors in response to traumatic exposure and grief.

*Eligibility*

States, political subdivisions of States, private nonprofit agencies, and Indian Tribes and tribal organizations may apply for targeted capacity expansion grants. For example, the following are eligible to apply:

- Community-based mental health providers.
- Nonprofit employee assistance programs.
- Occupational health organizations.
- Voluntary organizations, including faith-based organizations.

Funds under this announcement are intended to provide interim and long-term services for public safety workers involved in the response to the September 11 terrorist attacks. Therefore, applications are limited to programs from States that were directly impacted by the September 11 attacks (New York, Virginia, and Pennsylvania) and to programs from adjacent States (New Jersey, Connecticut, Massachusetts, Rhode Island, Maryland and the District of Columbia), where significant numbers of public safety workers were involved in response efforts through mutual aid agreements. Applicants must provide a detailed justification of needs directly related to the September 11 attacks.

*Availability of Funds*

In FY 2002, *approximately* $2,200,000 will be available for up to six awards.

*Period of Support*

The award may be requested for up to three years.

*Criteria for Review and Funding*

*General Review Criteria:* Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications*

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria.

*Additional award criteria may be included in the application guidance materials.*

Catalog of Federal Domestic Assistance Number: 93.243.

*Program Contact*

For questions concerning program issues, contact: Seth Hassett, M.S.W., Public Health Advisor, 5600 Fishers Lane, Room 17C–20, Rockville, MD 20857.

(301) 443–4735.

E-mail: *shassett@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, Substance Abuse and Mental Health, Services Administration, 5600 Fishers Lane 13–103, Rockville, MD 20857.

(301) 443–9666.

E-Mail: *shudak@samhsa.gov.*

*Public Health System Reporting Requirements*

The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not

transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

*PHS Non-Use of Tobacco Policy Statement*

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*Executive Order 12372*

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 18, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–10228 Filed 4–25–02; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Fiscal Year (FY) 2002 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TI–02–009),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

| Activity | Application deadline | Est. Funds FY 2002 | Est. No. of Awards | Project Period (years) |
|---|---|---|---|---|
| Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services. | July 10, 2002 ..... | $24,500,000 | 50 | 5 |

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

### General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from:

National Clearinghouse for Alcohol and Drug Information (NCADI),
P.O. Box 2345,
Rockville, MD 20847–2345.
Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

### Purpose

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2002 funds for grants to enhance and expand substance abuse treatment and/or outreach services in conjunction with HIV/AIDS services in African American, Latino/Hispanic, and/or other racial or ethnic communities highly affected by the twin epidemics of substance abuse and HIV/AIDS.

All of the applicants must target one or more of the following high-risk substance abusing populations in African-American, Hispanic/Latino, and/or other racial/ethnic minority communities:

- Women, including women and their children;
- Adolescents (individuals who are 12–17 years old);
- Men who have sex with men (MSM) who use either injection or non-injection drugs;
- Individuals who have been released from prisons and jails within the past 2 years.

*Eligibility*

Funding will be directed to activities designed to deliver services specifically targeting racial and ethnic minority populations impacted by HIV/AIDS. Eligible entities may include: not for profit community-based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, State and local governments agencies and tribal governments and tribal/urban Indian entities and organizations. Faith based and community-based organization are eligible to apply. This general statement is subject to program specific statutory and/or regulatory requirements.

There are three additional requirements:

1. The applicant agency and all direct providers of substance abuse treatment and HIV/AIDS services with linkages to the applicant agency must be in compliance with all local, city, county and State licensing and accreditation/certification requirements.

2. The applicant agency, if a direct provider of substance abuse treatment and HIV/AIDS services, and all direct providers of substance abuse treatment and HIV/AIDS services involved in the project must have been providing those services for a minimum of two years prior to the date of this application.

3. Only applicants located in close proximity to and proposing to provide services in one of the following groups are eligible to apply:

(a) *Group 1*—Metropolitan Statistical Areas (MSAs)with minority AIDS case rates greater than 25 out of 100,000 people. These are the MSAs not previously funded under prior CSAT TCE/HIV and HIV Outreach grant announcements and that do not qualify under the overall State AIDS rate, but have high AIDS case rates among minority communities.

(b) *Group 2*—States with an annual AIDS case rate of, or greater than, 10 out of 100,000 people, or MSAs with an annual AIDS case rate of, or greater than, 15 out of 100,000 people.

*Availability of Funds*

Approximately $24.5 million will be available for up to 50 awards in FY 2002. Of this,

- $15.0 million is available for up to 30 grants in Metropolitan Statistical Areas (MSAs) listed in Group 1.
- $9.5 million is available for up to 20 States and MSAs listed in Group 2.

Applicants may request up to, but not more than $500,000 in total costs (direct and indirect) per year.

*Period of Support*

Grants will be awarded for a period of up to 5 years. Annual awards will depend on continued availability of funds to SAMHSA/CSAT and progress achieved by grantee.

*Criteria for Review and Funding*

*General Review Criteria:* Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*Award Criteria for Scored Applications*

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

*Program Contact:* For questions concerning program issues, contact: David C. Thompson, Div. Of Practice and Systems Development, CSAT/SAMHSA, Rockwall II, 7th Floor, 5600 Fisher's Lane, Rockville, MD 20857. (301) 443–6523. E-mail: *dthompso@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-mail: *shudak@samhsa.gov.*

*Public Health System Reporting Requirements*

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

*PHS Non-Use of Tobacco Policy Statement*

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*Executive Order 12372*

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive

any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 22, 2002.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 02–10366 Filed 4–25–02; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4730–N–17]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information lines at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocated the building to their own site at their own expense. Homeless assistance provider interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, the property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Julie Jones-Conte, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Program Integration Office, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; *DOT:* Mr. Rugene Spruill, Principal, Space Management, SVC–140 Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW., Room 2310, Washington, DC 20590; (202) 366–4246; *Energy:* Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: April 19, 2002.

**John D. Garrity,**

*Director, Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 4/26/02**

**Suitable/Available Properties**

*Buildings (by State)*

Alabama

Fed. Bldg./Courthouse
1710 Alabama Ave.
Jasper Co: AL 35502–
Landholding Agency: GSA
Property Number: 54200220001
Status: Excess
Comment: approx. 15,792 sp. ft., approx. 38% of bldg. leased, most recent use—offices
GSA Number: 4–G–AL–771

Idaho

Bldg. CF617
Idaho Natl. Eng. & Env. Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200220022
Status: Excess
Comment: 11484 sq. ft. concrete, needs major rehab, presence of lead paint, off-site use only

Michigan

Pontiac Federal Bldg.
142 Auburn Ave.
Pontiac Co: Oakland MI
Landholding Agency: GSA
Property Number: 54200220005
Status: Surplus
Comment: 11,910 sq. ft., most recent use—office
GSA Number: 1–G–MI–809

New York

Ava Test Annex
11518 Webster Hill Road
Boonville Co: NY
Landholding Agency: GSA
Property Number: 54200220007
Status: Excess
Comment: 11,000 sq. ft. bldg. on 297 acres, needs repair, presence of asbestos/lead paint, portion of land consists of road easements and wetlands
GSA Number: 1–D–NY–0875

Pennsylvania

Bldg, 216
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220008
Status: Excess
Comment: 121,604 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 504B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220009
Status: Excess
Comment: 4824 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 608D
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220010
Status: Excess
Comment: 8400 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 609B
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220011
Status: Excess
Comment: 2100 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 611
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220012
Status: Excess
Comment: 425 sq. ft. concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 616
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220013
Status: Excess
Comment: 216 sq. ft., needs rahab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Rhode Island

Bldg. 8
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220017
Status: Unutilized
Comment: 2800 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, meets Nat. Register criterion, off-site use only

Bldg. 30
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220018
Status: Unutilized
Comment: 150 sq. ft., poor condition, most recent use—switch house, off-site use only

Bldg. 46
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220019
Status: Unutilized
Comment: 3600 sq. ft., poor condition, possible asbestos/lead paint, most recent use office, off-site use only

Bldg. 53
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220020
Status: Unutilized
Comment: 2691 sq. ft., poor condition, possible asbestos/lead paint, most recent use—garage/office, off-site use only

Bldg. 55
Naval Ambulatory Care
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77200220021
Status: Unutilized
Comment: 135 sq. ft., poor condition, most recent use—storage, off-site use only

**Unsuitable Properties**

*Buildings (by State)*

Alabama

Bldg. 01404
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number 21200220001
Status: Excess
Reason: Extensive deterioration

Bldg. 00002
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number 21200220002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 03331
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number 21200220003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1140
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number 21200220004
Status: Unutilized
Reason: Extensive deterioration

Arizona

Bldg. 14471
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613–
Landholding Agency: Army
Property Number: 21200220005
Status: Excess
Reason: Extensive deterioration

Bldg. 15373
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613–
Landholding Agency: Army
Property Number: 21200220006
Status: Excess
Reason: Extensive deterioration

California

Bldgs. M0, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reason: Extensive deterioration

Bldgs. 2616

Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220001
Status: Excess
Reason: Extensive deterioration

Bldgs. 2634
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200220002
Status: Excess
Reason: Extensive deterioration

Bldg. 2643
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220003
Status: Excess
Reason: Extensive deterioration

Bldg. 2644
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220004
Status: Excess
Reason: Extensive deterioration

Bldg. 2645
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220005
Status: Excess
Reason: Extensive deterioration

Bldg. 2646
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220006
Status: Excess
Reason: Extensive deterioration

Bldg. 2659
Marine Corps Base
Camp Pendleton Co: CA 90255–
Landholding Agency: Navy
Property Number: 77200220007
Status: Excess
Reason: Extensive deterioration

Bldg. 391
U.S. Coast Guard
Pacific Strike Team
Novato Co: Marin CA 94934–
Landholding Agency: DOT
Property Number: 87200220005
Status: Underutilized
Reason: Secured Area

Colorado

Bldgs. 124, 129
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 371, 374, 374A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 376–378, 381
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220004
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 441–443, 452
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220005
Status: Excees
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 557, 559
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 561, 562
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 564, 566/A, 569
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220008
Status: Excess
Rasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 662, 663
Rocky Flats Env. Tech. Site
Golden Co: Jefferson Co 80020–
Landholding Agency: Energy
Property NumberL 41200220009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 666, 681
Rocky Flats Env. Tech. Site
Golden co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220010
Status: Excess
Reasons: Within 2000 fit. of flammable or explosive material; Secured Area

Bldgs. 701, 705–708
Roocky Flats Env. Tech. Site
Golden Co: Jefferson Co 80020–
Landholding Agency: Energy
Property Number: 41200220011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 714, 715, 718
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 731, 732
Rocky Flats Env. Tech. Site
Golden Co: Jefferson Co 80020–
Landholding Agency: Energy
Property Number: 41200220013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 750, 763–765
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 758, 790
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 850, 864–865
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 869, 879
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 881, 881F, 881H
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 883–885, 887
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 891
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 906, 991, 995
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Georgia

Bldg. 00420
Fort Gordon
Ft. Gordon Co: Rochmond GA 30905–
Landholding Agency: Army

Property Number: 21200220007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00479
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200220008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 18806
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200220009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 19210
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200220010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00933
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5233
Landholding Agency: Army
Property Number: 21200220011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00934
Fort Gillem
Ft. Gillem Co: Forest Park GA 30050–5233
Landholding Agency: Army
Property Number: 21200220012
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 6011
Naval Forces, Marianas
Marianas Co: GU 96540–
Landholding Agency: Navy
Property Number: 77200220024
Status: Unutilized
Reason: Secured Area

Hawaii

Bldg. C1180
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00316
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00343
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220015
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00638
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220016
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00651
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220017
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00700
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220018
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00701, 00703
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220019
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00702
Dillingham Military Rsv
Waialua Co: HI 96791–
Landholding Agency: Army
Property Number: 21200220020
Status: Unutilized
Reason: Extensive deterioration

Bldg. 120
Wheeler Army Airfield
Waialua Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220021
Status: Unutilized
Reason: Extensive deterioration

Iowa

Bldg. 01075
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 21200220022
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Kentucky

Bldgs. 02715, 02717, 02719
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200220026
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 02736, 05326
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200220027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02738
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200220028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07178
Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 21200220029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01049
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220030
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01308
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01487
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220032
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02758
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220033
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 04787, 04788–04800
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220034
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 04804, 04814, 04818
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220035
Status: Unutilized
Reason: Extensive deterioration

47 Bldgs.
Fort Knox
04958–04960, 04964–04966, 04970–04972, 04986
Ft. Knox Co: KY 40121–
Location: 04805, 04821, 04828, 04830, 04831, 04834–04836, 04839–04841, 04845–04847, 04853, 04871, 04872, 04876–04878, 04909, 04910, 04922–04924, 04927–04929, 04937–04939, 04943–04945. 04952–04954, 04956
Landholding Agency: Army
Property Number: 21200220036
Status: Unutilized
Reason: Extensive deterioration

40 Bldgs.
Fort Knox
04950, 4967, 4973, 4976, 4977, 4981, 4984
Ft. Knox Co: KY 40121–
Location: 04806–04808, 04811, 04813, 04822, 04823, 04827, 04837, 04848, 04854–04856, 04859–04861, 04879, 04883, 04887–04889, 04894, 04897, 04898, 04902, 04903, 04907, 04913, 04917, 04930, 04931, 04934, 04946
Landholding Agency: Army
Property Number: 21200220037
Status: Unutilized
Reason: Extensive deterioration

19 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–

Location: 04809, 04812, 04832, 04843, 04849, 04852, 04869, 04873, 04890, 04919, 04920, 04935, 04941, 04962, 04968, 04975, 04978, 04980, 04988
Landholding Agency: Army
Property Number: 21200220038
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04810, 04842, 04868, 04884, 04891, 04899, 04904, 04940, 04947, 04961, 04974, 04979, 04987
Landholding Agency: Army
Property Number: 21200220039
Status: Unutilized
Reason: Extensive deterioration

17 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04829, 04833, 04838, 04844, 04850, 04870, 04875, 04908, 04918, 04921, 04926, 04936, 04942, 04951, 04957, 04963, 04969
Landholding Agency: Army
Property Number: 21200220040
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04851, 04911, 04912, 04915, 04916
Landholding Agency: Army
Property Number: 21200220041
Status: Unutilized
Reason: Extensive deterioration

16 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 04857, 04858, 04885, 04886, 04892, 04893, 04895, 04896, 04905, 04906, 04932, 04933, 04948, 04949, 04982, 04983
Landholding Agency: Army
Property Number: 21200220042
Status: Unutilized
Reason: Extensive deterioration

Bldg. 04914
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220043
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 05023, 05030–05035
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220044
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 05024, 05025, 05026, 05028, 05029, 05036–05044
Landholding Agency: Army
Property Number: 21200220045
Status: Unutilized
Reason: Extensive deterioration

15 Bldgs.
Fort Knox
Ft. Knox Co: KY 40121–
Location: 05055, 05056, 05057, 05059–05070
Landholding Agency: Army
Property Number: 21200220046
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05214
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220047
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06112, 09212
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220048
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06803
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220049
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06811, 06815
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220050
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06819
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220051
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06827
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220052
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 06829, 06840
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220053
Status: Unutilized
Reason: Extensive deterioration

Bldg. 06848
Fort Knox
Ft. Knox Co: KY
Landholding Agency: Army
Property Number: 21200220054
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07011
Fort Knox
Ft. Knox Co: KY 40121–
Landholding Agency: Army
Property Number: 21200220055
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bldg. 00602
Adelphi Lab Center
Adelphi Co: MD 20783–
Landholding Agency: Army
Property Number: 21200220056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 00605
Adelphi Lab Center
Adelphia Co: MD 20783–
Landholding Agency: Army
Property Number: 21200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Michigan

5 Bldgs.
Fort Custer
Augusta Co: Kalamazoo MI 49012–
Location: 2621, 2614, 2608, 2701, 2721
Landholding Agency: Army
Property Number: 21200220058
Status: Excess
Reason: Extensive deterioration

Bldgs. 2706–2707
Fort Custer
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200220059
Status: Excess
Reason: Extensive deterioration

4 Bldgs.
Fort Custer
Augusta Co: Kalamazoo MI 49012–
Location: 2722, 2609, 2809, 2909
Landholding Agency: Army
Property Number: 21200220060
Status: Excess
Reason: Extensive deterioration

Bldg. 2727
Fort Custer
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200220061
Status: Excess
Reason: Extensive deterioration

Bldg. 3650
Fort Custer
Augusta Co: Kalamazoo MI 49012–
Landholding Agency: Army
Property Number: 21200220062
Status: Excess
Reason: Extensive deterioration

New Jersey

Bldg. 1222F
Picatinny Arsenal
Dover Co: NJ 07806–5000
Landholding Agency: Army
Property Number: 21200220063
Status: Unutilized
Reason: Extensive deterioration

Bldg. 195
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220001
Status: Excess
Reason: Secured Area

Bldg. 204
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220002
Status: Excess
Reason: Secured Area

Bldg. 208
U.S. Coast Guard

Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220003
Status: Excess
Reason: Secured Area

Bldg. 209
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220004
Status: Excess
Reason: Secured Area

New Mexico

TA–53, Bldg. 61
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 63
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 65
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration

Bldg. B118
Kirland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration

New York

Bldgs. B9008, B9009
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. B9016, B9017, B9018
Youngstown Training Site
Youngstown Co: Niagara NY 14132–
Landholding Agency: Army
Property Number: 21200220065
Status: Unutilized
Reason: Extensive deterioration

Bldgs. B9025, B9026, B9027
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220066
Status: Unutilized
Reason: Extensive deterioration

Bldgs. B9033, B9034
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220067
Status: Unutilized
Reason: Extensive deterioration

Bldg. B9042
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220068
Status: Unutilized
Reason: Extensive deterioration

Bldgs. B9050, B9051
Youngstown Training Site
Youngstown Co: Niagara NY 14131–
Landholding Agency: Army
Property Number: 21200220069
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. BT–423
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200220070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 11
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220026
Status: Excess
Reason: Secured Area

Bldg. 14A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220027
Status: Excess
Reason: Secured Area

Bldg. 15A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220028
Status: Excess
Reason: Secured Area

Bldg. 15C
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220029
Status: Excess
Reason: Secured Area

Bldg. 20K
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220030
Status: Excess
Reason: Secured Area

Bldg. 53B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220031
Status: Excess
Reason: Secured Area

Pennsylvania

Bldg. 99
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200220071
Status: Unutilized
Reason: Secured Area

Bldg. 106–114
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200220072
Status: Unutilized
Reason: Secured Area

Bldg. 459
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200220073
Status: Unutilized
Reason: Secured Area

Bldg. 13
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220014
Status: Excess
Reason: Extensive deterioration

Bldg. 311
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220015
Status: Excess
Reason: Extensive deterioration

Bldg. 608–C
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200220016
Status: Excess
Reason: Extensive deterioration

South Dakota

Residence
308 8th Ave., S.
Clear Lake Co: Deuel SD 57226–
Landholding Agency: GSA
Property Number: 54200220003
Status: Surplus
Reason: Extensive deterioration
GSA Number: 7–J–SD–0552

Tennessee

Bldgs. 02413, 02425
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200220023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02538
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200220024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02548
Fort Campbell

Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9404–03
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220035
Status: Unutilized
Reason: Secured Area

Bldg. 9404–07
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220036
Status: Unutilized
Reason: Secured Area

Bldg. 9404–08
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220037
Status: Unutilized
Reason: Secured Area

Texas

Bldg. 1825
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200220025
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 262 & 263
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200220026
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Virginia

Bldg. 812
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427–
Landholding Agency: Army
Property Number: 21200220074
Status: Unutilized
Reason: Extensive deterioration

Bldg. S0097
Defense Supply Center
Richmond Co: Chesterfield VA 23297–
Landholding Agency: Army
Property Number: 21200220075
Status: Unutilized
Reasons: Secured Area

Bldgs. 00065, 00066
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200220076
Status: Excess
Reason: Extensive deterioration

Bldgs. 00067, 00068
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200220077
Status: Excess
Reason: Extensive deterioration

Bldgs. 00069, 00070
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200220078
Status: Excess
Reason: Extensive deterioration

Bldg. 00079
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21200220079
Status: Excess
Reason: Extensive deterioration

Bldg. AT222
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220080
Status: Unutilized
Reason: Extensive deterioration

Bldg. T0222
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220081
Status: Unutilized
Reason: Extensive deterioration

Bldg. T1306
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220082
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1707, T1708, T1709
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220083
Status: Unutilized
Reason: Extensive deterioration

Bldg. T1811
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220084
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1886, T1187
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220085
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T2203, T2229
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220086
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T2305, T2306
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220087
Status: Unutilized
Reason: Extensive deterioration

Bldg. T2362
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220088
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Location: T2375, T2376, T2464, T2465, T2665, T2666, T2667, T2862, T2863
Landholding Agency: Army
Property Number: 21200220089
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T2652, T2804
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220090
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T2847, T2848, T2849
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220091
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Location: T2850, T2851, T2852, T2853, T2854, T2855
Landholding Agency: Army
Property Number: 21200220092
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T3002, T3004
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200220093
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Location: T3010, T3012, T3025, T3026, T3040, T3041
Landholding Agency: Army
Property Number: 21200220094
Status: Unutilized
Reason: Extensive deterioration

14 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Location: T3013–T3015, T3018–T3024, T3027–T3030
Landholding Agency: Army
Property Number: 21200220095
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Location: T3016–T3017, T3031–T3036, T3037–T3039
Landholding Agency: Army
Property Number: 21200220096
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 4173
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200220097

Status: Excess
Reason: Extensive deterioration

Bldg. 98
Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

Bldg. 2667
Naval Air Station
Oak Harbor Co: Whidbey Island WA 98278–
Landholding Agency: Navy
Property Number: 77200220023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Extensive deterioration

*Land (by State)*

Arizona

Parcels WC–1–2c, WC–1–2f
Gila & Salt River Meridian
Peoria Co: Maricopa AZ 85382–
Landholding Agency: Interior
Property Number: 61200220001
Status: Excess
Reason: Floodway

Colorado

Landfill
48th & Holly Streets
Commerce Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54200220006
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material; contamination
GSA Number: 7–Z–CO–0647

[FR Doc. 02–10111 Filed 4–25–02; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Tribal Consultation of Indian Trust Asset Management

**AGENCY:** Office of the Secretary; Bureau of Indian Affairs; Office of the Special Trustee for American Indians; Office of Tribal Trust Transition, Interior.

**ACTION:** Reopen comment period.

**SUMMARY:** The Office of the Secretary, the Bureau of Indian Affairs, the Office of the Special Trustee for American Indians, and the Office of Indian Trust Transition conducted consultation meetings with the public during the months of December 2001, January 2002 and February 2002. In a notice published in the **Federal Register** on February 11, 2002 (67 FR 6271), the Department extended the comment period for these consultations to February 28, 2002. This notice reopens the comment period to June 30, 2002.

**DATES:** All written comments must be received by June 30, 2002.

**ADDRESSES:** Office of the Assistant Secretary—Indian Affairs, 1849 C Street, NW., MS 4140 MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Wayne R. Smith, Deputy Assistant Secretary—Indian Affairs, 1849 C Street, NW., MS 4140 MIB, Washington, DC 20240 (202/208–7163).

**SUPPLEMENTARY INFORMATION:** The purpose of the consultation meetings was to involve affected and interested parties in the process of organizing the Department's trust asset management responsibility functions. The Department has determined that there is a need for dramatic change in the management of Indian trust assets. An independent consultant has analyzed important components of the Department's trust reform activities and made several recommendations that the Department consolidate trust functions under a single entity. The Department held eight (8) tribal consultation meetings across the country to discuss the merits of this reorganization. Because of the overwhelming public response to this effort, the Department believes it prudent to reopen the comment period to June 30, 2002. This reopening (and continuing) comment period will facilitate the maximum direct participation of all interested persons in this important Departmental process.

Dated: April 19, 2002.

**J. Steven Griles,**

*Deputy Secretary.*

[FR Doc. 02–10230 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–02–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**[Permit Number TE054503]**

*Applicant:* Brian Scholtens, Mount Pleasant, South Carolina.

The applicant requests a permit to take (survey and hold) Hungerford's crawling water beetle (*Brychius hungerfordi*) in Michigan. The scientific research is aimed at enhancement of survival of the species in the wild.

**[Permit Number TE054504]**

*Applicant:* Melissa M. Pierson, Grayslake, Illinois.

The applicant requests a permit to take (capture and release) Karner blue butterfly (*Lycaeides melissa samuelis*) in Illinois. The scientific research is aimed at enhancement of survival of the species in the wild.

**[Permit Number TE055406]**

*Applicant:* U.S. Army Corps of Engineers, St. Louis District, CEMVS–PM–EA.

The applicant requests a permit to take (hold, tag, and study) pallid sturgeon (*Scaphirhynchus albus*) in Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or Fax (612) 713–5292.

Dated: April 11, 2002.

**Robert J. Krska,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 02–10243 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Electric Utility Power Rate and Service Fee Adjustment, Mission Valley Power

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of rate adjustment.

**SUMMARY:** The Bureau of Indian Affairs (BIA) adjusted the electric power rates for operation and maintenance assessed to customers of the Mission Valley Power (MVP) Utility. MVP is a tribal

enterprise of the Confederated Salish and Kootenai Tribes (Tribes) operating and maintaining the federally-owned power utility on the Flathead Indian Reservation under the authority of a Public Law 93–638 contract. These rates will remain in effect until we provide notice of a separate rate adjustment.

**EFFECTIVE DATE:** The new rates were effective November 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4169, Telephone (503) 231–6702.

**SUPPLEMENTARY INFORMATION:** A notice of Proposed Rate Adjustment was published in the **Federal Register** on December 14, 2001 at 66 FR 64853. The public and interested parties were provided an opportunity to submit written comments during the 60-day period subsequent to December 14, 2001. No comments were received.

### Where Can Information on the Regulatory and Legal Citations in This Notice Be Obtained?

You can contact the Northwest Regional Director's office at the location stated in **FOR FURTHER INFORMATION CONTACT** section or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

### What Is the Purpose of This Notice?

This notice is to notify you that we adjusted the power rates and service fees for one of our power utilities. We are publishing this notice in accordance with the BIA's regulations governing its power rates and service fees of power utilities, specifically, 25 CFR 175.10–175.12. These sections provide for the fixing and announcing of power rates and related information for BIA Indian Electric Power Utilities.

### What Authorizes Us To Issue This Notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301, and the Act of August 7, 1946 (60 Stat. 895; 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs under part 209 of the Department of the Interior's Departmental Manual, Chapter 8.1A, and by memorandum dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries and Heads of Bureaus and Offices.

### What Are the Final Adjusted Power Rates and Service Fees?

The following table shows the rates and fees:

| Rate class | Rate |
|---|---|
| Residential: | |
| Basic charge per month | $5.00 |
| Energy charge per kilowatt-hour | 0.04739 |
| Minimum Monthly Charge | 10.00 |
| General Service without demand (See note at the end of this table): | |
| Basic charge per month | 5.00 |
| Energy Rate per kilowatt-hour | 0.05495 |
| General Service with demand charge: | |
| Single phase service basic charge per month | 20.00 |
| Three-phase service basic charges per month | 40.00 |
| Demand charge per kilowatt of billing demand | 4.10 |
| Energy charge per kilowatt-hour | 0.03735 |
| Large commercial service: | |
| Basic charge per month | 125.00 |
| Demand charge per kilowatt of billing demand | 5.00 |
| Energy charge per kilowatt-hour | 0.03115 |
| Irrigation pump service: | |
| Seasonal charge (whichever is greater): | |
| Minimum charge, or | 132.00 |
| Charge per horsepower | 6.00 |
| Monthly charge per rated horsepower of pump | 11.05 |
| Energy charge per kilowatt-hour | 0.03586 |
| Area lighting rate class, monthly charge: | |
| Install on existing pole or structure: | |
| 7,000 lumen, mercury vapor unit (existing only) | 7.20 |
| 20,000 lumen, mercury vapor unit (existing only) | 10.30 |
| 9,000 lumen, high-pressure sodium unit | 6.70 |
| 22,000 lumen, high-pressure sodium unit | 9.00 |
| Install with new pole: | |
| 7,000 lumen, mercury vapor unit (existing only) | 9.05 |
| 20,000 lumen, mercury vapor unit (existing only) | 11.85 |
| 9,000 lumen, high-pressure sodium unit | 8.50 |
| 22,000 lumen, high-pressure sodium unit | 10.85 |
| Street lighting service: | |
| Metered Service (not including street light fixtures): | |
| Basic monthly charge | 5.00 |
| Energy charge | 0.05495 |
| Unmetered service: | |
| This rate class is available only to municipalities or communities for ten or more lighting units in a group. The charges for this service are subject to a negotiated contract with MVP | ([1]) |
| Unmetered service charge per month: | |
| Charges for an unmetered service under the present rate structure are determined on an individual basis. The rate for this service is a flat monthly charge (unmetered street light service is not part of this rate class) | 15.00 |

[1] Negotiated.

Note: This rate was titled ''Small commercial without demand'' in the Notice of proposed rate adjustment published in the FEDERAL REGISTER on December 14, 2001 at 66 FR 64853. This notice corrects the title to ''General service without demand''. This rate title change has no effect on the proposed or final rates.

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

The Tribes operate the utility under a Public Law 93–638, as amended, contract. As part of the contractual relationship, there are continuing consultations between the Tribes and the BIA. These consultations meet the spirit and intent of the Executive Order.

**Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)**

This is a final notice for a rate adjustment at a BIA-owned electric power utility. These rate adjustments have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increased use of foreign supplies) when implemented.

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

This rate adjustment is not a significant regulatory action and does not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

This rate adjustment is not a rule for the purposes of the Regulatory Flexibility Act because it is ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2)(1996).

**Unfunded Mandates Reform Act of 1995**

This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Reform Act of 1995.

**Takings (Executive Order 12630)**

The Department of the Interior (Department) has determined that this rate adjustment does not have significant ''takings'' implications. The rate adjustment does not deprive the public, state, or local governments of rights or property.

**Federalism (Executive Order 13132)**

The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

**Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

**Paperwork Reduction Act of 1995**

This rate adjustment does not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. The OMB control number is 1076–0141 and expires November 30, 2002.

**National Environmental Policy Act**

The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act.

Dated: April 8, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–10264 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–W7–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## Rate Adjustments for Indian Irrigation Projects; Correction

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rate adjustments; correction.

**SUMMARY:** The Bureau of Indian Affairs (BIA) published a notice in the **Federal Register** of March 8, 2002, seeking comments on proposed rate adjustments for irrigation projects. The notice contained incorrect current and proposed rates for the Wapato Irrigation Project units in the Northwest Region Rate Table.

**DATES:** Interested parties may send comments for the Wapato Irrigation Project units on or before June 25, 2002. The comment period for all other BIA irrigation projects published in the March 8, 2002 notice remains May 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220; Telephone: (509) 877–3155.

**Correction**

In the **Federal Register** issue of March 8, 2002, page 10751, correct the Wapato Irrigation Project units portion of the Northwest Region Rate Table to read:

NORTHWEST REGION RATE TABLE

| Project name | Rate category | Current 2001 rate | Proposed 2002 rate |
|---|---|---|---|
| Wapato Irrigation Project * Ahtanum | Billing Charge Per Tract | $5.00 | $5.00 |
| | Farm unit/land tracts up to one acre (minimum charge) | 10.00 | 10.35 |
| | Farm unit/land tracts over one acre—per acre | 10.00 | 10.35 |
| Wapato Irrigation Project * Toppenish/Simcoe | Billing Charge Per Tract | 5.00 | 5.00 |
| | Farm unit/land tracts up to one acre (minimum charge) | 10.00 | 10.40 |
| | Farm Unit/land tracts over one acre-per acre | 10.00 | 10.40 |
| Wapato Irrigation Project * Wapato/Satus | Billing Charge Per Tract | 5.00 | 5.00 |
| | Farm unit/land tracts up to one acre (minimum charge) | 40.00 | 41.40 |
| | ''A'' farm unit/land tracts over one acre—per acre | 40.00 | 41.40 |
| | Additional Works farm unit/land tracts over one acre—per acre | 44.00 | 45.76 |
| | ''B'' farm unit/land tracts over one acre— per acre | 48.00 | 49.68 |
| | Water Rental Agreement Lands—per acre | 49.00 | 50.96 |

Dated: April 9, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 02–10263 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–5M–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[MT–921–02–1320–EL–P; NDM 91535]**

## Notice of Coal Lease Application—NDM 91535—The Coteau Properties Company

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice of The Coteau Properties Company's Coal Lease Application NDM 91535 for certain coal resources within the Fort Union Coal Region.

The land included in Coal Lease Application NDM 91535 is located in Mercer County, North Dakota, and is described as follows:

T. 144 N., R. 88 W., 5th P. M.
Sec. 2: Lots 3 and 4, S½NW¼;
Sec. 4: Lots 1 and 2, S½NE¼, S½;
Sec. 6: All;
Sec. 8: N½NE¼, SE¼NE¼, NW¼, N½SW¼;
T. 145 N., R. 88 W., 5th P. M.
Sec. 4: Lots 1 to 4, inclusive, S½N½, S½SW¼, SE¼;
Sec. 10: N½;
Sec. 14: All;
Sec. 22: All;
Sec. 26: N½NE¼, SW¼NE¼, W½, NW¼SE¼;
Sec. 28: NE¼NE¼, S½NE¼, SE¼NW¼, S½;
Sec. 34: N½N½, SE¼NE¼, SW¼, NE¼SE¼, S½SE¼;
T. 144 N., R. 89 W., 5th P. M.
Sec. 12: E½.

The 5,571.34-acre tract contains an estimated 88 million tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), and the implementing regulations at 43 CFR part 3400. A decision to allow leasing of the coal reserves in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR part 3422.

**SUPPLEMENTARY INFORMATION:** The Coteau Properties Company is the lessee and operator of Federal Coal Leases NDM 81582, NDM 85515, and NDM 85517, at the Freedom Mine. The entire area included within this lease application lies west of the present Freedom Mine permit area.

The area applied for would be mined as an extension of the Freedom Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 5 and one-half years and enable recovery of coal that might never be mined if not mined as a logical extension of current pits.

*Notice of Availability:* The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, and at the Bureau of Land Management, Dakotas District Office, whose address is 2033 Third Avenue West, Dickinson, North Dakota, 58601–2619, between the hours of 8 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Good, Coal Coordinator, at telephone 406–896–5080, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: February 6, 2002.

**Randy D. Heuscher,**

*Chief, Branch of Solid Minerals.*

[FR Doc. 02–10387 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–$$–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–075–1330–EO]**

## Smokey Canyon Mine, Idaho; Availability of Final Supplemental Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of Final Supplemental Environmental Impact Statement.

**SUMMARY:** The Bureau of Land Management (BLM) announces the availability of the Final Supplemental Environmental Impact Statement (SEIS) for the Smoky Canyon Mine, Panels B and C. The Smoky Canyon Mine, located in southeast Idaho, is currently operated by the J.R. Simplot Company (Simplot) on Federal phosphate leases administered by BLM within the U.S. Forest Service (USFS) Caribou-Targhee National Forest. The SEIS was prepared by BLM, acting as the lead agency, with USFS as a joint lead agency.

**ADDRESSES:** Limited numbers of the SEIS are available at the Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Avenue, Pocatello, Idaho 83201, telephone (208) 478–6354.

**FOR FURTHER INFORMATION CONTACT:** Comments or questions may be directed to Jeff Cundick, SEIS Project Manager, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Avenue, Pocatello, Idaho 83201. He may be reached by telephone at (208) 478–6354, or by e-mail at *Jeff_Cundick@blm.gov.*

**SUPPLEMENTARY INFORMATION:** The SEIS supplements the original Smoky Canyon Phosphate Mine Environmental Impact Statement, prepared in 1982. The SEIS analyzes the direct, indirect, and cumulative impacts associated with a proposal by Simplot to develop and reclaim open pits, haul roads, overburden disposal areas, and related facilities that would be utilized during operation of the B and C Panels at the Smoky Canyon phosphate mine. In particular, it addresses mitigation and monitoring related to potential mobilization of selenium contained in overburden produced by these operations.

Alternatives to the Proposed Action include a No Action Alternative, as well as alternative methods of handling overburden to reduce impacts caused by the proposed mining activities. The Agency Preferred Alternative is the Proposed Action with mitigation measures. The Final SEIS also responds to comments received on the Draft SEIS, which was distributed for public review in July 2001. BLM intends to issue a Record of Decision regarding the proposed mine developments no sooner than 30 days after publication of a Notice of Availability of the SEIS in the **Federal Register** by the Environmental Protection Agency. USFS will provide BLM with recommendations for those portions of the project that are located in the Caribou-Targhee National Forest.

Dated: March 28, 2002.

**Joe Kraayenbrink,**

*Acting Pocatello Field Office Manager.*

[FR Doc. 02–10187 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–GG–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–010–1990–EX]**

## Notice of Availability of the Final Environmental Impact Statement; South Operations Area Project Amendment, Eureka Co., NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the Final Environmental Impact Statement;

South Operations Area Project Amendment, Eureka Co., NV.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is given that the Elko Field Office of the Bureau of Land Management (BLM) has prepared, by third party contractor, a Final Environmental Impact Statement on Newmont Mining Corporation's South Operations Area Project Amendment, located in Eureka County, Nevada.

**EFFECTIVE DATES:** The Final Environmental Impact Statement will be distributed and made available to the public on April 26, 2002. The period of availability for public review for the Final Environmental Impact Statement ends May 28, 2002. At that time a Record of Decision will be issued regarding the Proposed Action.

**ADDRESSES:** A copy of the Final Environmental Impact Statement can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. The Final Environmental Impact Statement may also be downloaded from the Elko Field Office internet site at *www.nv.blm.gov/elko.*

**FOR FURTHER INFORMATION CONTACT:** Roger D. Congdon, Project Manager, at the above Elko Field Office address or telephone (775) 753–0200.

**SUPPLEMENTARY INFORMATION:** A full text Final Environmental Impact Statement has been produced which presents in its entirety the analysis originally included in the Draft Environmental Impact Statement (issued September 1, 2000). The Final Environmental Impact Statement analyzes the direct, indirect and cumulative impacts related to expansion of existing mine facilities (continued mining of the Gold Quarry Mine; expansion of the Gold Quarry North, Gold Quarry South, and James Creek waste rock disposal facilities; expansion of the South Area Leach facility; expansion of the Refractory Leach facility; and construction of ancillary facilities). On-going expansion and further development of this deposit includes continued dewatering of the Gold Quarry pit area for the life of the project.

Alternatives analyzed include the Proposed Action, No Action, Proposed Action with backfill of the Mac pit, and Proposed Action with modified waste rock disposal facilities. The Bureau of Land Management's preferred alternative is the Proposed Action as described in the Final Environmental Impact Statement. The Final Environmental Impact Statement also includes changes and additions to the 1993 South Operations Area Project Mitigation Plan, and responses to comments received on the Draft Environmental Impact Statement during the public scoping period.

**Robert V. Abbey,**

*State Director, Nevada.*

[FR Doc. 02–9872 Filed 4–25–02; 8:45 am]

BILLING CODE 4310–HC–P

## INTERNATIONAL TRADE COMMISSION

### Handbook on Electronic Filing Procedures

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Consistent with the Government Paperwork Elimination Act, the United States International Trade Commission (Commission) proposes to implement procedures to permit persons to electronically file certain documents with the Commission. Elsewhere in this issue of the **Federal Register,** the Commission is issuing a Notice of Proposed Rulemaking to permit electronic filing. In conjunction with that Notice, the Commission has developed a draft of a Handbook on Electronic Filing Procedures that sets forth the requirements governing electronic filing of documents. The Commission solicits public comment on the draft of the Handbook as set out below.

**DATES:** To be assured of consideration, written comments must be received no later than 5:15 p.m. on June 25, 2002.

**ADDRESSES:** A signed original and 8 copies of each set of comments, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Acting Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Irene H. Chen, Esq., Office of the General Counsel, United States International Trade Commission, telephone 202–205–3112. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its World Wide Web site (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** The Commission proposes to implement electronic filing procedures consistent with the Government Paperwork Elimination Act (Pub. L. 105–277, Title XVII) and Office of Management and Budget Circular A–130. The Commission wishes to promulgate, concomitantly with its proposed amendment of its Rules of Practice and Procedure, certain electronic filing procedures that will be published in a handbook to be maintained and distributed by the Secretary to the Commission. Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. The Commission invites the public to comment on the proposed Handbook on Electronic Filing Procedures. The Commission encourages members of the public to comment—in addition to any other comments they wish to make on the proposed procedures—on whether the proposed procedures are in language that is sufficiently plain for users of the Handbook to understand. The Commission plans to phase in the implementation of electronic filing procedures over time. In the initial, pilot phase, the agency anticipates permitting the electronic filing of only documents that contain no confidential business or business proprietary information. The Commission plans to wait until the filing system has been in use for some time before considering whether to expand the list of covered documents. At that stage, the Commission may also provide for heightened security measures in addition to the password system currently described in the draft Handbook. Based on its experience with electronic filing in the pilot phase, the Commission may need to amend other provisions of the Handbook.

The Commission considers public input important to the development of electronic filing procedures. The draft Handbook takes into account comments previously received from the public on electronic filing issues. A suggestion that was not adopted was one proposing a requirement that a filer submit a graphical image of his or her signature on each electronically-filed document. Such an image likely could be electronically manipulated (*e.g.,* copied and pasted), so that such a requirement likely would not enhance the security of the filing and would impose an additional transaction cost on the filer. In contrast, such digitized signatures might be useful with respect to documents requiring multiple signatures.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, DC 20436

COMMISSION HANDBOOK ON ELECTRONIC FILING PROCEDURES

## I. Introduction

This Handbook provides instructions for persons who wish to file documents electronically with the United States International Trade Commission (Commission) pursuant to Section 201.8(f) of the Commission's Rules of Practice and Procedure (19 CFR 201.8(f)).

A. In any conflict between the Commission's Rules of Practice and Procedure (Rules) and this Handbook, the Rules shall govern. This Handbook is designed to be read in conjunction with the Rules. This Handbook does not alter or waive any provisions in the Rules governing the filing of documents with entities and/or persons other than the Commission, including but not limited to the United States Secretary, NAFTA Secretariat.

B. If you choose to file in paper form, you must comply with the relevant provisions of the Rules governing such filing. The Commission does not permit filing by means other than paper filing in accordance with the relevant Rules and electronic filing in accordance with Section 201.8(f) and this Handbook. Thus, for example, filing by facsimile and by electronic mail (*i.e.,* sending a document to a Commission electronic mail address) are not permitted.

## II. Electronic Filing Procedures (EFP)

### *A. Definitions and Instructions*

(1) ''EFP'' means the Commission's Electronic Filing Procedures.

(2) ''Secretary'' means the Secretary to the Commission (500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000). The EFP is administered by the Secretary and any questions about EFP should be directed to the Secretary.

(3) ''Business Hours'' or ''Business Days'' refers to the hours and days that the Commission is open (*i.e.,* from 8:45 a.m. to 5:15 p.m., Washington, DC, local time, from Monday through Friday, excepting Saturdays, Sundays and Federal legal holidays).

(4) The ''Web site'' refers to the Commission's World Wide Web site at *http://edis.usitc.gov.*

(5) ''EDIS–II'' refers to the Commission's Electronic Document Information System, which will receive electronic transmission of documents through the Commission's Web site.

(6) ''Document'' refers to the cover sheet and attachments that comprise an electronic filing with the Commission.

(7) ''Electronic Receipt'' means that an electronic transmission of a document to EDIS–II via the Commission's website has been successfully completed in its entirety.

(8) ''Electronic filing'' means the electronic transmission of a document and the Secretary's acceptance of the document for filing. As discussed below, the electronic transmission and receipt of a document does not necessarily mean that the document has been filed.

(9) ''Registered User'' means a person that registers to file documents electronically with the Commission.

(10) ''E-mail address of record'' means the electronic mail address of Registered User which he or she has provided to the Secretary.

(11) ''Notice of Electronic Receipt'' will be provided in two forms: (a) An on-screen notice of receipt once the electronic transmission of the document is complete; and (b) an e-mail sent to the Registered User's e-mail address of record. The Notice of Electronic Receipt only conveys that the document is physically present at the Commission and does not mean that the document has been accepted by the Commission for filing.

### *B. Registration as an EFP User and Assignment of Passwords*

(1) Except as provided in Paragraph B(5) below, to file electronically, you must first register to become a ''Registered User'' of the Web site. To register, you should fill-out the ''EFP User Registration Form'' (hereinafter called ''Registration Form'') both on-line at the Website *and* in paper from by printing-out a paper copy directly from the Website. You should mail or deliver the completed and signed paper copy of the Registration Form to the Secretary. The Registration Form will require identification of your name, firm affiliation (if any), address, telephone number and e-mail address of record, and your original signature (on the paper copy). You must have and maintain a working e-mail address to be a Registered User. You should also designate a User ID and password on the on-line version of the Registration Form; however, you may not use your User ID and password for electronic filing until the Secretary has reviewed the paper copy of your Registration Form and has sent you a Notice of Activation of User ID and Password by mail.

(2) A Registered User may authorize another person to file a document with the Commission using the User ID and Password of the Registered User; however, the Registered User assumes responsibility for any authorized use of his or her User ID and Password. The Registered User and all persons who participate in the preparation of or are signatories to a document shall retain responsibility with respect to any duties and obligations pertaining to the document under the Rules. A Registered User must comply with applicable limitations on disclosure of BPI and CBI when providing his or her User ID and password to another person. As provided in Paragraph II(K)(2), a document filed using a Registered User's ID and Password will be deemed signed by the Registered User.

(3) Upon learning of the potential compromise of the confidentiality of his/her Password, the Registered User shall immediately change the Password. The Registered User must also notify the Secretary of the perceived breach and the period of compromise. If the Registered User has provided his/her Password to an employee of the Registered User's firm, such as a paralegal, legal assistant, or secretary who subsequently leaves the firm, the Registered User must change the password when that employee's access should be terminated. Unless there is perceived breach of confidentiality, in such instances, no notification of the Secretary is needed.

(4) Every Registered User shall be responsible for keeping his or her registration information current.

(5) You may not electronically file documents with the Commission unless you have registered with the Commission pursuant to the procedures set forth in Subparagraph (1) above, with the following exception:

(a) If you do not represent a party to an investigation pending before the Commission (*i.e.* , you are not an attorney, consultant, officer owner, shareholder, employee, agent, director, or other representative of a party to an investigation), and you would like to submit a documentation to the Commission regarding the pending investigation, please follow the relevant instructions on the Web site.

### *C. Types of Documents*

You may file any document electronically with the Commission without a paper copy, except if the document falls into category (1) below. If the document falls into categories (2) through (7), you are encouraged to file a copy of the document electronically, but you must also file the document in paper form pursuant to the Rules. A document (i) that contains CBI or BPI, (ii) that exceeds the size limit set forth

in Paragraph II(J) of this Handbook, or (iii) that contains exhibits of original documents, such as certified copies, must be filed only in paper form in accordance with the Rules.

(1) Documents containing confidential business information (''CBI'') or business proprietary information (''BPI'') as defined in 19 CFR 201.6;

(2) Briefs for which no BPI or CBI version is filed, including those subject to 19 CFR 201.13, 207.15, 207.23, 207.25, 207.65, 207.67, and 210.40 with the exception of the following;

(a) briefs subject to section 332 of the Tariff Act of 1930 for which no CBI version is filed may be filed electronically without corresponding paper copies;

(3) Comments on Questionnaires for which no BPI or CBI version is filed, subject to 19 CFR 207.20 and 207.63;

(4) Final comments for which no BPI version is filed, subject to 19 CFR 207.68 and 207.30;

(5) Petitions for review for which no CBI version is filed subject to 19 CFR 210.43, and 210.46;

(6) Petitions, including those subject to 19 CFR 202.2, 206.2, 206.14, 206.33, 206.43, 206.54, 207.10, 210.47; and

(7) Complaints, including those subject to 19 CFR 210.12. If a standard form has been prescribed to be used when filing any document, you must use that standard form when filing such document electronically. You must complete the electronic cover sheet on EDIS–II at the time that you make your electronic filing. EDIS–II will consider any filing to be the cover sheet and one or more attachments. For example, a cover letter addressed to the Secretary is one attachment. Multiple attachments may be filed as part of the same electronic transmission as long as each attachment does not exceed the size limitation set forth in Paragraph II(J) of this Handbook.

*D. Where Documents Are To Be Filed Electronically*

If you want to file a document electronically, you should visit the Website and follow the instructions for electronic filing procedures set out at that site, including completion of the cover sheet for each filing. The instructions will include the hardware and software requirements for electronic filing.

*E. Notice of Electronic Receipt*

Upon completion of the Electronic transmission of your document and upload at the Commission, EDISA–II will provide you with an on-screen Notice of Electronic Receipt. In addition, EDIS–II will generate and send an e-mail Notice of Electronic Receipt to the official e-mail address associated with the User ID. Receipt of a Notice of Electronic Receipt does not constitute acknowledgement by the Commission that the document has been properly filed pursuant to the Rules or this Handbook. Moreover, such notification does not constitute service of the document on the parties to an investigation.

If you do not receive a Notice of Electronic Receipt following transmission of a document for filing or get an error message, the document will not be deemed transmitted to EDIS–II and consequently, will not be received by the Secretary for filing. You must attempt to (i) re-transmit the document electronically until such a Notice is received, (ii) file in paper form, or (iii) contact the Secretary in accordance with the provisions of Section II(G) permitting delayed filings.

If the document is electronically received by EDIS–II on a Saturday, Sunday, or Federal legal holiday, or after business hours on a business day, the effective filing date and time of the document will be the next business day, assuming the document is accepted. If the document is electronically received by EDIS–II during business hours, then the effective filing date and time of the document is the date and time that the document has been electronically received by EDIS–II.

Subsequent to the Notice of Electronic Receipt, the Secretary will send you a second notice (Notice of Electronic Filing) notifying you of the effective filing date and time of the document provided the document is accepted for filing.

*F. Deadline for Electronic Filing of Documents*

When the Commission has imposed a deadline on the filing of a document, the Secretary will consider the document timely filed electronically only if it is received successfully in its entirety by EDIS–II by 5:15 p.m. Washington, DC local time, on the day that the document is due to be filed. However, you may electronically transmit a document to EDIS–II at any time of the day (i.e., twenty-four hours/day) and on any day of the week (including weekends and holidays). You should preserve the Notice of Electronic Receipt, which states the time and date that EDIS–II received the document, for your records. From time to time, EDIS–II may be unavailable for electronic filing due to periodic maintenance. The Commission will try to schedule EDIS–II maintenance to those times when EDIS–II is least likely to be used. Scheduled downtime of EDIS–II will be posted on the Website.

*G. Technical Failures*

(1) The Secretary shall deem the Website to be subject to a technical failure on a given day if the Website is unable to accept electronic filings continuously or intermittently over the course of any period of time greater than 12 noon, Washington, DC local time, on that day. If you are unable to file a document electronically by the deadline imposed by the Commission because the Website is experiencing a technical failure, you should contact the Office of the Secretary immediately to report the technical failure of the Website and to seek authorization from the Secretary to file your document after the Commission's deadline governing the filing of your document. If the Secretary grants you such an authorization, the Secretary shall give you an authorization number that you should include on the cover sheet and/or cover letter accompanying your document when you do file your document. When you do file your document subject to the authorization, you should also file a declaration or affadavit stating (i) the fact that the Website's technical failure prevented your making a timely filing, (ii) the dates and times of the attempted filing, (iii) your contacts with the Office of the Secretary to report the Website's technical failure, (iv) the Secretary's granting of authorization to file after deadline to you, and (v) the authorization number.

If you are making a late filing for reasons unrelated to the operating status of the Website, you should follow the normal procedures in the Rules for late filings.

(2) If you discover that the version of the document available for viewing on EDIS–II does not conform to the document that you transmitted, you should send or transmit to the Commission a replacement document with an explanatory cover letter. After receipt, the Secretary will review the documents and provide you with notification of acceptance or rejection.

*H. Requests for Late Filing*

If you electronically transmit your document prior to 5:15 p.m., but the document is received in its entirety by EDIS–II after 5:15 p.m., you may file a ''Request for Late Filing'' with the Secretary requesting that the Secretary accept your late filing because you began electronically transmitting the document to EDIS–II prior to 5:15 p.m. As part of your Request for Late Filing, you should attach documentation to demonstrate that you electronically

transmitted the document to EDIS–II prior to 5:15 p.m.

*I. Format of Documents*

(1) Documents filed electronically pursuant to this Handbook must be submitted in Adobe Acrobat portable document format (PDF). Please be aware that some special characters used in certain work-processing applications may not convert easily to PDF. The conversion process to PDF may affect pagination as well as the conversion of special characters. Filers are responsible for the accuracy of the documents submitted.

The Commission encourages the submission, when practicable, of documents converted to PDF from word-processed text over that of documents converted to PDF from images because the former normally are significantly smaller in terms of megabytes than the latter, and because the former are more easily searchable within EDIS–II. EDIS–II will create a searchable text version of an image-based document through an optical character recognition process, but that text version is likely to contain some conversion errors. The Commission will post on the Website information that will assist users with document conversion to PDF.

(2) Each page of an electronically filed document must be in letter-sized format (*i.e.,* 8½ inches by 11 inches when printed by the Secretary). Documents filed electronically cannot exceed the smaller of: the page limits set forth in the Rules or the size limit set forth in Paragraph J below.

*J. Size of Electronic Transmission*

No single attachment to an electronic transmission may exceed five (5) megabytes. A filing with an attachment that exceeds the foregoing size limitation may only be filed in paper form pursuant to the Rules. All page limits set forth in the Rules shall remain in effect for purposes of this Handbook.

*K. Signatures*

(1) A document filed with the Commission electronically shall be deemed to be signed by a person (the ''Signatory'') when the document identifies the person as a Signatory and the filing complies with subparagraph (2), (3) or (4). When the document is filed with the Commission in accordance with any of these methods, the filing shall bind the Signatory as if the document were physically signed and filed, and shall function as the Signatory's signature, whether for the purpose of complying with the Commission's Rules, to attest to the truthfulness of an affidavit or declaration, or for any other purpose.

(2) In the case of a Signatory who is a Registered User as described in Paragraph II (B)(1), such document shall be deemed signed, regardless of the existence of a physical signature on the document, provided that such document is filed using the User ID and Password of the Signatory. The page on which the physical signature would appear if filed in non-electronic form must be filed electronically, but need not be filed in an optically scanned format displaying the signature of the Signatory. In such cases, the electronically filed document shall indicate a typed ''electronic signature''*e.g.,* ''s/ Jane Doe''.

(3) In the case of a Signatory who is not a Register User, or who is a Registered User but whose User ID and Password will not be utilized in the electronic filing of the document, such document shall be deemed signed and filed when the document is physically signed by the Signatory, the document is filed electronically, and the signature page is filed in optically scanned form pursuant to and consistent with the EFP.

(4) In the case of a document to be signed by two or more persons, the following procedure shall be used:

(a) The filing person shall initially confirm that the content of the document is acceptable to all persons required to sign the document. The filing person then shall attest that original signatures have been obtained from each of the other signatories on a paper copy of the document. If the filing person complies with the foregoing requirements, the Commission shall presume that the filing person has the authority to file the document on behalf of all other persons required to sign such document.

(b) The filing person shall then file the document electronically, indicating the original signatures that have been obtained, *e.g.,* ''s/ Jane Doe,'' ''s/John Doe,'' etc.

(c) The filing person shall retain the hard copy of the document containing the original signatures until one year after the completion of the investigation in which it was filed and of all resulting appeals and disputes.

(d) For a document that requires a signature in the presence of a notary public (e.g., affidavits), the document instead should contain an unsworn declaration clause to be signed by the Signatory under penalty of perjury. The language for unsworn declarations under penalty of perjury is provided in 28 U.S.C. 1746.

*L. Limitation on Service of Electronic Documents*

Documents filed electronically in all pending matters before the Commission, except for proceedings under section 337 of the Tariff Act of 1930, are not to be served electronically on other parties without the prior agreement of the Secretary. In the case of proceedings under section 337 of the Tariff Act of 1930, the presiding administrative law judge shall determine whether electronic service of documents by parties will be permitted in that proceeding. Parties may only effect electronic service on recipients who have provided written consent thereto to the Secretary or the presiding administrative law judge. Persons who have filed documents electronically with the Commission must comply with the Rules in effecting service of the electronically filed document on parties in accordance with 19 CFR 201.16. All electronically filed documents must be accompanied by a certificate of service.

*M. Copyright and Other Proprietary Rights*

(1) The Website shall bear a prominent notice as follows: ''The contents of each filing in EDIS–II may be subject to copyright and other proprietary rights (with the exception of the notices, orders, and opinions of the ITC). It is the user's obligation to determine and satisfy copyright or other use restrictions when publishing or otherwise distributing material found in EDIS–II. Transmission or reproduction of protected items beyond that allowed by fair use requires the written permission of the copyright owners. Users must make their own assessments of rights in light of their intended use.''

(2) By filing any material with the Commission electronically, a person shall be deemed to consent to all uses of such materials by all parties to the action solely in connection with and for the purposes of the action, including the electronic filing in the action (by a party who did not originally file or produce such materials) of portions of such excerpts, quotations, or selected exhibits from such filed materials as part of motion papers, pleadings or other filings with the Commission.

(3) Any dispute that arises among persons regarding the use of materials, subject to copyright and other proprietary rights must be resolved among the persons themselves, without the Commission's involvement.

**III. Duration**

A. This Handbook is effective upon issuance. These electronic filing

procedures shall remain in effect until superseded or rescinded.

B. The Secretary shall, from time to time, amend the electronic filing procedures as necessary.

By Order of the Commission,

**Marilyn R. Abbott,**

*Secretary.*

[FR Doc. 02–10347 Filed 4–25–02; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 2, 2001, and published in the **Federal Register** on October 11, 2001, (66 FR 51969), Dupont Pharmaceuticals, which has changed its name to Bristol-Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Oxymorphone (9652) | II |

The firm plans to manufacture the listed controlled substances to make finished products.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Bristol-Myers Squib Pharma Company to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Bristol-Myers Squibb Pharma Company on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10301 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–-09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 16, 2001, and published in the **Federal Register** on December 20, 2001, (66 FR 65744), Cerilliant Corporation, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78708–0189, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N, N-Dimethylamphetamine (1480). | I |
| Aminorex (1585) | I |
| 4-Methylaminorex (cis isomer) (1590). | I |
| Gamma hydroxybutyric acid (2010). | I |
| Methaqualone (2565) | I |
| Alpha-Ethyltryptamine (7249) | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| 2,5-Dimethoxy-4-ethylamphetamine (7399). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine (7401). | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7402). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| Acetyldihydrocodeine (9051) | I |
| Benzylmorphine (9052) | I |
| Codeine-N-oxide (9053) | I |
| Dihydromorphine (9145) | I |
| Heroin (9200) | I |
| Hydromorphinol (9301) | I |
| Methyldihydromorphine (9304) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Acetylmethadol (9601) | I |
| Allyprodine (9602) | I |
| Alphacetylmethadol except Levo-Alphacetylmethadol (9603). | I |
| Alphameprodine (9604) | I |
| Alphamethadol (9605) | I |
| Betacetylmethadol (9607) | I |
| Betameprodine (9608) | I |
| Betamethadol (9609) | I |
| Betaprodine (9611) | I |
| Hydromorphinol (9627) | I |
| Noracymethadol (9633) | I |
| Norlevorphanol (9634) | I |
| Normethadone (9635) | I |
| Trimeperidine (9646) | I |
| Phenomorphan (9647) | I |
| Para-Fluorofentanyl (9812) | I |
| 3-Methylfentanyl (9813) | I |
| Alpha-methylfentanyl (9814) | I |
| Acetyl-alpha-methylfentanyl (9815). | I |
| Beta-hydroxyfentanyl (9830) | I |
| Beta-hydroxy-3-methylfentanyl (9831). | I |
| Alpha-Methylthiofentanyl (9832) | I |
| 3-Methylthiofentanyl (9833) | I |
| Thiofentanyl (9835) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phenmetrazine (1631) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutehimide (2550) | II |
| Nabilone (7379) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603) | II |
| Alphaprodine (9010) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Leveomthorphan (9210) | II |
| Levorphanol (9220) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Methadone-intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |

| Drug | Schedule |
|---|---|
| Noroxymorphone (9668) | II |
| Racemethorphan (9732) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and non-deuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

No comments or objections have been received.

DEA has considered the factors in Title 21, United Stated Code, Section 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10300 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 14, 2001, Irix Pharmaceuticals, Inc., 101 Technology Place Florence, South Carolina 29501, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for sale to their customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10306 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 3, 2001, Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N,N-Dimethylamphetamine (1480) | I |
| Aminorex (1585) | I |
| Methaqualone (2565) | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 2, 5-Dimethoxyamphetamine (7396). | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| 3,4-Methyl-enedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methyl-enedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455). | I |
| Dihydromorphine (9145) | I |
| Normorphine (9313) | I |
| Acetylmethadol (9601) | I |
| Alphacetylmethadol Except Levo-Alphacetylmethadol (9603). | I |
| Normethadone (9635) | I |
| 3-Methylfentanyl (9813) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| 1-Piper-idinocyclohexanecarbonitrile (8603). | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Levo-Alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture small quantities of the listed controlled substances to produce standards for analytical laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10305 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 23, 2001, Noramco of Delaware, Inc., Division of Ortho-McNeil, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |

The firm plans to manufacture the listed controlled substances for distribution to its customers as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10303 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 28, 2001, Novartis Pharmaceuticals Corporation, Attn: Security Department, Building 103, Room 335, 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10302 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 31, 2001, Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Pentobarbital (2270) | II |
| Meperidine (9230) | II |

The firm plans to manufacture bulk products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10307 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 19, 2001, Salsbury Chemicals, Inc., 1205 11th Street, Charles City, Iowa 50616–3466, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |

The firm plans to manufacture amphetamine and methylphenidate for distribution as bulk product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than June 25, 2002.

Dated: April 11, 2002.

**Laura M. Nagel,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 02–10304 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### National Institutes of Corrections

### Solicitation for a Cooperative Agreement

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2002 for a cooperative agreement to fund the project ''Effectively Managing a Multi-Generational Workforce.'' NIC will award one cooperative agreement to: develop a training curriculum for correctional supervisors on how to manage a multi-generational workforce; develop a Training-for-Trainers component on how to teach that curriculum and develop a two-hour portable training module on effectively managing a multi-generational workforce.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award will be made to an organization that will, in concert with the Institute, develop a curriculum and training materials for effectively managing a multi-generational workforce which may be utilized by operational and training personnel within a correctional agency.

*Background*

The National Institute of Corrections, Prisons Division, sponsored a series of meetings during FY 2001 to discuss issues and problems regarding the correctional workforce. One of the topics which emerged in every meeting was how difficult it was for Correctional Supervisors to manage and motivate the new workers coming into correctional agencies. Likewise, in a variety of NIC training programs over the past few years, workforce issues—especially those involving the newer groups of workers entering the workforce—have predominated in many training programs regardless of the topic.

According to the Bureau of Labor Statistics, within the next decade 33% of the workforce will be older than 55 years of age. In the corrections workplace, the predominance of hazardous duty retirement benefit and other public sector retirement systems will mean that many of this country's correctional workers will be drawn from the Generation X (typically considered as those born between 1965 and 1976) and Generation Y (generally those born in or after 1977) demographic groups. Many supervisors, managers and administrators will still be from the large Baby Boomer generations (born between 1946–1964).

Although many ''Baby Boomers'' supervisors lament the poor work attitudes of the ''new'' workforce, those newer workers are equally unsatisfied with their supervisors being ''stuck in the past'' and unwilling to look at alternatives ways of doing things. With projected shortages of staff in all business sectors, not just corrections, there could be other interesting ''generational differences'' emerging in the workplace—for instance, retirees returning to the workforce.

These, and many other generational differences, become quite prominent and critical in the correctional workplace. Yet providing information and understanding of the generational characteristics of various workforce groups can assist in assuring that workplace practices are most effective. Supervisors can be trained on effective supervisory practices—whether with a younger workforce or any other group of employees. Workplace attitudes, policies and procedures can be re-evaluated to assure that they are effective for the current workforce recognizing that over time there will be changing trends among those who comprise the workforce.

*Purpose*

To develop training materials for supervisory and management staff in the correctional workplace to assist them in effectively managing a multi-generational workforce.

*Scope of Work*

The awardee will research the existing training materials and management literature in all areas relating to a multi-generational workforce (including Generation X, Generation Y, Baby Boomers, retirees and any other relevant workforce groupings or designations) as well as from training and management resources in the field of corrections, and will complete the following tasks:

1. To develop a 16-hour training program/curriculum targeted to correctional supervisors and managers on how to most effectively work with and supervise a multi-generational workforce. The awardee will have base the development of all training materials on research which has been done on the trends and characteristics of the various demographic workgroups. The training program should include: instructors guide with all lesson plans, handouts, power point presentations, classroom exercises, relevant audio-visual videotapes and any other relevant information; and a participant handbook with all relevant reading materials, classroom exercises and other materials identified by the awardee as helpful in the training process. Copyrighted materials should have written permission for use or other materials need to be identified.

2. To develop an 8 hour Training-for-Trainers (T-for-T) program to prepare correctional trainers to deliver the curriculum developed for ''Effectively Managing a Multi-generational Workforce.'' The T-for-T Program should include lesson plans and all relevant materials.

3. To develop a 2-hour training module which is portable and can ''stand alone'' to be used in various NIC training programs on the characteristics of the workforce from different generations and what correctional managers need to know to work effectively with the different generations. Relevant readings, lesson plans, tapes and other help materials should be included.

4. Materials should be prepared in consultation with NIC and an edited, final, camera-ready copy of all materials presented to NIC for publication in accordance with the NIC Preparation of Printed Materials for Publication. All products from this funding effort will be in the public domain and available to interested parties through the National Institute of Corrections. Any copyrighted material must have written permission that it can be used as part of this training program.

*Specific Requirements*

1. ''Multi-generational workforce'' will include those persons in the correctional workforce who are frequently referred to in the human resource and management literature as Generation X workers, Generation Y workers, the next generation or the new, younger workforce who bring different values to the work setting. It will also include workers who have retired and are returning to the workforce. Although the demographics suggest that most correctional managers are from the ''Baby Boomer'' generation, the awardee will address various ''multi-generational'' management and supervisory issues.

2. Correctional workplace or correctional workers will refer to settings/employees in prisons, jails, halfway houses, parole and probation agencies, *etc.* The correctional workplace will be defined in broad terms and all references in the training materials should be equally applicable to prisons, jails, and community corrections settings.

3. The developed materials should be equally relevant to all correctional workers whether they are correctional captains, nursing supervisors or chief parole agents among others. All training materials should be generic and human resource focused for the correctional profession.

4. There are many current resources, such as publications, videotapes, and training materials which have been developed in areas relating to the multi-generational workforce or specific generational groups such as Generation X and Baby Boomers. The award recipient will be expected to have knowledge of an fully utilize these resources.

5. The award recipient should identify appropriate training videotapes that can be included in training packages and obtain any necessary releases for use of those tapes. It is not expected that the awardee would develop their own audiovisual materials, however no application is prohibited from doing that within the cost allowance of this award.

6. The applicant must propose a project team which is comprised of human resource/training expertise, at least some of whom have a knowledge of generational differences, as well as correctional operations and training expertise.

7. Individual examples/illustrations can be used—but care should be given to assuring that various disciplines in the correctional environment as well as the various components of the corrections systems are included.

8. The person designated as *project director* needs to be the person who will manage the project on a day-to-day basis and who has full decision—making authority to work with the NIC project manager. This person *must* have enough time dedicated to the project to assure they are available to direct the day-to-day activities of the project and to be available for collaboration with the NIC project manager.

9. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC.

*Application Requirements*

Applications must be *submitted using OMB Standard Form 424, Federal Assistance, and attachments*. The applications should be concisely written, typed doubled-spaced, and referenced to the project by the number and title given in the this cooperative agreement announcement.

The narrative portion of this cooperative agreement application should include, at a minimum:

1. A brief paragraph that indicates the applicant's understanding of the purpose of the three (3) training programs/modules;

2. One or more paragraphs to detail the applicants understanding of the workforce characteristics of the primary generational groups;

3. A brief paragraph that summarizes the project goals and objectives;

4. A clear description of the methodology that will be used to complete the project and achieve its goals;

5. A clearly developed and detailed Project Plan which demonstrates how the various goals and objectives of the project will be achieved through its various activities so as to produce the required results;

6. A chart of measurable project milestones and time lines for the completion of each;

7. A description of the qualifications of the applicant organization and the relevant knowledge, skills and abilities of all project staff;

8. A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and a statement from individual staff that they will be available to work on this project;

9. A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A). A budget narrative must be included which explains how all cost were determined.

The project must be completed within one year of its award date.

**Authority:** Public Law 93–415.

*Funds Available:* The award will be limited to a maximum of $100,000 (direct and indirect costs). Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. This project will be a collaborative venture with the NIC Prisons Division.

*Application Procedures:* Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

*Deadline for Receipt of Applications:* Applications must be received by 4:00 p.m. Eastern Daylight Time on Wednesday, June 5, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by due date as the mail at the National Institute of Corrections is still being delayed due to decontamination procedures implemented after recent events. Applications mailed or express delivery should be sent to: National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534, Attn: Director. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The security officer will call our front desk at (202) 307–3106 to come to the security desk for pickup. Faxed or e-mailed applications will not be accepted.

*Addresses and Further Information:* A copy of this announcement and applications forms may be obtained through the NIC Web site: *http://www.nicic.org* (click on ''Cooperative Agreements''). Requests for a hard copy of the applications, forms, and announcement should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 44222 or (202) 307–3106, extension 44222. She can also be contacted by e-mail via *jevens@bop.gov.*

All technical and or programmatic questions concerning this announcement should be directed to BeLinda P. Watson at the above address or by calling (800) 995–6423, extension 30483 or (202) 353–0483, or by e-mail via *bpwatson@bop.gov.*

*Eligibility Applicants:* An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in the requested areas.

*Review Considerations:* Applications received under this announcement will be subjected to a 3 to 5 person NIC Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number: 02P06.* This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424 and outside of the envelope in which the application is sent.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372.

The Catalog of Federal Domestic Assistance number is: 16.61.

Dated: April 18, 2002.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 02–10256 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2002 for a cooperative agreement to fund the project ''Strategic Planning and Response''. NIC will award a one year cooperative agreement to develop a model for strategic planning in state prisons or state departments of corrections and a model or methodology for strategic response/strategic management in state correctional agencies. Up to $160,000 will be awarded in FY 2002. With satisfactory performance, additional funds may be added in subsequent years to implement strategic planning and strategic response/strategic management in state correctional agencies.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award will be made to an organization that will, in collaboration with the Institute, develop a model or methodology for strategic planning and strategic response/strategic management that will benefit state departments of correction.

*Background*

The National Institute of Corrections, Prisons Division, began offering assistance to state departments of corrections to address issues and concerns in their organizational climate. Work is on-going in the areas of Institution Mission Change, Institutional Culture Assessment, Workforce and Staff Sexual Misconduct. In many of the institutions which request NIC assistance, it is apparent that to address their organizational or culture issues, there needs to be a strategic approach to addressing their issues and concerns.

Management scholars and practitioners have identified five major functions of the managerial process—planning, organizing, directing, motivation, and controlling. Perhaps the most critical, but least developed, skill in correctional management is ''planning''. This, despite the fact that our ultimate success largely depends on the management of change, recognizing and addressing areas of vulnerability, and the process by which managers identify alternative courses of action, measure their probable results, and determine the strategy through which they will achieve their goals. Strategic planning can be a practical tool for correctional agencies and institutions so that they are viewing the ''big picture'' as they develop their long and short term operational plans.

As is true of ongoing system and operational planning, the response to critical events in the correctional environment is often without the benefit of in-depth preparation. Increasingly, decisions following unique events have been made intuitively, in a ''shooting from the hip'' manner, or based on political or economic expedience. Though termination of an employee for abuse of inmates or sexual misconduct with inmates may be appropriate, failure to examine and address the culture that supports, encourages, or turns a blind eye to such behavior will most certainly ensure repeat of such behaviors. Only those managers who search for and identify core issues rather than mere symptoms of the issue and initiate a planned, strategic response are successful in impacting the issue at its core.

Most strategic planning initiatives fail during the implementation of the process. Additionally, organizations need to be willing to shift priorities and resources, promote teamwork and accountability and obtain internal and external ''buy-in'' if they intend to manage their agency strategically. Identifying a model or methodology for Strategic Management will assist correction agencies in improving their organizational capabilities.

*Purpose*

The National Institute of Corrections is seeking applications for a cooperative agreement which will propose a strategic planning model and a strategic response/strategic management model or methodology that will be effective and useful to state departments of corrections.

*Scope of Project*

1. To identify and review Strategic Planning models which are currently used in the state departments of corrections or other public sector agencies and to identify one model that appears to meet criteria (to be developed by the applicant) that would make them of greatest benefit to state departments of corrections and state prisons. The selected model should be fully developed with all relevant materials that would be required for implementation in an operating correctional agency. A system of measurement and accountability will be required for the selected model.

2. To develop a model or methodology for Strategic Response that could enable state departments of corrections to have a planned response to critical, unique and unanticipated events. The methodology will include a protocol for identifying the core problem or issues, assessing the nature of the consequent vulnerability, determining the scope of it's impact, and developing specific, strategic actions to ameliorate the condition and lessen/eliminate the vulnerability. the methodology will be sufficiently flexible to lend it's applicability to a broad range of problems or issues (*example:* change of facility mission, excessive violence, staff sexual misconduct, chronic absenteeism, budget/staff reductions, *etc.*). The methodology will guide the development of the strategic response model that will usually include both short-and long-term interventions. It will guide the development of immediate actions that must be taken; intermediate system and facility planning that is required; and may require system level strategic planning to re-order operations, make programmatic adjustments, reallocate staff, etc.

3. To develop a model or methodology for Strategic Management that will enable a state correctional agency to implement its Strategic Plan into the long—term and short—term management of the agency. Existing models or methodologies for Strategic Management should be reviewed and the one which is most appropriate for operating correctional agencies selected and developed for implementation. All relevant materials must be included.

4. to document all the efforts of this project in a report to NIC, which will be made available on the NIC web site, which will clearly detail the proposed models and how they were selected and developed. Development of a title, description and format for the report should include the objectives of the project, all project outcomes and all relevant information concerning the project. This report will also include the research conducted for this project and a comprehensive review of all literature pertaining to the project's work.

5. To develop a short monograph for publication, which adheres the NIC's

guidelines for publications, which would contain practical information for departments of corrections and other correctional agencies which would like to implement Strategic Planning, Strategic Response or Strategic Management models, with a ''Lessons Learned'' focus from any agencies currently utilizing the model. This should include a glossary of terms and definitions related to strategic planning and strategic response that may create a common language in the correctional environment. All materials that would be needed to train an agency's staff to implement any of the models or methodologies are to be included.

6. Development of an outcome evaluation instrument through which the effectiveness of the models/methodologies can be measured. Linked to the strategic planning and response methodology, the outcome evaluation will inform the planning and guide development of alternative interventions as necessary and appropriate.

7. Applicants who are familiar with the NIC Institutional Culture Initiative are welcomed to discuss this current cooperative agreement and its relationship to the other Initiative projects. However, there will be *no* penalty to applicants who do not discuss the relationship of this project to the broader Initiative.

8. In assessing the applications, additional consideration will be given to applicants who provide guidance in use of the methodology, in an institution that may be antagonistic to examination and hostile to intervention. The characteristic of such a correctional culture may be described and strategies proposed that will enhance the success of change agents leaders, and managers in strategic response. Allocation of cooperative agreement resources to this optional task may not significantly detract from the primary tasks.

*Specific Requirements*

1. The intent of this solicitation is *not* to ''reinvent the wheel'' by developing new models for Strategic Planning or Strategic Management. Rather the applicant is requested to demonstrate knowledge of existing Strategic Planning or Strategic Management models which are used in correctional agencies or other public sector agencies as well as knowledge of the correctional environment. Applicants are requested to select a model of Strategic Planning and Strategic Management which they believe would be useful and manageable in a correctional environment—or to adapt portions of existing models of Strategic Planning or Strategic Management to create a model for correctional agencies. Research, survey's, site visits, focus groups and all other methods for identifying existing models of Strategic Planning and Strategic Management as well as the criteria for selection of the models must be clearly explained in the proposal.

2. The development of a model or methodology for Strategic Response is expected to demonstrate expertise in correctional management, organizational development and change management. If there is no existing model on which to rely, the applicant should propose a methodology of strategic response which can be utilized by department of corrections. The methodology will be sufficiently flexible to lend its applicability to a broad range of problems or issues (*examples:* change of institution mission, excessive violence, staff misconduct, absenteeism, budget/staff reductions, *etc.*). The strategic response will usually include both short-and long-term interventions: immediate actions that must be taken; intermediate system and facility planning that is required; and may require system level strategic planning to re-order operations, make programmatic adjustments, reallocate staff, etc.

3. Development of a methodology for strategic response will enable rapid, planned response to critical, unique and unanticipated events. Strategic management provides an organization the opportunity to shift it's organizational priorities to implement the goals it has developed. The applicant should provide a conceptual understanding of Strategic Planning, Strategic Response and Strategic Management which provides a practical and useful tool to state correctional agencies.

4. The applicant *must* demonstrate that their project team is comprised of persons with expertise in correctional administration/management and organizational development/change.

5. The person designated as *project director* is required to be the person who will manage the project on a day-to-day basis and who has full decision—making authority to work with the NIC project manager. This person *must* have enough time dedicated to the project to assure they are available to direct the day-to-day activities of the project and to be available for collaboration with the NIC project manager. Applicants may use whatever position titles they wish with other project staff, but the position of project director *must* be as described in this paragraph.

6. Applicants should identify in the proposal specific strategies for assuring a collaborative effort between their project team and NIC. Additional credit will be given during the evaluation process to applicants who can demonstrate their ability to work collaboratively from their previous work.

*Application Requirements*

Applications must be *submitted using OMB Standard Form 424, Federal Assistance, and attachments.* The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement. The narrative portion of this cooperative agreement application should include, at a minimum:

1. A brief paragraph that indicates the applicant's understanding of the purpose of this cooperative agreement;

2. One or more paragraphs to detail the applicants understanding of strategic planning, strategic management and strategic response;

3. A brief paragraph that summarizes the project goals and objectives;

4. A clear description of the methodology that will be used to complete the project and achieve its goals;

5. A clearly developed and detailed Project Plan which demonstrates how the various goals and objectives of the project will be achieved through its various activities so as to produce the required results;

6. A chart of measurable project milestones and time lines for the completion of each milestone;

7. A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and a statement from individual staff that they will be available to work on this project;

8. A description of the qualifications of the applicant organization and documentation of each project staff's knowledge, skills and abilities to carry out their assigned project responsibilities;

9. A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A). A budget narrative must be included which explains how all costs were determined.

The project must be completed within one year of its award date.

**Authority:** Public Law 93–415.

*Funds Available:* The award will be limited to a maximum of $160,000 (direct and indirect costs). Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local government. This project will be a collaborative venture with the NIC Prisons Division.

*Application Procedures:* Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

*Deadline for Receipt of Applications:* Applications must be received by 4:00 p.m. Eastern Daylight Time on Wednesday, June 12, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. The NIC application number should be written on the outside of the mail or courier envelope. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by due date as the mail at the National Institute of Corrections is still being delayed due to decontamination procedures implemented after recent events. Applications mailed or submitted by express delivery should be sent to: National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534, Attn: Director. Hand delivered applications can be brought to 500 First Street, NW., Washington, DC 20534. The security officer will call our front desk at (202) 307–3106 to come to the security desk for pickup. Faxed or e-mailed applications will not be accepted.

*Addresses and Further Information:* A copy of this announcement and application forms may be obtained through the NIC Web site: *http://www.nicic.org* (click on ''Cooperative Agreements''). Requests for a hard copy of the application, forms, and announcement should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 44222 or (202) 307–3106, extension 44222. She can also be contacted by e-mail via *jevens@bop.gov.*

All technical and or programmatic questions concerning this announcement should be directed to Susan M. Hunter at the above address or by calling (800) 995–6423, extension 40098 or (202) 514–0098, or by e-mail via *shunter@bop.gov.* A copy of this announcement and application forms may also be obtained through the NIC Web site: *http://www.nicic.org* (click on ''Cooperative Agreements'').

*Eligibility Applicants:* An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individuals or team with expertise in the requested areas.

*Review Considerations:* Applications received under this announcement will be subjected to 3 to 5 member Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number: 02P09.* This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424 and on the outside of the envelope in which the application is sent.

**Executive Order 12372**

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application Kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is 16.603.

Dated: April 18, 2002.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 02–10257 Filed 4–25–02; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF LABOR

### Employment Standards Administration Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and

fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**Modification to General Wage Determination Decisions**

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

New Jersey
NJ020002 (Mar. 1, 2002)

*Volume II*

District of Columbia
DC020001 (Mar. 1, 2002)
Maryland
MD020048 (Mar. 1, 2002)
Virginia
VA020092 (Mar. 1, 2002)
VA020099 (Mar. 1, 2002)

*Volume III*

None

*Volume IV*

Illinois
IL020001 (Mar. 1, 2002)
IL020002 (Mar. 1, 2002)
IL020003 (Mar. 1, 2002)
IL020006 (Mar. 1, 2002)
IL020007 (Mar. 1, 2002)
IL020008 (Mar. 1, 2002)
IL020009 (Mar. 1, 2002)

*Volume V*

None

*Volume VI*

Oregon
OR020007 (Mar. 1, 2002)

*Volume VII*

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon And Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office
Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued on January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of April 2002.

**Carl J. Poleskey**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 02–10046 Filed 4–25–02; 8:45 am]

BILLING CODE 4510–22–M

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2002–22; Exemption Application No. D–10891, et al.]**

### Grant of Individual Exemptions; Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund), Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund), Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds) et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

**Connecticut Plumbers and Pipefitters Pension Fund (the Pension Fund); Connecticut Pipe Trades Local No. 777 Annuity Fund (the Annuity Fund); Connecticut Pipe Trades Health Fund (the Health Fund) (Collectively the Funds), Located in Manchester, Massachusetts**

[Prohibited Transaction Exemption No. 2002–22; Exemption Application Nos. D–10891; D–10892 and L–10893]

*Exemption*

The restrictions of sections 406(a), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase on September 1, 1999 (the Purchase) by the Health Fund of the common stock of Employee Benefit Administrators, Inc. (EBPA Stock) from Michael W. Daly and Virginia S. Daly, parties in interest with respect to the Health Fund, and the subsequent reallocation of the purchase price (the Reallocation) among the Funds, including ''makewhole'' payments (Makewhole Payments) representing lost earnings in connection with the Purchase, provided that the following conditions are satisfied:

(a) the Purchase was a one-time transaction for a lump sum cash payment;

(b) the Purchase price was no more than the fair market value of EBPA Stock as of the date of the Purchase;

(c) the fair market value of the EBPA Stock was determined by an independent, qualified, appraiser;

(d) the Funds paid no commissions or other expenses relating to the Purchase;

(e) the proposed Reallocation will be made in connection with the original payment by the Pension Fund and the Annuity Fund for EBPA Stock resulting from the original allocation (the Original Allocation);

(f) the Makewhole Payments to be made by the Health Fund to the Pension Fund and the Annuity Fund represent an amount to provide the Pension Fund and the Annuity Fund with a rate of return equal to the total accrued but unpaid interest due as of the date of grant of this exemption as a result of the Original Allocation on September 1, 1999; and

(g) an independent fiduciary has negotiated, reviewed, and approved the terms of the Reallocation and will ensure the current and future payments by the Funds in connection with services provided by the administrative affiliate will reflect actual expenditures by the Funds.

*Effective Date of Exemption:* The effective date of this exemption is September 1, 1999.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 5, 2002 at 67 FR 5305.

*For Further Information Contact:* Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

**Cargill, Incorporated and Associated Companies Salaried Employees' Pension Plan, et al., (the Original Plans), Located in Minneapolis, Minnesota**

[Prohibited Transaction Exemption 2002–23; Exemption Application Nos. D–11017 through D–11023]

*Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act, and the sanctions resulting from section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective October 18, 1996, to: (1) The acquisition (the Stock Acquisition) and holding of certain shares of Cargill, Incorporated common stock (the Common Stock) by the Cargill, Incorporated and Associated Companies Master Pension Trust (the Master Trust); and (2) the acquisition, holding and, where relevant, exercise by the Master Trust of a certain irrevocable put option associated with the Common Stock (the Put Option); provided that the following conditions are satisfied:

(A) Prior to the Stock Acquisition, a qualified, independent fiduciary acting on behalf of the Master Trust (the Independent Fiduciary) determined that the Stock Acquisition was appropriate for, and in the best interests of, the Original Plans and the Master Trust.

(B) The $178.75 per share purchase price the Master Trust paid for each share of Common Stock pursuant to the Stock Acquisition equaled the August 31, 1996 fair market value of each such share as determined by a qualified, independent appraiser selected by the Independent Fiduciary.

(C) Subsequent to the Stock Acquisition, the Independent Fiduciary represented the interests of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option, and will continue to represent such interests as long as the Master Trust holds such stock and Put Option.

(D) Subsequent to the Stock Acquisition, the Independent Fiduciary took and will take whatever action is necessary to protect the rights of the Master Trust with respect to the Master Trust's holding of the Common Stock and the Master Trust's holding of the Put Option.

(E) Upon request by the Independent Fiduciary, Cargill, Incorporated (Cargill) purchased, or will purchase, all or a portion of the Common Stock held by the Trust, in accordance with the terms of the Put Option, for the greater of: (1) The price of the Common Stock as of the date of the Stock Acquisition; or (2) the fair market value of the Common Stock as of the date the Put Option is exercised.

(F) Subsequent to the Stock Acquisition, the Common Stock did not, at any time, represent more than ten percent (10%) of the total fair market value of the assets held by: (1) Any Original Plan; or (2) after the Original Plans were merged into each other on January 1, 1997, any remaining Original Plan that continued to have an undivided interest in the assets of the Master Trust (a Remaining Plan).

(G) For purposes of securing its obligations with respect to the Put Option, Cargill established, and will continue to maintain, an escrow account containing cash and/or U.S. government securities amounting to at least 25 percent (25%) of the total current fair market value of the Common Stock held by the Master Trust.

(H) All transactions between Cargill and the Master Trust, or between Cargill and any Original Plan or Remaining Plan (collectively, the Plans), arising in connection with the Stock Acquisition, were no less favorable to the Master Trust or Plan than arm's-length transactions involving unrelated parties.

(I) Cargill reimbursed the Master Trust, with interest (the Reimbursement), for the Master Trust's payment of certain legal expenses associated with the Master Trust's holding of the Common Stock (the Legal Fees).

(J) Cargill paid, and will continue to pay, the fees of the Independent Fiduciary and its financial advisor to the extent such fees relate to either the Stock Acquisition or the continued holding of the Common Stock and the Put Option by the Master Trust.

(K) At no time subsequent to the Stock Acquisition has the Master Trust held more than 25% of the aggregate amount of Common Stock issued and outstanding.

(L) Cargill adopts written procedures which require that a Remaining Plan fiduciary: (1) Review all expenses submitted for payment by the Master Trust; and (2) approve the payment of only those expenses that are reasonable

and necessary for the administration of a Remaining Plan.

(M) Cargill adopts written procedures which require that independent legal counsel provide Cargill with a written opinion regarding the payment by the Master Trust or a Remaining Plan of expenses associated with a transaction between Cargill and a Remaining Plan.

(N) Cargill, within 60 days of the date of this grant, will file Form 5330 with the Internal Revenue Service and will pay the applicable excise taxes with respect to the Master Trust's payment of the Legal Fees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 3, 2002 at 67 FR 359.

*For Further Information Contact:* Christopher Motta of the Department, telephone (202) 693–8544. (This is not a toll-free number.)

**Carl Mundy, Jr. Defined Benefit Plan (the Plan), Located in Alexandria, Virginia**

[Prohibited Transaction Exemption No. 2002–24; Application No. D–11043]

*Exemption*

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed contribution(s) (the Contribution(s)) to the Plan of shares (the Shares) of Schering-Plough Corporation (Schering-Plough) to be received annually by Carl Mundy, Jr. (Mr. Mundy), a disqualified person with respect to the Plan [1] as compensation in the form of Shares in lieu of cash, provided that the following conditions are met:

(a) The Shares are valued at its fair market value at the time of each Contribution;

(b) The Shares represent no more than 20% of the total assets of the Plan following each Contribution;

(c) The Plan will not pay any commissions, costs or other expenses in connection with the Contributions; and

(d) Mr. Mundy, who is the only person affected by the transactions, believes that the transactions are appropriate for the Plan and desires that the transactions be consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 27, 2002 at 67 FR 9092.

*For Further Information Contact:* Mr. Khalif Ford of the Department, telephone (202) 693–8560. (This is not a toll-free number.)

**HSBC Holdings plc, Located in London, England**

[Prohibited Transaction No. 2002–25; Exemption Application No.: D–11057]

*Exemption*

HSBC Asset Management Americas, Inc.(AMUS), HSBC Asset Management Hong Kong, Ltd.(AMHK), HSBC Bank USA (Bank USA), and any current affiliate of HSBC Holdings plc (HSBC) that is eligible to serve or becomes eligible to serve as a qualified professional asset manager (a QPAM), as defined in Prohibited Transaction Class Exemption 84–14 (PTCE 84–14),[2] HSBC, itself, if in the future it becomes a QPAM, and any newly acquired or newly established affiliate of HSBC that is a QPAM or in the future becomes a QPAM, other than Republic New York Securities Corporation (RNYSC), shall not be precluded from functioning as a QPAM, pursuant to the terms and conditions of PTCE 84–14, for the period beginning on December 17, 2001, and ending ten (10) years from the date of the publication of this final exemption in the **Federal Register**, solely because of a failure to satisfy Section I(g) of PTCE 84–14, as a result of an affiliation with RNYSC; provided that:

(a) RNYSC has not in the past acted, nor does it now act, nor will it act as a fiduciary with respect to any employee benefit plans subject to the Act;

(b) This exemption is not applicable if HSBC and/or any successor or affiliate is affiliated with or becomes affiliated with any person or entity convicted of any of the crimes described in Section I(g) of PTCE 84–14, other than RNYSC; and

(c) This exemption is not applicable if HSBC and/or any successor or affiliate is convicted of any of the crimes described in Section I(g) of PTCE 84–14, including any such crimes subsequently committed by RNYSC.

*Effective Date:* This exemption is effective for the period beginning on December 17, 2001, the date on which the U.S. Attorney for the Southern District of New York filed an Information and Government's Memorandum (the Information) outlining the charges against RNYSC and on which RNYSC entered a plea of guilty to the criminal charges set forth in the Information, and ending ten (10) years from date of the publication of the final exemption in the **Federal Register**.

**Written Comments**

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption. As set forth in the Notice, interested persons consisted of the investment fiduciary or trustee for each of the current Plan clients for which one or more of the applicants might potentially act as a QPAM. The deadline for submission of comments and requests for a hearing was within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on February 27, 2002. Accordingly, all comments and requests for a hearing were due on April 15, 2002.

As required by 29 CFR section 2570.43(d) of the Department's regulations, the applicants confirmed in a letter dated, April 5, 2002, that notification of the pendency of the proposed exemption was furnished to the primary contact for each of the individual Plan clients identified in the application file. In addition, the applicants informed the Department that the primary contact for fifteen (15) other Plan clients that were not listed in the application file also received notification. These fifteen (15) Plan clients included six (6) clients to which HSBC Bank provides certain asset allocation services and one (1) former client. All of the notifications included a copy of the Notice along with a copy of the supplemental statement (the Supplemental Statement), described at 29 CFR § 2570.43(b)(2) of the Department's regulations. All of the notifications were sent by first class mail or overnight Federal Express delivery. The deadline for providing notification to interested persons was March 14, 2002.

In their letter of April 5, the applicants confirmed that notification to all but seven (7) interested persons were sent either on March 8 or March 14, 2002. Of the seven (7) remaining interested persons, six (6) were sent notification on March 15, 2002, and one was sent notification on March 18, 2002. It is represented that the delay in sending notification to these seven (7) interested persons was due either to the nature of HSBC Bank's coding system, which grouped asset allocation clients separately from individual Plan client

[1] Since Mr. Mundy is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[2] 49 FR 9494 (March 13, 1984), as amended, 50 FR 41430 (October 10, 1985).

accounts or due to the fact that the former client's identity as an interested person was not immediately determined.

In light of the fact that notification to interested persons was delayed, and in order to allow such interested persons the benefit of the full thirty (30) day comment period, the Department required, and the applicants agreed to, an extension of the deadline within which to comment and request a hearing on the proposed exemption until April 16, 2002.

During the comment period, the Department received no comments and no requests for a hearing from interested persons. Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption. The complete application file, including all submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on February 27, 2002, at 67 FR 9093.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department of Labor, telephone (202) 693–8551 (this is not a toll-free number).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of April, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 02–10320 Filed 4–25–02; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–11031, et al.]**

### Proposed Exemptions; Northwoods Bank of Minnesota Employee Stock Ownership Plan (the Plan)

**AGENCY:** Pension and Welfare Benefits Administration, Labor

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration (PWBA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *''moffittb@pwba.dol.gov''*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Northwoods Bank of Minnesota Employee Stock Ownership Plan (the Plan) Located in Park Rapids, Minnesota**

[Application No. D–11031]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by individual accounts (the Stock Accounts) within the Plan of certain shares of common stock (the Shares) of Dorset Bancshares, Incorporated (the Holding Company) to the Holding Company, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Stock Accounts receive the greater of: (i) $32,000 per Share, as currently apppraised by an independent, qualified appraiser; or (ii) the current fair market value for the Shares established at the time of the sale by an independent qualified appraiser; and

(c) The Stock Accounts pay no commissions or other expenses associated with the sale.

**Summary of Facts and Representations**

1. Northwoods Bank of Minnesota (the Bank) is a community bank located in Park Rapids, Minnesota. The bank is a wholly-owned subsidiary of the Holding Company. Both the Bank and the Holding Company are closely-held corporations under Minnesota state law. Effective November 1, 1967, the Bank established the Plan as a profit sharing plan (the Original Plan) for the benefit of its employees.

In 1986, the Original Plan was converted to an employee stock ownership plan (i.e., the Plan). Effective February 15, 1995, the Plan also added a 401(k) salary deferral feature. Effective January 1, 1999, the Bank and the Holding Company each elected to be treated as a subchapter ''S'' corporation.

As of December 31, 2001, the Plan had 30 active participants and 6 inactive participants. Only the participants (both active and inactive) that have a Stock Account in the Plan will be affected by the proposed transaction.

Mark Hewitt (Mr. Hewitt) is the Chairman/CEO of the Bank, the president of the Holding Company, and a co-trustee of the Plan. Mr. Hewitt currently owns 194 Shares, which represents an approximately 91.5% ownership interest in the Holding Company. Brian Grave (Mr. Grave) is also a co-trustee of the Plan, and the Chief Financial Officer of the Bank. Mr. Grave does not own any interest in the Bank or the Holding Company.

2. On December 31, 1986, the Plan purchased 20 Shares of the Holding Company from Mr. Hewitt at a price of $4,489.15 per Share, for a total purchase price of $89,783. On April 18, 1996, the Plan sold 3 Shares to the Holding Company at a price of $15,500 per Share, for a total purchase price of $46,500.[1] The Stock Accounts have received distributions, as shareholders of an ''S'' corporation, in the following amounts:

| Year | Amount of distribution |
|---|---|
| 1999 | $15,476.12 |
| 2000 | 19,419.61 |
| 2001 | [1] 35,957.52 |

[1] Through 9/30/01.

Since 1996, the Plan has continued to hold the remaining 17 Shares (which represents approximately 8.02% of the outstanding Shares), but no additional Shares have been purchased or contributed to the Plan. These 17 Shares are held in thirty (30) Stock Accounts within the Plan. The applicant states that the certificates for the Shares are held at the Bank, while other contributions are invested in mutual funds unrelated to the Bank. The Plan's ownership of the 17 Shares represented 47.8% of total Plan assets, as of December 31, 2000. The Plan had approximately $941,738 in total assets as of December 31, 2000.

3. The Plan was originally established to invest primarily in ''qualifying employer securities'' (QES), as defined under section 407(d)(5) of the Act. However, since 1995 the Plan's participants have made deferral contributions (pursuant to section 401(k) of the Code) to the Plan which have been invested in mutual funds. The Bank's matching contributions to the Plan have been made in cash, rather than in Shares. Consequently, the percentage of the Plan's assets invested in QES has declined over time and is expected to continue declining as additional cash contributions are made.[2]

Therefore, the applicant believes that the employee stock ownership portion of the Plan should be discontinued and proposes that the Plan sell the Shares to the Holding Company for cash at their fair market value. In this regard, the applicant states that section 408(d) of the Act excludes owner-employees (including shareholder-employees), and any corporation which is 50% or more owned by such persons (subchapter ''S'' corporations), from using the statutory exemption provided under section 408(e) of the Act for purchases or sales of QES. The applicant notes that section 408(d)(2)(B) of the Act provides an exception to this exclusion for a sale of QES to an employee stock ownership plan (ESOP) by a shareholder-employee or related subchapter ''S'' corporation. However, the applicant notes further that because the exception described in section 408(d)(2)(B) applies only to sales of QES to an ESOP, the applicant is requesting an individual exemption to permit the cash sale of the Shares by the Plan to the Holding Company.

4. The Shares were appraised on December 31, 2000 (the Appraisal). The Appraisal was prepared by the Bank Advisory Group, Inc. (BAGI), an independent consulting firm in Austin, Texas. BAGI provides appraisal services for closely-held banks and other financial institutions.

The Appraisal states that the Holding Company is a ''shell'' holding company for the Bank, a federally-chartered savings bank located in Minnesota. The Appraisal considered three valuation methodologies (i.e., the net asset value, the market value, and the investment value) of the Holding Company to determine the fair market value of the Shares.

The Appraisal relied primarily on the market value and the investment value in determining fair market value of the

[1] The applicant represents that the original purchase of the Shares by the Plan and the subsequent sale of certain Shares to the Holding Company occurred before the Bank and the Holding Company elected subchapter ''S'' status. Therefore, the applicant states that such transactions were permitted by the statutory exemption under ERISA section 408(e) and the Internal Revenue Code section 4975(d)(13).

The Department expresses no opinion in this proposed exemption as to whether the Plan's purchase, holding or sale of the Shares met the requirements necessary for relief under section 408(e) of the Act or section 4975(d)(13) of the Code.

[2] Section 407(d)(6) of the Act defines the term ''employee stock ownership plan'' as an individual account plan (A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under section 401 of the Code, and which is designed to invest primarily in qualifying employer securities, and (B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

The Department is providing no opinion herein as to whether such requirements have been met.

Shares. Specifically, the Appraisal considered the following factors:

(i) The Holding Company's restricted market presence and relatively low future growth prospects when compared to that of larger, publicly-traded thrift organizations;

(ii) the Holding Company's small asset base;

(iii) the Holding Company's high level of ownership;

(iv) ongoing branch divestitures by larger financial institutions in outlying markets; and

(v) larger financial institutions' competitive advantage with regard to technology and customer diversification.

Based on these factors, BAGI determined that the Shares had a fair market value of $26,000 per Share, as of December 31, 2000.

An update to the Appraisal (the Update) was prepared by BAGI on April 5, 2002. The Update states that the fair market of the Shares was $32,000 per Share, as of December 31, 2001. Thus, the Plan's 17 Shares had a total fair market value of $544,000 as of that date.

5. The applicant proposes that the Holding Company purchase the shares from the Plan in a one-time cash transaction. The Plan will pay no commissions or other expenses associated with the sale. The aggregate fair market value of the Shares will be determined by BAGI, an independent qualified appraiser, at the time of the transaction. In this regard, the Holding Company proposes to pay the Plan the greater of: (i) $32,000 per Share, which is the fair market value per share established by BAGI, as of December 31, 2001; or (ii) the fair market value of the Shares as established by a further update of the Appraisal at the time of the transaction.

The applicant represents that the proposed transaction is in the best interest and protective of the Plan and its participants and beneficiaries. The sale of the Shares to the Holding Company will increase the liquidity and the diversification of the Plan's investment portfolio and allow the Plan to eliminate its employee stock ownership component.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of (i) $32,000 per Share, as currently appraised by BAGI; or (ii) the current fair market value for the Shares, as established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no commissions or other expenses associated with the sale;

(d) the sale will provide the Plan and its participants with more liquidity and an opportunity to increase their return with more diversified investments; and

(e) only the assets in Stock Accounts within the Plan will be affected by the transaction.

*For Further Information Contact:* Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

**Louisville Electrical Joint Apprentice and Training Committee Trust Fund (the Fund) Located in Louisville, Kentucky**

[Exemption Application No: L–10981]

**Proposed Exemption**

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act shall not apply to the purchase by the Fund of an interest in a condominium regime (the Condo) from the International Brotherhood of Electrical Workers (IBEW), Local 369 Building Corporation (the Building Corporation), a party in interest with respect to the Fund; provided that, at the time the transaction is entered into, the following conditions are satisfied:

(1) The purchase by the Fund of the interest in the Condo is a one-time transaction for cash;

(2) the Board of Trustees (the Trustees), acting as named fiduciary on behalf of the Fund, prior to entering the transaction, determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(3) an independent qualified fiduciary (the I/F) after analyzing the relevant terms of the transaction advises the Trustees that proceeding with the transaction would be in the interest of the Fund;

(4) the purchase price paid by the Fund for the interest in the Condo is the *lesser of:* (a) the total amount actually expended by the Building Corporation in the construction of the north wing unit (the Unit) of the condominium building (the Condo Building), as documented in writing and approved by the I/F, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by an independent, qualified appraiser, as of the date of the transaction, provided that such value does not exceed $2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such independent, qualified appraiser, as of December 11, 2001;

(5) the terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(6) the Fund does not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(7) the Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the IBEW, Local Union 369 (the Local) and the Bank of Louisville (the Bank);

(8) the Fund does not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction, and the costs incurred in connection with the purchase by the Fund at closing does not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(9) under the terms of the loan agreement between the Bank and the Fund, the Bank in the event of a default by the Fund has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(10) under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

**Summary of Facts and Representations**

1. The Fund is an employee benefit welfare plan located at 1021 South Floyd Street (the Existing Facility) in Louisville, Kentucky. The Fund is maintained under a collective bargaining agreement between the Local and the Louisville Chapter, of the National Electrical Contractors Association (NECA). The Fund is designed to provide programs to recruit and train workers as electricians. In

addition, the Fund also provides continuing education and advanced training for electrical workers.

Members of the Local are covered by the Fund. As of December 1, 2000, there were 340 participants in the Fund.

As of June 30, 2001, the Fund had cash and cash equivalents of $1,420,542 and a ''net worth'' of $2,056,940. An unaudited balance sheet of the Fund's assets prepared by William P. Schmitz (Mr. Schmitz), the Fund's independent accountant, indicated that the Fund had, as of December 31, 2001, $1,829,704 in cash and $2,656,242 in ''net worth.''

2. The Trustees have authority to invest the assets of the Fund. Among the eight (8) individuals who serve as Trustees, four (4) are management representatives and four (4) are labor representatives. Two (2) of the Trustees, Scott Pulliam and Steve Silliman (Mr. Silliman), also serve as officers of the Local.

3. The Local is the sole shareholder of the Building Corporation, a Kentucky corporation. The Local and the Building Corporation are parties in interest with respect to the Fund, pursuant to section 3(14)(D) and 3(14)(G) of the Act, respectively.

4. The Building Corporation owns real estate (the Property) located at 4315 Preston Highway in Louisville, Kentucky. It is represented that this location offers immediate interstate access from the Louisville metropolitan area and has parking availability. The Property consists of an irregularly shaped level parcel of 3.09 acres of land. As of December 11, 2000, the Property was improved with two buildings. The first building, a two-story, 8,092 square foot concrete block structure (the Original Building) was used, as of December 11, 2000, for offices and meeting space for the Local. The second building, a 900 square foot concrete block garage (the Garage) located in the rear of the Property, was used, as of the same date, for storage by the Local. A sewage treatment plant was also located on the Property, as of December 11, 2000.

In 2001, the Building Corporation chose to expand the total square footage of the Original Building on the Property from 8,092 square feet to 53,353 square feet by adding a north and a south wing. Included in the site improvements to the Property are 110 striped parking spaces, asphalt cement paving, walks, lighting, and landscaping.

To finance the expansion of the Original Building, the Building Corporation obtained in March 2001, a construction loan in the amount of $5.9 million dollars from the Bank. It is represented that the Fund is under no obligation to the Bank or the Union under the terms of this loan.

5. It is represented that by March 15, 2002, the Building Corporation, as the developer of the Property, had filed documents establishing a condominium regime on the Property in accordance with Kentucky Horizontal Property law.[3] Under the provisions of the Kentucky Horizontal Property Law,[4] an owner of an interest in a condominium has the exclusive ownership of its unit and also has a right to share the common elements of the property with the owners of other units in the condominium. Except as otherwise provided, the common elements of a condominium include the underlying land, the foundations, main walls, roofs, halls, lobbies, stairways, entrances, exits, basements, yards, gardens, the installations of central services, and all other elements rationally of common use or necessary for upkeep and safety. It is represented that the amount of an ownership interest in a unit of a condominium is equivalent to the percentage representing the floor area of such individual unit to the total floor area of such condominium. It is further represented that this percentage is expressed at the time the condominium regime is established, is recorded with the county clerk, and cannot be altered without the agreement of all owners of the units of the condominium.

It is represented that the Building Corporation, as the developer of the Property, chose to use a condominium regime, because a traditional approach to dividing the Property, as subsequently improved, would have taken too long and have been more expensive. In this regard, numerous local governmental approvals and variances would have been required. It is represented that such approvals and variances would have created a delay in construction and in occupancy.

6. It is represented that the offices and union hall of the Local occupy the Original Building plus the south wing (32,079 square feet) of the Condo Building on the Property (approximately 60.13 percent (60.13%) of the total square footage in such building). The north wing (21,274 square feet) of the Condo Building on the Property (approximately 39.87 percent (39.87%) of the total square footage in such building) is intended to house the training facility and the administrative offices of the Fund.

7. An administrative exemption has been requested that would permit the Fund to purchase from the Building Corporation an interest in the Condo. In this regard, it is represented that in purchasing the interest in the Condo, the Fund will acquire a real property interest in the north wing, the land underlying the north wing, and any other common elements of the Condo. The amount of the Fund's ownership interest in the land underlying the north wing and any other common elements of the Condo will be equivalent to the percentage (approximately 39.87%) representing the square footage of the north wing of the Condo Building (21,274 square feet) to the total square footage of such building (53,353 square feet). Further, it is represented that the Fund's ownership of the interest in the Condo will be recorded as a deed for real property with the Clerk of Jefferson County.

8. It is represented that the proposed transaction is feasible in that the purchase of an interest in the Condo by the Fund is a one-time transaction for cash.

In addition to the purchase price, with regard to the acquisition of an interest in the Condo, the Fund will be responsible for paying the cost of recording the deed, the charges of title examination and title policy, the state, county, school, and fire tax assessments, and any other obligations required under Kentucky law governing condominiums. However, the costs incurred in connection with the purchase by the Fund at closing may not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank. Further, the Fund may not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction.

It is represented that the Fund will be responsible for paying for its own electrical, gas, telephone, and water service on its Unit in the Condo Building. However, the Local and the Fund agree to base all cost-sharing for the common elements of the Condo on the percentage of each party's ownership interest in the Condo.

9. The proposed exemption contains conditions which are designed to ensure the presence of adequate safeguards to protect the interests of the Fund regarding the subject transaction. In this regard, the applicant agreed to hire an I/F to act on behalf of the Fund with respect to the acquisition by the Fund of the interest in the Condo. With regard

[3] It is represented that Kentucky Horizontal Property Law, KRS 381.805–381.910 creates a framework for developing and owning condominium units in the state of Kentucky.

[4] KRS 381.830.(1)(a).

to the selection of the I/F, the Trustees received proposals from two (2) entities willing to serve as the I/F. Of the two candidates, the Trustees chose Independent Fiduciary Services, Inc. (IFS).

10. Pursuant to an agreement (the Agreement), dated October 22, 2001, the Trustees retained IFS to analyze relevant aspects of the proposed transaction and advise the Trustees, in the Trustees' capacity as the named fiduciary of the Fund, whether proceeding with the proposed transaction according to the proposed terms would be in the Fund's financial interest.

Pursuant to the terms of the Agreement, IFS is responsible for considering, at a minimum: (a) The appraisal of the fully completed Property, and evaluating the sufficiency of the methodology of such appraisal and the reasonableness of the conclusions reached in such appraisal; (b) the Fund's financial statements and projections of future cash flows and the Fund's expected ability to financially support the transaction, subject to certain limitations; (c) the proposed purchase and sale agreement, the condominium agreement, and other documents regarding the proposed sale, ownership, and occupancy of the Property; provided that IFS shall consider such documents solely from an investment perspective and shall be entitled to confer with and rely upon counsel for the Fund (the Fund's Counsel) regarding legal matters; and (d) the Fund's financial and business analysis of whether to proceed with the transaction, compared to leasing comparable space or purchasing other comparable space. Further, IFS is responsible for providing the Trustees with advice and conclusions about the foregoing matters by way of a written report.

It is represented that IFS is independent of the parties involved in the proposed transaction in that amounts paid or to be paid to IFS by the Fund in each of 2001 and 2002 are less than one percent (1%) of IFS's total revenues in each respective year. IFS confirms that it has registered as an investment adviser under the Investment Advisers Act of 1940 and acknowledges that with respect to its duties as set forth in the Agreement it is a fiduciary, as defined in section 3(21)(A)(ii) of the Act.

It is represented that although IFS was retained as a fiduciary, the Trustees remain responsible, as named fiduciary for the Fund, for deciding whether, when, and on what terms to consummate the proposed transaction.[5]

IFS requested and has reviewed the following documents concerning the Fund and the proposed transaction: (a) The Prohibited Transaction Exemption Application, dated March 7, 2001; (b) the Department's response, dated March 26, 2001; (c) letters from the Fund's Counsel to the Department, dated April 27, May 30, and September 28, 2001; (d) the December 11, 2000, appraisal report prepared for the Bank by J. Michael Jones, MAI, and Jerome S. Cowens of J. Michael Jones and Associates, an independent, qualified real estate appraiser in Louisville, Kentucky (the Appraiser); (e) the December 11, 2001, appraisal report, prepared by the Appraiser and addressed to IFS, supplemented by a letter from the Appraiser to IFS, dated February 12, 2002; (f) the Construction/Term Loan Agreement, dated March 1, 2001, between the Bank and the Building Corporation; (g) the draft undated Condominium Sales Contract between the Building Corporation and the Fund; (h) the draft Declaration or Master Deed under which the condominium regime would be managed; (i) the proposed term sheet for a loan between the Bank and the Fund and draft loan documents; (j) audited financial statements of the Fund, dated June 30, 2000, prepared by Buschenberger, Darst & Eggers, LLC., CPAs; and audited financial statements of the Fund, as of June 30, 2001, and an unaudited balance sheet and income statement of the Fund, dated December 31, 2001, prepared by Mr. Schmitz, the Fund's accountant; (k) a Forecasted Statement of Cash Flows, dated June 20, 2001, prepared by Mr. Schmitz; and more detailed cash flow projections, dated February 12, 2002, prepared by Mr. Schmitz and the Fund's Counsel, further refined and tested by IFS; (l) layout drawings of existing and new structures, land, relationship to other structures and similar physical aspects; and (m) a breakdown of costs of construction prepared by Abel Construction Company (the General Contractor).

In addition, IFS met in person or telephonically with: (a) The Fund's Counsel, Thomas J. Grady, Esq. of Segal, Stewart, Cutler, Lindsay, Janes, & Berry, PLLC; (b) the Fund's accountant, Mr. Schmitz; (c) the Bank lending officer, Edward L. Shannon, Senior VP of the Bank; (d) the Appraiser; (e) the business manager for the Local, Mr. Silliman; (f) the training director of the Fund, Steve Willinghurst; and (g) Ricky George (Mr. George) the Fund Chairman and one of the Trustees who represent the employers of electrical workers.

11. It is represented that because the Fund's Existing Facility is landlocked and cannot be expanded to meet the growing need for training electrical workers, the Trustees considered three (3) alternatives: (1) Purchasing another property and renovating it; (2) building a new training facility; and (3) leasing additional space. With regard to the first alternative, the Trustees engaged the help of a commercial real estate agent, Walter Wagner, Jr. Co., to assist them in finding a property to purchase and renovate. After considering at least six (6) sites, the Trustees became more interested in the second alternative, building a new facility that would satisfy the specific requirements of the Fund. Recognizing the appeal of a ''one-stop'' campus environment for the entire membership, the Trustees believe that the Unit in the Condo Building with proximity to the Local's union hall and offices is too attractive an offer not to act upon.

With regard to the third alternative, the leasing by the Fund of the amount of space it needs in the Condo Building or the leasing of such space in another property, the Trustees had a real estate professional prepare a draft lease based on an arm's length transaction between two commercial entities. It is represented that the rent of 21,274 square feet of space equivalent to that in the north wing Unit of the Condo Building at a fair market rental rate of $14.00 per square foot would, over the course of 20 years, cost the Fund $5,956,800.

Although evaluating alternatives to the proposed transactions is outside the scope of IFS's Agreement, IFS noted that the Fund's conclusion to buy rather than rent appears reasonable. In this regard, IFS noted that based on a rental value of $14.00 per square foot, as established by the Appraiser, if the Fund were to rent the Unit in the Condo Building (or a similar one assuming availability), the Fund would pay as much in rent over 8.5 years as it is paying to purchase the interest in the Condo. At the conclusion of the 8.5 years, IFS's notes that the Fund would then either have to continue paying rent or find another facility.

12. The applicant maintains that the proposed transaction is in the interest of the participants and beneficiaries of the Fund in that the Fund will obtain the additional space needed to increase the number of training classes offered by the

[5] The Department notes that the relief proposed herein, is conditioned upon the adherence by the Trustees to the material facts and representations set forth in the application file and upon compliance with the conditions, as set forth in this proposed exemption.

Fund and to accommodate more students per class. In this regard, in the mid-1980's the Fund acquired the Existing Facility to provide training for 125 apprentices. Despite the fact that, in 1999, the Fund began scheduling day and evening classes to utilize the Existing Facility more efficiently, the space (6,200 square feet) in such facility is inadequate to provide apprenticeship training for the 488 individuals currently attending school.

According to the applicant, there has been an increased demand for training that is expected to continue in the future. In this regard, an aging workforce and early retirements have contributed to a shortage of electrical workers and created a need for more trained apprentices. Further, in the last three (3) years, the number of refresher classes for experienced journeymen has doubled. In addition, due to the merger of several unions, the Fund's mission has evolved from providing training locally to providing training regionally. In this regard, the Fund now provides the sole training facility for IBEW electricians throughout 68 counties in Kentucky and 6 counties in southern Indiana.

The increase demand for training has also increased the need for classroom space. In this regard, in 1999, the Fund registered two additional programs with the State of Kentucky, a residential electrical program and a telecommunications program. It is represented that each of these programs requires a dedicated amount of space to provide hands-on-training, and each will require additional space as the demand for workers in each industry grows.

IFS represents that its responsibility does not include determining either the inadequacy of the Existing Facility or the adequacy of the new facility. However, as support for an assessment of whether the proposed transaction would be in the interest of the Fund's participants, IFS visited the Fund's Existing Facility. According to IFS, statements regarding the size, crowded conditions at the Existing Facility, lack of parking, and the condition of the neighborhood were confirmed by observation to reasonably support the conclusion of the Fund's Counsel about the Fund's needs. IFS also toured the fully constructed but as yet unoccupied new facility. According to IFS, statements made by the Fund's Counsel regarding the suitability of the new facility appear to be reasonable. In this regard, IFS states that the new facility is clean, spacious, and appears to be able to provide high quality classroom, lab and practical training venues to a considerably larger student body than the Existing Facility, as well as space to provide communication training.

13. It is represented that the terms of the proposed transaction are on terms which are at least as favorable to the Fund as those which would have been negotiated at arm's length with an unrelated party. In this regard, it is represented that the purchase and sale agreement between the Fund and the Building Corporation will set the purchase price that the Fund will pay for an interest in the Condo. In this regard, the purchase price will be *the lesser of:* (a) The total amount actually expended by the Building Corporation in the construction of the Unit in the Condo Building, as documented in writing and approved by IFS, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of the date of the transaction, provided that such value does not exceed $2,655,000, the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of December 11, 2001.

14. In this regard, on December 11, 2001, the Appraiser determined the fair market value of the Property, after the improvements were substantially completed. Specifically, the Appraiser established the fair market value of the north wing (*i.e.,* the Fund's Unit in the Condo Building) and the south wing (*i.e.,* the Local's unit in the Condo Building), ''as condominiums,'' to be $2,655,000, and $3,520,000, respectively. According to the Appraiser, condominiums are, rarely, if ever, the size of the units in the Condo Building which are the subject of this proposed exemption. In addition, the Appraiser noted in the appraisal report that the units in this case are atypical due to their multi-purpose usage which makes finding reasonable comparables extremely difficult. In establishing the value of the north wing and the south wing, as condominiums, the Appraiser gathered information in the general area of the subject on sales of smaller office condominiums (850 to 4,100 square feet) in the $85 to $120 per square foot range. In this regard, the Appraiser assigned $120 per square foot value to the north wing and $105 per square foot value to the Original Building plus the south wing. In assigning these values, the Appraiser considered the smaller size, the entirely new construction, and the higher degree of flexibility of use of the north wing making it more marketable and more valuable relative to the south wing, which though larger is less flexible because it includes both the renovated older structure and an auditorium.

Based on its review of the appraisal report, a letter from the Appraiser, dated February 12, 2002, and discussions with the Appraiser, IFS concluded that the methodology used by the Appraiser is reasonable under the circumstances and that the fair market value of $2,655,000 for the Unit, including its proportion of the underlying land, as documented in the appraisal report, is reasonable.

15. It is represented that the entire cost of construction has been measured, allocated between the units, and certified as correct by the General Contractor. In this regard, it is represented that the total cost to construct the Fund's Unit in the Condo Building, including additional expenses allocated to the Fund's Unit, was $2,490,570.48. It is represented that, including the value of an undivided interest in the underlying land and other general common property, the total cost of the Unit is $2,771,863 (rounded).

Accordingly, IFS represents that based on the ''lower of cost or market'' standard, the price to be paid for an interest in the Condo by the Fund is the fair market value of the Unit of $2,655,000, plus customary closing costs. According to IFS, closing costs could include simple interest on the price paid by the Fund from the date of the valuation by the Appraiser (December 11, 2001) to the date of the closing, at a rate not greater than the rate paid by the Building Corporation on the construction loan during such period. However, the Department has determined that as a condition of this exemption the costs incurred in connection with the purchase by the Fund at closing may not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank.

16. In order to finance the acquisition of the interest in the Condo, the Fund will obtain permanent financing from the Bank. It is represented that the Bank has approved a loan to the Fund of up to $2 million and up to 20 years. In acquiring the interest in the Condo for $2,655,000, plus customary closing costs, the Fund intends to make a down payment in cash of no less than $1 million dollars; and therefore, expects to borrow approximately $1.7 million. It is intended that the Fund's down payment

on the purchase and the proceeds from the loan by the Bank to the Fund will be paid to the Building Corporation. The Building Corporation, in turn, will use the money it receives from the Fund to reduce the Building Corporation's outstanding indebtedness to the Bank.

Pursuant to a request from the Trustees, the Bank has offered two sets of interest rates for the loan between the Bank and the Fund. The first interest rate involves a floating rate of prime plus zero, (currently represented to be 4.75%) reset daily with any change in the prime rate. Payout is calculated over 120 months (ten years) of level payments. The Fund's Counsel confirms that the loan to the Fund by the Bank will have level payments of principal and interest over 120 months and does not include any balloon payment by the Fund at the end of such period. In addition, the Fund would have the choice of increasing the monthly payment or increasing the term to cover any future upward changes in the rate.

The second interest rate involves a rate fixed at the time of drawdown on the loan between the Bank and the Fund at the Federal Home Loan Bank five (5) year rate plus 200 basis points, (currently represented to be 7.00%). The rate would be reset on each fifth anniversary of such loan.

The Fund has indicated that it wants to and expects to repay the loan early. In this regard, it is represented that in both interest rate scenarios discussed above, there is no prepayment penalty, provided the source of the funds to prepay is from contributions to or operations of the Fund (*i.e.,* not a refinancing). The loan will be secured by the Unit, including rights to general common elements of the Condo, and by rents, if any, generated by such Unit, but not with liens on any other Fund property. It is represented that there is no cross collateral or cross defaults between the Fund's loan from the Bank and the Building Corporation's loan from the Bank.

It is represented that the choice between the two pricing structures is a matter of cost and risk preference, and, pursuant to the Agreement, is within the responsibility and authority of the Trustees, not IFS. In this regard, it is represented that the Trustees reviewed these two offers and have decided to accept the variable rate.

17. It is represented that the Fund has sufficient cash to make a monthly mortgage payment to the Bank and also to meet its ongoing obligation of providing training to participants. Because of the increase in employer contributions, it is represented that the Fund has a monthly net operating excess of approximately $70,000 dollars. It is represented that the contributions from employers after the current collective bargaining agreements expire on June 1, 2002, will be sufficient to meet all of the on-going obligations of the Fund. Furthermore, it is represented that even a decrease in employer contributions of 10 percent (10%) or 20 percent (20%) would not jeopardize operations of the Fund. In support of this representation, the applicant submitted a Forecast Statement of Cash Flows of the Fund, dated on June 20, 2001, prepared by Mr. Schmitz, the Fund's certified public accountant. Based on Mr. Schmitz's analysis, the applicant maintains that a decrease in employer contributions of 10 percent (10%) or even 20 percent (20%) by December 2001, would only reduce the Fund's monthly operating excess from approximately $70,000 dollars to approximately $63,583 and $48,380 dollars, respectively.

It is represented that, in order to evaluate the ability of the Fund to own, finance and pay for an interest in the Condo, IFS reviewed the Fund's financial statements, and has defined, reviewed, and tested a projection of expected future cash flows of the Fund, dated February 2, 2002, prepared by Mr. Schmitz. Based on its review, IFS has concluded that the Fund is highly likely to have sufficient net cash after paying all costs of maintaining the school and training the members to be able to make all necessary debt service payments to retire the debt within its terms and may also accumulate cash during the period of loan servicing.

It is represented that the increase in the assets of the Fund is largely due to a negotiated increase in contributions from employers. Under the current collective bargaining agreement, the contribution rate to the Fund was one percent (1%) of the monthly labor payroll from June 1, 1999, until August 1, 1999. Then the contribution rate increased to 1.5 percent (1.5%) until June 1, 2000, when the rate further increased to 2.5 percent (2.5%). In addition, manhours increased from 2,059,668 in 1998, to 2,781,350 in 1999, to 3,190,710 in 2000, and to 3,652,569 in 2001. To be conservative, IFS assumed 2,921,000 manhours for 2001–2002, which is the average over the past four (4) years and a 20 percent (20%) reduction from the 2000–2001 level. IFS also assumed only a one percent (1%) increase in manhours, far below the actual annual compound growth over the past 11 years of about 7.5 percent (7.5%).

It is represented that the current contract expires June 1, 2002. IFS represents that both the Local and the employer representatives to the Fund expect that the new contract will maintain the current formula and the current 2.5 percent (2.5%) contribution rate to the Fund. In this regard, IFS has incorporated this into its base case and assumed a labor rate increase of two percent (2%) per year.

IFS also reviewed the level and structure and nature of costs anticipated for the operation and maintenance of the Fund's Unit in the Condo and the school, as computed by the Fund's accountant. IFS notes that overall the majority of the costs of maintaining and operation the Unit are fixed on an annual basis. The costs of operating the school, other than semi-fixed instructors' salaries, tend to be variable with the number of students taught. IFS's assumptions, in this regard, were an annual 3 percent (3%) increase in personnel costs and five percent (5%) increase in operating costs. Accordingly, IFS conservatively assumed expenses increasing faster than revenues.

Overall, IFS concluded that the Fund can reasonably be expected to make all payments of interest and principal on its loan to acquire the property, maintain the property, and meet its expected training obligations.

18. As discussed in paragraph 5, above, the Fund's Counsel advised IFS that, consistent with Kentucky Horizontal Property Law, ownership of a condominium unit includes a proportional undivided interest in all the land within the condominium regime. According to IFS, this structure addresses the concern that the Fund would own only improvements and not land. In addition, IFS has addressed three (3) other areas of concern related to this ownership of the land: (1) the septic system; (2) the status of the Garage; and (3) the ongoing operating arrangements.

With regard to the first concern, it is represented that the Original Building was serviced by a septic system. It is further represented that the Property, including the Original Building, is now served by city sanitary sewers. The Building Corporation has advised IFS that the septic system has been removed; and the site had been inspected and found free of contamination. Despite environmental considerations being outside the scope of IFS's contract, IFS has advised the Trustees to ask the Building Corporation to indemnify the Fund for any preexisting environmental problems. It is IFS's understanding that the Fund will receive that indemnity.

With regard to the second concern, the Property includes an unheated

Garage used for storage. IFS represents that the Garage will be part of the common elements of the condominium regime.

With regard to the third concern, based on IFS reading of the relevant law and advice from the Fund's Counsel, IFS understands that under the standard structure, the Local would have 60 percent (60%) of each vote, and could thus control every situation, and relegate the Fund to having no influence, control, or even input into the decisions of the Board of Directors (Directors) or the Council of Unit Owners (the Council). The Fund would be responsible for its proportionate share of all expenses, but would have no recourse other than the full arbitration process of an aggrieved owner.

IFS has concluded that this situation would not be in the interest of the Fund. Accordingly, as the Kentucky Horizontal Property Law permits other arrangements by agreement, IFS has directed certain changes in the Declaration or Master Deed to provide the Fund with greater assured participation. In particular, IFS has directed and the Building Corporation has agreed that: (a) The formula for sharing expenses in accordance with respective percentages of undivided interest in the common elements of the Condo and facilities may not be changed by the Council; (b) a super majority of ⅔rds of ownership interests, rather than a simple majority, is necessary to constitute a quorum; (c) rather than a majority of ownership interests being able to elect each of the Directors, the owner of the Local's unit will appoint two Directors and the owner of the Fund's Unit will appoint one; and (d) exceeding the annual budget increase caps requires a ⅔rds vote of the ownership interests, rather than a simple majority.

19. In conclusion, subject to certain caveats listed below, and subject to all of the terms of the Agreement, IFS finds that the purchase of the Unit at a price of $2,655,000, plus reasonable closing costs and legal fees, is in the interest of the Fund. IFS's conclusion is subject to the following caveats: (a) The changes in representation on the Council and the Directors are incorporated into the Declaration or Master Deed and the Council Bylaws; (b) the Fund's Counsel has reviewed and approved the Condominium Sale Contract, the Declaration or Master Deed, and all other documents pertaining to the proposed transaction; (c) the loan between the Bank and the Fund does not exceed $2 million in principal, and contains the basic rate, payment, and maturity structure described in IFS's report, dated March 13, 2001, and has been reviewed and approved by the Fund's Counsel; and (d) all legal and physical conditions normally evaluated in connection with a commercial real estate transaction (including but not limited to environmental, title, Americans with Disabilities Act) have been evaluated and the Fund's Counsel has determined that there are no material problems. With regard to caveat (a) above, the Fund's Counsel has filed with the Department a copy of the Master Deed and a draft of the Bylaws containing the changes required by IFS in its March 13, 2002, report. Further, the Fund's Counsel has represented that caveats (b), (c), and (d) above have been satisfied.

20. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The purchase of an interest in the Condo by the Fund is a one-time transaction for cash;

(b) the Trustees, acting as named fiduciary on behalf of the Fund, prior to entering the transaction, will determine that the transaction is feasible, in the interest of the Fund, and protective of the participants and beneficiaries of the Fund;

(c) the proposed transaction will not be entered until IFS, after analyzing the relevant terms of such transaction, has advised the Trustees that proceeding with such transaction would be in the interest of the Fund;

(d) the purchase price paid by the Fund for the interest in the Condo is the *lesser of:* (a) The total amount actually expended by the Building Corporation in the construction of the Unit in the Condo Building, as documented in writing and approved by IFS, plus the value of that portion of the land underlying such Unit, which is equivalent to the percentage of the square footage of such Unit to the total square footage in the Condo Building, plus the value of the same portion of any other common elements of the Condo; or (b) the fair market value of the Fund's interest in the Condo, as determined by the Appraiser, as of the date of the transaction, provided that such value does not exceed $2,655,000, the fair market value of the Fund's interest in the Condo, as determined by such Appraiser, as of December 11, 2001;

(e) the Fund will not pay any commissions, sales fees, or other similar payments to any party as a result of the proposed transaction, and the costs incurred in connection with the purchase by the Fund at closing will not include, directly or indirectly, interest incurred by the Building Corporation on the construction financing loan or the permanent financing loan from the Bank;

(f) the terms of the transaction are no less favorable to the Fund than terms negotiated under similar circumstances at arm's length with unrelated third parties;

(g) the Fund will not purchase the interest in the Condo or take possession of the Unit in the Condo Building until such Unit is substantially completed;

(h) the Fund has not been, is not, and will not be a party to the construction financing loan or the permanent financing loan between the Building Corporation and the Bank;

(i) under the terms of the loan agreement between the Bank and the Fund, the Bank, in the event of a default by the Fund, has recourse only against the interest in the Condo and not against the general assets of the Fund; and

(j) under the terms of the loan agreement between the Bank and the Building Corporation, in the event of default by the Building Corporation, the Bank has no recourse against any assets of the Fund.

**Notice to Interested Persons**

Those persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include Mr. George, the Chairman of the Fund, and each participant in the Fund.

It is represented that these two classes of interested persons will be notified through different methods. In this regard, notification will be provided within seven (7) calendar days of the date of publication of the Notice in the **Federal Register**, to all participants in the Fund by posting on the general bulletin board at the Existing Facility and by posting at the union hall. Such postings will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise interested persons of their right to comment and to request a hearing.

It is represented that notification will also be provided to Mr. George by first class mail, postage prepaid, return receipt requested within seven (7) calendar days of the date of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR

2570.43(b)(2), which will advise Mr. George of his right, as Chairman of the Fund, to comment and to request a hearing.

The Department must receive all written comments and requests for a hearing no later than thirty (30) days from the *later of*: (1) The date a copy of the Notice and a copy the Supplemental Statement were posted at the Existing Facility and the union hall; or (2) the date Mr. George receives a copy of the Notice and a copy of the Supplemental Statement in the mail.

**FURTHER INFORMATION CONTACT:** *Angelena C. Le Blanc of the Department,* telephone (202) 693–8551 (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of April, 2002.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 02–10321 Filed 4–25–02; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL SCIENCE FOUNDATION

### Office of Polar Programs Advisory Committee

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Office of Polar Programs Advisory Committee (1130).

*Dates/Time:* May 13, 2002; 8:30 am to 5 pm. May 14, 2002; 8:30 am to 2:00 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

*Type of Meeting:* Open.

*Contract Person:* Brenda Williams, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 292–8030.

*Minutes:* May be obtained from the contact person list above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Discussion of NSF-wide initiatives, long-range planning and GPRA.

Dated: April 23, 2002

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 02–10294 Filed 4–25–02; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Westinghouse Electric Company; Notice of Receipt of Application for Final Design Approval and Standard Design Certification of the AP1000 Standard Plant Design

Notice is hereby given that the Nuclear Regulatory Commission (NRC, the Commission) has received an application from Westinghouse Electric Company dated March 28, 2002, filed pursuant to section 103 of the Atomic Energy Act and Title 10 of the Code of Federal Regulations (10 CFR) part 52, for the final design approval and standard design certification of the AP1000 Standard Plant Design.

The AP1000 design is based on the AP600 design, which was certified on December 16, 1999. The AP1000 design is an approximately 1100 megawatts electric pressurized water reactor plant design in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural circulation, and stored energy (in the form of pressurized accumulators and batteries), are used as the motive forces of these systems. The AP1000 application includes the entire power generation complex, except those elements and features considered site-specific. The acceptability of the tendered application for docketing and other matters relating to the requested rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be the subject of subsequent **Federal Register** notices.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of April 2002.

For the Nuclear Regulatory Commission.

**James E. Lyons,**

*Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.*

[FR Doc. 02–10308 Filed 4–25–02; 8:45 am]

BILLING CODE 7590–01–P

## U.S. COMMISSION ON OCEAN POLICY

### Public Meeting

**AGENCY:** U.S. Commission on Ocean Policy.

**ACTION:** Notice.

**SUMMARY:** The U.S. Commission on Ocean Policy will hold its fifth regional

meeting, the Commission's seventh public meeting, to hear and discuss coastal and ocean issues of concern to Hawaii and the Pacific Islands.

**DATES:** Public meetings will be held Monday, May 13, 2002 from 1 p.m. to 6 p.m. and Tuesday, May 14, 2002 from 8:30 a.m. to 6 p.m.

**ADDRESSES:** The meeting location is the Renaissance Ilikai Waikiki Hotel, Bora Bora/Moorea Ballroom, 1777 Ala Moana Boulevard, Honolulu, HI 96815.

**FOR FURTHER INFORMATION CONTACT:** Terry Schaff, U.S. Commission on Ocean Policy, 1120 20th Street, NW., Washington, DC, 20036, 202–418–3442, *schaff@oceancommission.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting is being held pursuant to requirements under the Oceans Act of 2000 (Public Law 106–256, Section 3(e)(1)(E)). The agenda will include presentations by invited speakers representing local and regional government agencies and non-governmental organizations, comments from the public and any required administrative discussions and executive sessions. Invited speakers and members of the public are requested to submit their statements for the record electronically by May 6, 2002 to the meeting Point of Contact. A public comment period is scheduled for Tuesday, May 14. The agenda for the meeting, including the specific time for the public comment period, and guidelines for making public comments will be posted on the Commission's website at http://www.oceancommission.gov prior to the meeting.

Dated: April 22, 2002.

**Admiral James D. Watkins, USN (ret.),**

*Chairman, U.S. Commission on Ocean Policy.*

[FR Doc. 02–10269 Filed 4–25–02; 8:45 am]

**BILLING CODE 6820–WM–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 38–45

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for review of a revised information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38–45 forms are completed annually. Each form requires approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received on or before May 28, 2002.

**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 ADMINISTRATION COORDINATION—CONTACT:** Donna G. Lease, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services, Division. (202) 606–0623.

**Kay Coles James,**

*Director, Office of Personnel Management.*

[FR Doc. 02–10137 Filed 4–25–02; 8:45 am]

**BILLING CODE 6325–50–P**

## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 6 p.m. to 9 p.m. on Tuesday, May 21, 2002, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to: (1) Receive a staff report regarding the Presidio Trust Management Plan, Land Use Policies for Area B of The Presidio of San Francisco, including a summary of plan contents and changes incorporated based on public comments on the draft plan known as the Draft Presidio Trust Implementation Plan and the associated Draft Environmental Impact Statement; (2) receive a staff report and take action regarding recognition of key staff members involved in the planning process; and (3) receive public comment in accordance with the Trust's Public Outreach Policy.

**TIME:** The meeting will be held from 6 p.m. to 9 p.m. on Tuesday, May 21, 2002.

**ADDRESSES:** The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: April 22, 2002.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 02–10272 Filed 4–25–02; 8:45 am]

**BILLING CODE 4310–4R–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 29, 2002:

An open meeting will be held on Tuesday, April 30, 2002, in Room 6600, at 10 a.m., and a closed meeting will be held on Wednesday, May 1, 2002, at 10 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)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and

(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the open meeting scheduled for Tuesday, April 30, 2002, will be:

1. The Commission will consider proposing rules that would require companies to discuss ''critical accounting estimates'' in their ''Management's Discussion and Analysis'' (MD&A) section of annual reports, registrations statements, proxy and information statements. Quarterly updates to disclose material changes would be required under the proposals. The proposed disclosure is designed to provide additional key information about a company's financial statements to enhance investors' understanding of a company's financial condition and to provide information about the quality of, and potential variability of, a company's earnings. The proposed amendments reflect the changes to MD&A rules that the Commission announced its intention to propose in Press Release 2002–22 on February 13, 2002.

2. The Commission will consider a recommendation to issue an exemptive order under Section 36 of the Exchange Act, which would permit broker-dealers to pledge a wider range of collateral when entering into borrowing transactions governed by paragraph (b)(3) of Rule 15c3–3. The provisions in this paragraph apply when broker-dealers borrow fully paid and excess margin securities from customers. The conditions for such borrowings include the requirement that broker-dealers provide customers with full collateral consisting of certain specified financial instruments or cash. The order would expand the types of collateral that could be provided, subject to certain conditions in addition to those required in the Rule.

The Commission also will consider a recommendation to delegate its authority to issue such orders regarding permissible collateral to the Director of the Division of Market Regulation.

3. The Commission will consider a proposal to amend Rule 31–1 under the Securities Exchange Act of 1934 to clarify how to calculate assessments that are required to be paid by national securities exchanges and national securities associations pursuant to Section 31(d) of the Exchange Act for security futures transactions. The proposed amendments to Rule 31–1 also would provide guidance on how to calculate fees that are required to be paid by national securities exchanges and national securities associations pursuant to Sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

4. The Commission will consider a recommendation to propose amendments to Rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 and new Rule 17a–10 under the Investment Company Act of 1940. The proposed amendments to Rules 17a–6 and 17d–1 would expand the current exemptions for investment companies to enter into principal transactions and joint arrangements with portfolio companies that are affiliated with an investment company because the investment company controls the portfolio company, or owns more than five percent of the portfolio's voting securities. The proposed amendments to Rules 10f–3, 12d3–1, and 17e–1 and new Rule 17a–10 would permit investment companies and their affiliated subadvisers to enter into a variety of transactions together without first obtaining an exemptive order from the Commission.

The Commission also will consider whether to adopt amendments to Rule 10f–3 under the Investment Company Act of 1940. Rule 10f–3 permits investment companies to purchase certain securities in an underwriting in which an affiliated underwriter is participating. The amendments to Rule 10f–3 would include government securities among the types of securities that investment companies may purchase under the rule.

5. The Commission will consider whether to amend its rules to delegate authority to the Secretary of the Commission to enter orders instituting previously authorized administrative proceedings based on the entry of an injunction or a criminal conviction.

Because the open meeting will be held in Room 6600, there will be limited seating available. Additional seating will be provided in Room 1C50, where there will be a simultaneous telecast of the meeting. The meeting also will be audio webcast live at *www.sec.gov/news/openmeetings.shtml.*

The subject matter of the closed meeting scheduled for Wednesday, May 1, 2002, 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 23, 2002.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10385 Filed 4–23–02; 4:10 pm]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45784; File No. SR–Amex–2002–12]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Options Trading Fees

April 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on March 1, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex filed Amendment No. 1 to the proposed rule change on April 16, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has proposed to amend one of its options trading fees under File No. SR–Amex–2002–11,[4] which was filed for immediate effectiveness pursuant to section 19(b)(3)(A)(ii) of the Act.[5] The Exchange now seeks to impose this fee change, as set forth in File No. SR–Amex–2002–11 and described below, as of December 1, 2001.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Clair P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

[4] *See* Securities Exchange Act Release No. 45783 (April 18, 2002) for a description of these fees changes.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

## 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 Exchange recently (1) increased transaction, comparison and brokerage fees for all specialist and registered options trader transactions in both equity and index options;[6] and (2) eliminated the cap on the number options contracts subject to the transaction, comparison and floor brokerage fees on a given day.[7] This fee increase went into effect on December 1, 2001.[8]

The Exchange also determined, at the time, that accommodation trades (also known as ''Cabinet Trades'')[9] and trades occurring as part of certain types of strategies would continue to be eligible for the cap on that portion of the transaction, option clearance and floor brokerage fees that represented the increase in fees. Thus, for contracts executed in excess of 3,000 on a given day, the transaction fee increase of $0.09, the options comparison fee increase of $0.01 and the floor brokerage fee increase of $0.02 were to be reimbursed. Transaction, options comparison and floor brokerage fees were to continue to be charged for only the first 3,000 contracts executed as an accommodation trade or pursuant to one of the following strategies: (1) Reversals and conversions;[10] (2) dividend spreads;[11] and (3) box spreads.[12]

The Exchange proposes not to charge the recent increase in transaction, comparison and floor brokerage fees (a total increase of $0.12) for the entire number of contracts executed as an accommodation trade or pursuant to one of the above strategies. Thus, specialists and registered traders will pay a (1) transaction fee of only $0.17 for equity options and $0.12 for index options; (2) comparison fee of $0.04; and (3) floor brokerage fee of $0.03 for contracts executed as an accommodation trade or pursuant to a reversal or conversion, a dividend spread or a box spread.

The Exchange proposes not to apply the fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. In addition, the Exchange proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange represents that these financing strategies are usually entered into by professionals whose profit margins are generally narrow. In addition, the Exchange states that it has determined to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions.

The Exchange represents that its billing system is unable to distinguish among these types of transactions; therefore, it has developed a manual procedure. Specifically, within thirty calendar days of the particular transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in the amount of the transaction, clearance and brokerage fee increases (a total of $0.12) charged on contracts executed pursuant to an accommodation trade or one of the strategies described above.

The Exchange proposed these fee changes in File No. SR–Amex–2002–11, which became effective upon filing with the Commission.[13] The Exchange now proposes to make this fee change retroactive to the date of imposition of the fee, which was on December 1, 2001.[14] The Exchange believes that due to the paperwork involved in obtaining a reimbursement of these trading fees it would be easier on its membership if the revision could coincide with the imposition of the fee. In addition, given that the Exchange has increased a number of fees to its membership in recent months, it believes that the implementation of any type of reduction in fees should be put in place as soon as possible.

(2) Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[15] in general and furthers the objectives of section 6(b)(4)[16] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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[6] The options fees were increased as follows: (1) The Options Transaction Fee per contract side was increased from $0.17 to $0.26 for equity options and from $0.12 to $0.21 for index options; (2) the options comparison fee was increased from $0.04 to $0.05 per contract side; and (3) the floor brokerage fee per contract side was increased from $0.03 to $0.05.

[7] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (notice of filing and immediate effectiveness of File No. SR–Amex–2001–101).

[8] *See* Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving File No. SR–Amex–2001–102). The Exchange represents that it intended to eliminate the fee cap as of October 1, 2001. However, due to a delay in the reprogramming of the changes for the Exchange's Finance Division, the fee cap elimination did not go into effect until December 1, 2001.

[9] *See* Exchange Rule 959 for a description of an accommodation trade.

[10] A ''conversion'' is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. A ''reversal'' is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

[11] A ''dividend spread'' is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

[12] A ''box spread'' is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

[13] *See* Securities Exchange Act Release No. 45783 (April 18, 2002). The proposal became effective on April 16, 2002.

[14] This proposal to revise the recently adopted options trading fees was originally submitted on January 14, 2002 (File No. SR–Amex–2002–04). The Commission rejected the filing, stating that it was unable to accept filing pursuant to Section 19(b)(3)(A) because of the Exchange's request to apply the fee reduction retroactively.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–12 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10311 Filed 4–25–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45794; File No. SR–Amex–00–60]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Relating to the Use of Handheld Terminals by Floor Brokers and Registered Options Traders and to the Exchange's Audit Trail Rules

April 22, 2002.

## I. Introduction

On December 11, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposal relating to the use of handheld terminals (''HHTs'') by the Exchange's floor brokers and registered options traders (''ROTs'') and to the Exchange's audit trail rules. On May 15, 2001, Amex submitted Amendment No. 1 to the proposal,[3] and on July 27, 2001, Amex submitted Amendment No. 2 to the proposal.[4] The Commission published the proposed rule change, as amended, in the **Federal Register** on August 8, 2001.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

### *A. Mandatory Use of HHTs by Brokers and ROTs and Codification of Handheld Terminal Policy*

In the mid-1990s, the Exchange's ROTs began to make extensive use of proprietary HHTs that were linked to their home offices by wireless data transmission technologies. Amex has stated that the rapid proliferation of these devices raised concerns with broadcast interference, systems disruption, antenna location, exhaustion of system capacity, and appropriate regulatory oversight of data communications. As a result of these considerations and in light of similar developments on other exchanges, Amex built a Wireless Data Communications Infrastructure (''Infrastructure'') and adopted a Wireless Communications Policy to regulate the use of these devices.[6]

Since the inception of the Wireless Communications Policy, Amex has allowed members to develop their own HHT applications, subject to review by the Exchange to ensure compliance with its rules and compatibility with its systems. Amex also required members to use the Infrastructure (*i.e.,* Amex antennas, base stations, network, *etc.*) to transmit communications to and from HHTs and to conform their proprietary technologies, at their cost, to the requirements of the Infrastructure.

Amex introduced a Booth Automated Routing System (''BARS'') in late 2000. BARS is an order routing system with no order execution capabilities. Brokers can program different algorithms for each Amex security into BARS to cause certain orders to be routed to the specialist for execution or ''booking,'' and others to be routed to the broker's booth on the Amex floor. Booth clerks also can enter orders into BARS that are telephoned to the floor (*i.e.,* orders that are not systematized when they arrive on the Exchange). In August 2001, Amex enhanced the functionality of BARS by introducing a wireless retail application system (''BARS/HHT'') that provides communications between member firm booth personnel and floor brokers with HHTs using the Infrastructure. As of April 1, 2002, all Amex floor brokers had BARS terminals in their booths. Currently, there are approximately 50 floor brokers representing 12 firms with assigned HHTs. This is approximately 40 percent of the total number of HHTs that Amex ultimately will assign. As a member firm is added to BARS, Amex would provide that firm with the appropriate number of HHTs to utilize the new system.[7] Amex has proposed to require

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 15, 2001 (''Amendment No. 1''). In Amendment No. 1, Amex revised the proposal to clarify that its new Hand Held Terminal Policy would apply to both wired as well as wireless terminals, and to make technical corrections to the proposed rule text.

[4] *See* letter from William Floyd-Jones, Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Nancy Sanow, Assistant Director, Divison of Market Regulation, Commission, dated July 26, 2001 (''Amendment No. 2''). In Amendment No. 2, Amex revised and resubmitted its statement of the purpose of, and the statutory basis for, the proposed rule change. However, Amex did not make any revisions to the proposed rule text.

[5] *See* Securities Exchange Act Release No. 44647 (August 8, 2001), 66 FR 41632.

[6] *See* Securities Exchange Act Release Nos. 37728 (September 26, 1996), 61 FR 51476 (October 2, 1996) (approving Amex's original Wireless Communications Policy); and 40019 (May 21, 1998), 63 29272 (May 28, 1998) (amending Amex's Wireless Communications Policy).

[7] Users of these systems are subject to an Exchange fee. *See Securities Exchange Act Release*

Continued

brokers to use the BARS/HHT system when it becomes fully operational. In addition, Amex has proposed to require all ROTs to use HHTs with the following minimum capabilities at such times as may be determined by Amex:

• HHTs used by ROTs must be able to receive execution reports during a trading session with respect to trades executed against their accounts automatically (*e.g.,* Auto-Ex and Book trades).

• ROTs must be able to report their trades to their clearing agents for comparison and clearance within time limits prescribed by the Exchange by means of their HHTs.

• HHTs used by ROTs must be able to make a record of text transmissions to or from other persons. This record must include the date and time of the transmission, the name of the person initiating the transmission, all persons receiving the transmission, and the text of the message.

• ROTs must be able to capture the following audit trail data on their HHTs with respect to all trades they execute on the Exchange: (1) Time of trade (the clocking mechanism must be in seconds), (2) executing broker badge number, (3) contra broker badge number, (4) open or closing transaction, (5) clearing member, and (6) contra clearing member. ROTs must be able to report this audit trail information to their clearing agents during a trading session within time limits prescribed by the Exchange.

• HHTs used by ROTs must be able to make a record of the following information with respect to orders or quotes initiated by ROTs for securities or futures traded in other markets: (1) Date; (2) the time the order or quote is sent to the other market (the clocking mechanism must be in tenths of a second); (3) the identity of the person initiating the order or quote; (4) security symbol; (5) buy, sell, sell short, or short exempt; (6) order type (*e.g.,* market, limit); (7) order or quote size; (8) order or quote price; (9) execution quantity; (10) execution price; and (11) market where the order or quote is routed (*e.g.,* New York Stock Exchange, Nasdaq, CBOE, or Instinet).[8]

• All clocking must be done electronically. All clocking mechanisms must be synchronized at least once per business day to the National Time Service or as specified by the Exchange from time to time.[9]

• All required records must be maintained for at least three years and available to the staff of the Exchange upon request in no more than three business days.

The Wireless Communications Policy does not currently appear in the Exchange's rules. The Exchange proposes to codify the Policy in Amex Rule 220, Commentary .04, and—in light of the fact that many members have begun using wired, as opposed to wireless, HHTs—to rename it the ''Hand Held Terminal Policy'' (''HHT Policy''). In addition, Amex proposes to revise the HHT Policy: (1) To eliminate language that discussed the implementation of the Infrastructure, (2) to remove other features of the HHT Policy that are no longer used, and (3) to remove text that is found elsewhere in the Exchange's rules or that Amex believes is inappropriate in a rule. The requirements for ROTs' usage of HHTs, noted above, also would be incorporated into the HHT Policy.

*B. Audit Trail Enhancements*

The Exchange has proposed the following changes to Amex Rules 153 and 180 regarding records of orders:

• Paragraph (a) of Amex Rule 153 would be amended to explicitly require members and member organizations located off the floor to maintain a record of order modifications and cancellations.

• Paragraph (b) of Amex Rule 153 would be amended to require all members and member organizations to maintain a record of all orders, modifications, and cancellations received by them on the floor. Members and member organizations would be required to systematize any order, modification, or cancellation that CMS-eligible immediately upon receipt on the floor, if it were not already systematized.[10] Amex would provide members and member organizations with a paper record of all of their systematized orders that they would retain to satisfy their recordkeeping obligations.

• Paragraph (c) of Amex Rule 153 would be rescinded because it concerns orders ''carried'' to the Exchange floor, and the substance of the rule would be covered by Paragraph (b) of Amex Rule 153.

• Paragraph (d) of Amex Rule 153, concerning records of ITS commitments, would be amended to extend the rule's recordkeeping obligations to member organizations, to clarify that these recordkeeping obligations apply to order cancellations, and to extend the recordkeeping obligations from 12 months to three years.

• Paragraph (e) of Amex Rule 153, concerning records of orders in the Exchange's After Hours Trading (''AHT'') Facility, would be amended to consolidate AHT facility recordkeeping obligations in one place and would conform this provision to the other paragraphs of Amex Rule 153.

• Paragraph (f) of Amex Rule 153 concerns cancellations and reports. Recordkeeping responsibilities with respect to order cancellations would be transferred to the other sections of Amex Rule 153. Paragraph (f) also would be modified to require members and member organizations to keep records of reports for three years instead of 12 months.

• Amex Rule 180, concerning the recordkeeping obligations of specialists, would be deleted, as the revisions to Amex Rule 153 would include recordkeeping by specialists as well as other members.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the

*No.* 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (R–Amex–2001–22—).

[8] Amex has stated that the rationale for requiring ROT HHTs to be able to produce an audit trail with respect to orders and quotes initiated on Amex but sent to another market is to facilitate surveillance of intermarket trading violations such as front running.

[9] Every Exchange order passes through the Amex Order File (''AOF''), the host system of order processing, prior to a BARS booth terminal routing the order to an HHT. Any messsage affecting an order is logged and time stamped in AOF. All orders are assigned a unique turnaround number that is referenced on any subsequent cancellations, executions, or administrative messages. AOF includes a respository of all orders, execution information, processing of orders, reports, cancels, and administrative messages. Amex has represented that its order processing systems have been designed so that the clocking mechanisms do not deviate by more than three seconds from the Naval Observatory atomic clock in Washington, DC.

[10] The Common Message Switch (''CMS'') is the means by which member firms may send electronic orders to both Amex and the NYSE. Currently, percentage and combination orders (*e.g.,* spread orders) are not CMS-eligible. Amex has stated that it intends to develop systems that would make these orders CMS-eligible.

[11] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

public interest. The Commission also finds that that the proposed rule change is also consistent with the National Market System goals set forth in section 11A(a)(1)(C) of the Act [13] in that it will enhance economically efficient execution of securities transactions.

The Commission believes that requiring Amex brokers and ROTs to employ BARS/HHT in the manner described above should improve efficiency, minimize risk, and help create more liquid markets on the Exchange. BARS allows member firms to manage their order flow more efficiently by giving them a choice of sending orders electronically to their booths for further action or sending orders directly to the specialist post. BARS/HHT furthers the automation of the order delivery process by allowing floor brokers to communicate with their booths via HHTs. The Commission believes that BARS/HHT will improve the ability of brokers to represent equity and option orders and of ROTs to make markets.

The Commission also believes that the proposed amendments to Amex Rules 153 and 180 are consistent with the Act because they will clarify members' responsibilities under the Exchange's audit trail rules. Furthermore, these amendments will require the systematization of any order that has not already been systematized, which should make order processing more efficient and increase the ability of the Exchange and its members to construct an audit trail.

## IV. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Amex–00–60) and Amendment Nos. 1 and 2 thereto are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10312 Filed 4–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

[13] 15 U.S.C. 78k–1(a)(1)(C).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45783; File No. SR–Amex–2002–11]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Options Trading Fees

April 18, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 28, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 16, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] 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 revise a recently adopted options trading fee, as described herein.[4] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Exchange recently (1) increased transaction, comparison and brokerage fees for all specialist and registered options trader transactions in both equity and index options; [5] and (2) eliminated the cap on the number options contracts subject to the transaction, comparison and floor brokerage fees on a given day.[6] This fee increase went into effect on December 1, 2001.[7]

The Exchange also determined, at the time, that accommodation trades (also known as ''Cabinet Trades'') [8] and trades occurring as part of certain types of strategies would continue to be eligible for the cap on that portion of the transaction, option clearance and floor brokerage fees that represented the increase in fees. Thus, for contracts executed in excess of 3,000 on a given day, the transaction fee increase of $0.09, the options comparison fee increase of $0.01 and the floor brokerage fee increase of $0.02 were to be reimbursed. Transaction, options comparison and floor brokerage fees were to continue to be charged for only the first 3,000 contracts executed as an accommodation trade or pursuant to one of the following strategies: (1) Reversals

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Clair P. McGrath, Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 12, 2002 (''Amendment No. 1''). In Amendment No. 1, the Amex amended the proposal to incorporate the Exchange's reasons for not charging specialists and registered options traders the recent increase in transaction, comparison and floor brokerage fees for accommodation trades or trades executed pursuant to reversals and conversions, dividend spreads, and box spreads. Amex also provided an explanation of the December 1, 2001 implementation date for the elimination of the fee cap.

[4] Under FIle No. SR–Amex–2002–12, the Exchange seeks to impose the revised options trading fees, as described in this current proposal, as of December 1, 2001. *See* Securities Exchange Act Release No. 45784 (April 18, 2002).

[5] The options fees were increased as follows: (1) The Options Transaction Fee per contract side was increased from $0.17 to $0.26 for equity options and from $0.12 to $0.21 for index options; (2) the options comparison fee was increased from $0.04 to $0.05 per contract side; and (3) the floor brokerage fee per contract side was increased from $0.03 to $0.05.

[6] *See* Securities Exchange Act Release No. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001) (notice of filing and immediate effectiveness of File No. SR–Amex–2001–101).

[7] *See* Securities Exchange Act Release No. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving File No. SR–Amex–2001–102). The Exchange represents that it intended to eliminate the fee cap as of October 1, 2001. However, due to a delay in the reprogramming of the changes for the Exchange's Finance Division, the fee cap elimination did not go into effect until December 1, 2001.

[8] *See* Exchange Rule 959 for a description of an accommodation trade.

and conversions;[9] (2) dividend spreads;[10] and (3) box spreads.[11]

The Exchange proposes not to charge the recent increase in transaction, comparison and floor brokerage fees (a total increase of $0.12) to the entire number of contracts executed as an accommodation trade or pursuant to one of the above strategies. Thus, specialist and registered traders will pay a (1) transaction fee of only $0.17 for equity options and $0.12 for index options; (2) comparison fee of $0.04; and (3) floor brokerage fee of $0.03 for contracts executed as an accommodation trade or pursuant to a reversal or conversion, a dividend spread or a box spread.

The Exchange proposes not to apply the fee increases to accommodation transactions in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity as an accommodation to investors seeking to close out worthless option positions. In addition, the Exchange proposes not to apply the fee increases to reversals, conversions, dividend spreads and box spreads in order to encourage specialists and registered options traders, by keeping fees low, to provide liquidity for these types of financing strategies. The Exchange represents that these financing strategies are usually entered into by professionals whose profit margins are generally narrow. In addition, the Exchange states that it has determined to keep fees for accommodation transactions and spread strategies comparable with the fees charged by other options exchanges for these types of transactions.

The Exchange represents that its billing system is unable to distinguish among these types of transactions; therefore, it has developed a manual procedure. Specifically, within thirty calendar days of the particular transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in the amount of the transaction, clearance and brokerage fee increases (a total of $0.12) charged on contracts executed pursuant to an accommodation trade or one of the strategies described above.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[12] in general and furthers the objectives of section 6(b)(4) of the Act[13] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[14] and Rule 19b-4(f)(2)[15] thereunder because it establishes or changes a due, fee, or charge imposed by the Exchange. 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.[16]

**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 Amex. All submissions should refer to File No. SR–Amex–2002–11 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10315 Filed 4–25–02; 8:45 am]

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[9] A ''conversion'' is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. A ''reversal'' is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

[10] A ''dividend spread'' is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

[11] A ''box spread'' is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19–4(f)(2).

[16] For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 16, 2002, the date that the Amex filed Amendment No. 1.

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45791; File No. SR–BSE–2001–08]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Competing Specialists and the Execution of Directed Agency Orders

April 19, 2002.

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 December 21, 2001, the Boston Stock Exchange, Inc. (''BSE'' 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 19, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated April 18, 2002 (''Amendment No. 1''). In Amendment No. 1, the BSE removed from the proposed rule change all references to a new defined term, ''Professional Agency Order.''

comments on the proposed rule change as amended from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain sections of its rules related to Competing Specialists (as defined in BSE Rules, Chapter XV, *Dealer Specialists,* Section 18, *Procedures for Competing Specialists*) and the execution of directed agency orders. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XV

Dealer Specialists

Procedures for Competing Specialists

Sec. 18

* * * 6. The [receiving] specialist/*competing specialist* is responsible for all orders directed to him/her.

* * * * *

9. * * * However, [the regular specialist will be responsible for updating quotations; thus all competitors must communicate their markets to the regular specialist and] *all specialists* must be responsible for their portion of the published bid and/or offer, *and the BEACON System will update quotations accordingly.*

10. Because there is only one Exchange market in a security subject to competition, all limit orders sent to the Exchange will be maintained by the BEACON System's central limit book and will be executed strictly according to time priority as to receipt of the order in the BEACON System, irrespective of firm order routing procedures. *This rule shall not be applicable where the quotation on the book is for the account of a specialist/competing specialist and another specialist/competing specialist has received an order directed to him. In such event, the specialist/competing specialist can elect to execute the order for his own account at the same price as the other specialist/competing specialist's order, or a better price, or to permit the order to be executed against the specialist/competing specialist's quotation.*

* * * * *

**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

In today's competitive marketplace, customers and market makers have an increasing number of venues for the trading of listed securities. Both customers and market makers are becoming aware of and more selective about where their orders are ultimately executed, particularly in light of the increased disclosure under recently enacted Rule 11Ac1–5 under the Act (''Rule 5'').[4] This reflects the reality that quoting does not, in and of itself, indicate the best price within a market center, due to price improvement. Rather, it is a combination of several factors which attract orders and comprise order routing decisions, such as historical results, added depth, price improvement and other factors which serve to enhance best execution practices. Accordingly, the Exchange seeks to amend portions of its Competing Specialist Initiative Rules (*see* BSE Rules, Chapter XV, *Dealer Specialists*, Section 18, *Procedures for Competing Specialists*) to allow, under certain conditions, for the altering of priority of specialist/competing specialist principal quotations when orders are directed by a customer to another specialist/competing specialist. Under this proposal, it should be noted that all non-directed and Intermarket Trading System (''ITS'') orders will continue to be routed according to existing competing specialist rules.

The reasons behind this request are threefold. First, the proposal will enable Exchange specialists to effectively compete with other exchanges and market centers amidst recent changes in the competitive landscape. This is particularly true in light of (a) Nasdaq's proposed rules in their recent Form 1 exchange registration filing, (b) the various order routing scenarios set forth in the Nasdaq SuperMontage environment,[5] (c) the Philadelphia Stock Exchange's recently adopted rules in relation to the directing of orders,[6] and (d) the current preferencing model in place on the Cincinnati Stock Exchange (*see* CSE Rule 11.9). Second, the proposed rule amendment will reward specialists who are able to attract orderflow directed to them. Hence, it will increase competition in the marketplace, which carries an inherent benefit to investors. Third, the proposal supports the initiative of Rule 5 as it will improve the ability of order sending firms to better identify and direct orders to those venues that their customers demand as a result of the increased visibility of execution practices under the Rule.

Presently, Chapter XV, *Dealer Specialists,* Section 18, *Procedures for Competing Specialists,* Paragraph 10, sets forth that all limit orders sent to the Exchange will be executed strictly according to time priority as to receipt of an order in the Boston Exchange Automated Communication and Order Routing Network (''BEACON'') system, irrespective of firm order routing procedures. This would continue to be the case for all customer orders. However, the proposed rule amendment would allow specialists/competing specialists to execute an order that has been directed to him, at the same or better price as the prevailing national best bid and offer (''NBBO''), if the BSE quotation is for the account of another specialist/competing specialist.

Accordingly, the Exchange seeks to amend Chapter XV, *Dealer Specialists,* Section 18, *Procedures for Competing Specialists,* Paragraph 10, of its Rules by adding an exception for orders directed to a specialist/competing specialist. The exception will allow the specialist/competing specialist who receives such an order to elect to execute the order for his own account at the same NBBO price or better than the quotation on the book, if the quotation on the book is for the account of another specialist/competing specialist, or to permit the directed order to execute against the prevailing specialist/competing specialist's quotation.[7] Furthermore, certain other paragraphs of Chapter XV, *Dealer Specialists,* Section 18, *Procedures for Competing Specialists,* will need to be slightly amended in order to remain consistent with

[4] 17 CFR 240.11Ac1–5.

[5] *See* Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[6] *See* Exchange Act Release No. 45183 (December 21, 2001), 67 FR 118 (January 2, 2002).

[7] Where an agency order resides on the book of a specialist/competing specialist and a specialist/competing specialist then receives an executable order routed to him/her, the subsequent orders may be price improved by the specialist/competing specialist receiving such order, or permitted to match the resident agency order at the limit price (without price improvement).

paragraph 10. Namely, Paragraph 6 will need to be amended to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, Paragraph 9 will need to be amended to reflect certain BEACON system changes which will update quotations more efficiently, removing the burden from the regular specialist.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. Such order routing has allowed specialists with orderflow to reduce their costs and compete more effectively for public customer business without sacrificing quality of executions. However, the economic value of this practice has diminished considerably with the introduction of a number of Commission led initiatives in recent years, particularly the introduction of decimalization. Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed 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 securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*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.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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–BSE–2001–08 and should be submitted by May 17, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10310 Filed 4–25–02; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45798; File Nos. SR–NASD–2002–24 and SR–NYSE–2002–10]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs

April 22, 2002.

**I. Introduction**

On February 15, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary NASD Regulation, Inc. (''NASD Regulation''), 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 to establish NASD Rule 3011, Anti-Money Laundering Compliance Program. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. On February 25, 2002, notice of the proposed rule change was published in the **Federal Register**.[3] The Commission received four comments on the proposal.[4]

On February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed a proposed rule change to adopt NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed rule change would require each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder. On March 7, 2002, notice of the proposed rule change was published in the **Federal Register**.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45457 (February 19, 2002), 67 FR 8565.

[4] March 18, 2002 letter from Alan E. Sorcher, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC (''SIA Letter''); March 18, 2002 letter from Betty Santangelo, Schulte Roth & Zabel LLP, to Jonathan G. Katz, Secretary, SEC (''Schulte Roth Letter''); March 11, 2002 letter from W. Richard Mason, General Counsel, Mosaic Funds, to Secretary, SEC (''Mosaic Letter''); March 18, 2002 letter from Craig S. Tyle, General Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katz, Secretary, SEC (''ICI Letter'').

[5] Securities Exchange Act Release No. 45487 (February 28, 2002), 67 FR 10463.

Commission received two comments on the proposal.[6]

The NASD provided a response to the comment letters on April 17, 2002.[7] The NYSE provided a response to the comment letters on April 16, 2002.[8]

This order approves the NASD and the NYSE proposed rule changes.

## II. Description of the Proposed Rule Changes

*SR–NASD–2002–24*

NASD Regulation proposes to establish NASD Rule 3011, Anti-Money Laundering Compliance Program, which requires financial institutions, including broker-dealers, by April 24, 2002, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. NASD Regulation proposes its anti-money laundering compliance program rule to guide member firms on how to comply with Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''PATRIOT Act''). The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program.

Under the proposal, on or before April 24, 2002, each NASD member is required to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury (''Treasury''). Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.

The anti-money laundering programs required under the proposal, at a minimum, must (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder; (3) provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party; (4) designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and (5) provide ongoing training for appropriate personnel.

*SR–NYSE–2002–10*

The NYSE proposes to adopt NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed Rule, like the NASD proposal, requires each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder.

Under the NYSE's proposal, each member organization and each member not associated with a member organization must develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by Treasury. A member of senior management must approve, in writing, each member organization's anti-money laundering program. At a minimum, the anti-money laundering programs must (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder; (3) provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party; (4) designate, and identify to the NYSE a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the NYSE regarding any change in such designation(s); and (5) provide ongoing training for appropriate persons.

## III. Summary of Comments

The Commission received four letters commenting on the NASD proposal.[9] Of those four comment letters, two of them also were submitted as comments to the NYSE proposal.[10] One commenter expressed support for the proposals, calling sound anti-money laundering programs ''the starting point in the industry's effort in the prevention of money-laundering and the financing of terrorism.''[11] All of the commenters suggested that the proposals be modified.

While the SIA expressed support for the proposed rules, it requested that the requirements imposed by the proposed rules be clarified. First, it requested that the rules require firms to have a written anti-money laundering program in place by April 24, 2002, but not to have implemented the program by that date.[12] The SIA asserts that ''the language of Section 352 of the Patriot Act is clear that the requirement is to 'establish' anti-money laundering programs,'' not to have actually implemented the programs by April 24, 2002.[13]

The SIA also requests clarification that the anti-money laundering programs required by April 24, 2002 are only required to account for the Bank Secrecy Act requirements that are in effect by that same date.[14] The SIA states this clarification is necessary because some provisions of the PATRIOT Act have already become effective, while other provisions will become effective on a rolling basis throughout this year.[15] The SIA questions the ability of firms to implement all aspects of these programs by April 24, 2002.[16] For example, the SIA expressed strong support for the requirement that broker-dealers report suspicious activity. It also expressed concern that the rules could be read to require a firm to implement policies for reporting suspicious transactions before the time required by the statute.[17] According to the commenter, Section 356 of the Patriot Act requires that broker-dealers be subject to suspicious activity reporting requirements. Under Treasury's proposed rule implementing Section 356, such provision would take effect 180 days after a final rule is

[6] The SIA Letter and the Schulte Roth Letter were filed as comments to both the NASD proposal and the NYSE proposal.

[7] *See* April 17, 2002 letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC (''NASD Response Letter'').

[8] *See* April 16, 2002 letter from Richard P. Bernard, Assistant Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, SEC (''NYSE Response Letter'').

[9] *See* footnote 4, *supra.*

[10] *See* footnote 6, *supra.*

[11] SIA Letter at 2.

[12] SIA Letter at 2–3.

[13] *Id.* at 3.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

issued by Treasury.[18] The NYSE and NASD proposals require firms to establish and implement policies to comply with the Bank Secrecy Act and implementing regulations by April 24, 2002.

Finally, the SIA states the proposed rules should allow for extension beyond the April 24, 2002 compliance date, where full compliance cannot be timely achieved.[19] To obtain an extension, the SIA suggests a firm would be required to demonstrate the firm made a good faith effort to comply, and that there were extenuating circumstances that justify an extension.[20]

The Schulte Roth Letter suggests that the Commission and the self-regulatory organizations should allow an exemption from the anti-money laundering program requirement for broker-dealers that do not maintain traditional customer relationships, such as investment partnerships and corporations that are exempt from registration under the Investment Company Act of 1940.[21] Schulte Roth states these entities elect to register, or create a wholly-owned subsidiary to register, as a broker-dealer to obtain more favorable margin treatment. According to the commenter, these entities are not required to register as broker-dealers, and do not function as traditional broker-dealers, in that they do not engage in certain activities that are typically associated with a broker-dealer.[22] Furthermore, the commenter states that these broker-dealers do not advertise or hold themselves out to the public as a dealer, nor do they render any incidental investment advice, extend or arrange for the extension of credit to others in connection with securities, or purchase or sell securities as principal from or to customers.[23] Accordingly, the commenter asserts that these broker-dealers should not be required to adopt an anti-money laundering program.[24]

The commenter also asserts that broker-dealers that merely engage in stock lending activities with other broker-dealers, agency lenders, and mutual funds, should not be required to adopt an anti-money laundering program, because they do not conduct transactions involving the purchase or sale of securities in the traditional sense and do not involve traditional customer relationships.[25]

Similarly, one commenter suggested that the NASD proposal be modified to state that a broker-dealer that does not receive customer funds or open or hold customer accounts is deemed to satisfy the anti-money laundering program requirements by stating its understanding that it will be required to develop such a program before it actually receives customer funds or opens or holds customer accounts.[26] The commenter suggests this modification to prevent broker-dealers that do not accept or hold customer accounts or receive any customer funds from going through the ''futile exercise'' of establishing programs that cannot be implemented because the broker-dealers are powerless to identify any potential money-laundered money or accounts.[27]

The ICI submitted comments to address the NASD's proposal as it applies to NASD members that underwrite securities issued by registered investment companies.[28] The ICI expressed strong support for ''effective rules to combat potential money laundering activity in the investment company industry.'' It also proposed an exception to proposed NASD Rule 3011 for any NASD member with respect to its activities as a principal underwriter of mutual fund securities where the mutual funds such NASD member underwriters have established an anti-money laundering program that meets the requirements of Section 352 of the PATRIOT Act and any rules that apply to funds adopted thereunder.[29]

The ICI provides two reasons for its proposed exception. First, the ICI states the exemption would avoid unnecessary regulatory duplication. The PATRIOT Act's requirement to establish an anti-money laundering compliance program by April 24, 2002 applies to funds and to broker-dealers. The ICI states that proposed regulations setting minimum standards for fund compliance programs are imminent. Where an underwriter is part of a fund complex, the ICI states it would be ''logical'' for any relevant activities of the underwriter to be addressed by the funds' anti-money laundering program. In these situations, the ICI states there is no need for underwriters to comply with separate requirements imposed by the NASD on its members.[30]

Second, the ICI states the exception would eliminate a bifurcated anti-money laundering compliance examination regime. The ICI states that compliance with the anti-money laundering program requirements for funds will be examined by the Commission's Office of Compliance, Inspections and Examinations (''OCIE''). The ICI believes that OCIE is best able to examine funds comprehensively for compliance with anti-money laundering requirements. To subject fund underwriters to NASD examination authority would, according to the ICI, ''create a piecemeal regulatory scheme that would be both duplicative and inefficient.'' [31]

*The NYSE's Response to Comments*

On April 16, 2002, the NYSE submitted a response to comments.[32]

In response to the suggestion that Section 352 of the PATRIOT Act requires only that firms ''establish'' written anti-money laundering programs by April 24, 2002, the NYSE states that members and member organizations must be in compliance with federally mandated requirements of Section 352 by April 24, 2002, by establishing written policies and procedures that have been approved in writing by senior management, that address all applicable Bank Secrecy Act requirements. These policies should address the member organization's employee training program and independent audit functions.[33] The NYSE also indicates that proposed NYSE Rule 445 requires that the anti-money laundering programs provide for independent testing for compliance, and that policies, procedures, and internal controls must be reasonably designed to achieve compliance with applicable federal requirements. The NYSE expects implementation of the required independent testing function to be ''timely and effective.'' [34] As for implementation of policies related to anti-money laundering requirements that have yet to be adopted, the NYSE expects they will be implemented concurrently with their respective effective dates.[35] The NYSE further clarified that it will not require compliance with Bank Secrecy Act provisions before their prescribed effective dates.[36] The NYSE also confirmed its understanding that the suspicious activity reports (''SAR'') reporting requirements under 31 U.S.C. 5318(g) are expected to become effective

[18] *Id.*
[19] *Id.* at 4.
[20] *Id.*
[21] Schulte Roth Letter at 3–4.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 4.
[25] *Id.*
[26] Mosaic Letter.
[27] *Id.*
[28] ICI Letter at 1.
[29] *Id.*
[30] *Id.* at 2.
[31] *Id.*
[32] *See* footnote 8, *supra.*
[33] NYSE Response Letter at 2.
[34] *Id.*
[35] *Id.*
[36] *Id.*

180 days after the date on which final regulations are issued by Treasury.[37]

With regard to establishing a procedure to allow for extensions of the April 24, 2002 compliance date, the NYSE stated that the requirements outlined by proposed NYSE Rule 445 are practical applications of federal law and that it has no authority to grant extensions for compliance with federally mandated deadlines.[38] Similarly, in response to the commenter's suggestion that proposed NYSE Rule 445 grant an exemption from the requirement to adopt an anti-money laundering program for broker-dealers that do not engage in activities traditionally undertaken by registered broker-dealers such as hedge funds, or broker-dealers that engage in stock lending activities with other broker-dealers, agency lenders like banks, and mutual funds, the NYSE again maintains it has no authority to grant such relief from the requirement, as the requirement is mandated by federal law.[39] The NYSE takes the position that each entity subject to anti-money laundering requirements is required to implement policies and procedures that are ''reflective of the type and nature of their business and that exemptions for hedge funds, investment companies, etc. would not be appropriate.''[40]

*NASD Regulation's Response to Comments*

NASD Regulation submitted a response To comments on April 17, 2002.[41]

In response to the commenters' assertion that certain broker-dealers be exempt from the requirements of proposed NASD Rule 3011, NASD Regulation, like the NYSE, stated that the requirement to establish an anti-money laundering compliance program is a ''mandate of federal law.''[42] While Section 352 requires Treasury to issue regulations by April 24, 2002 that address the applicability of the statutory requirements to different types of financial institutions, it does not allow for the NASD or other self-regulatory organizations to grant exemptions to any types of broker-dealers from the statutory requirements.[43] NASD Regulation suggests that anti-money laundering programs at firms that have no customers and handle no funds will be tailored to focus on ''potential employee misconduct and counterparty awareness.''[44] Similarly, with regard to the ICI's request that an exemption be allowed for an NASD member with respect to its activities as principal underwriter of mutual fund securities where the fund complex being underwritten has established anti-money laundering compliance programs that meet the requirements of Section 352, NASD Regulation reiterates that all broker-dealers are required to enact appropriate compliance procedures.[45] In establishing such programs, NASD Regulation suggests that broker-dealers may coordinate their efforts by taking account of programs and procedures of other firms with which they do business. It also suggests that principal underwriters to mutual funds would be expected to have similarly targeted procedures once the firms had assured themselves that the investment adviser or transfer agent within the fund complex had established and implemented a sufficient anti-money laundering program. NASD Regulation notes that each firm must have its own program designed to detect suspicious activity, and no broker-dealer may rely solely on a program implemented by a firm with which it does business or has a business relationship.[46]

Regarding the SIA's concerns that the proposed rule's requirement to both establish and implement compliance programs by April 24, 2002 is beyond the scope of Section 352, NASD Regulation asserts that its proposed Rule is consistent with Section 352.[47] NASD Regulation states that it does not suggest that all aspects of a firm's anti-money laundering compliance program must be operational by April 24, 2002. Instead, NASD Regulation believes that firms must put in place written procedures, and take ''meaningful steps'' to carry out the procedures to the extent possible by April 24, 2002.[48]

With regard to the SIA's and ICI's requests for clarification that the compliance programs required by April 24, 2002 need only address the Bank Secrecy Act requirements that are in effect by that date, NASD Regulation states that it agrees a member's program must continuously evolve to adapt to new Bank Secrecy Act requirements as they are adopted.[49] Additionally, NASD Regulation believes its proposed new Rule does not require a firm's compliance program to reflect those Bank Secrecy Act requirements that are not in effect by April 24, 2002. NASD Regulation, however, encourages all firms to comply voluntarily with those provisions of the Bank Secrecy Act not yet in effect to the extent practicable, rather than waiting for mandatory compliance deadlines.[50] With respect to the SIA's comment that the broker-dealer SAR reporting requirement is not expected to be in effect until 180 days after Treasury issues final rules, NASD Regulation states that an anti-money laundering program need only achieve compliance with requirements that are in effect. However, NASD Regulation states that broker-dealers should consider filing SARs voluntarily before the effective date of the regulations, and programs must be adapted to provide procedures for reporting suspicious transactions consistent with the final rule once it becomes effective.[51]

Finally, with regard to the SIA's request that the NASD's proposed rule be modified to allow for exemptions from the compliance date under certain circumstances, NASD Regulation notes that the law does not grant NASD Regulation or any other self-regulatory organization the authority to grant exemptions or extensions of time for compliance.[52]

## IV. Discussion and Commission Findings

The Commission has reviewed carefully the NASD's and NYSE's proposed rule changes, the comment letters, and the NASD's and NYSE's responses to the comments, and finds, for the reasons set forth below, that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities association,[53] and a national securities and exchange, and, in particular, with the requirements of Sections 15A(b)(6)[54] and 6(b)(5)[55] of the Act. Section 15A(b)(6) requires the rules of a registered national securities association 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 securities, to remove impediments to and perfect the

[37] *Id.* at 3.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See* footnote 7, *supra.*
[42] *Id.* at 2.
[43] *Id.*
[44] *Id.*
[45] *Id.* at 3.
[46] *Id.*
[47] *Id.*
[38] *Id.*
[49] *Id.* at 4.
[50] *Id.*
[51] *Id.* at 4–5.
[52] *Id.* at 5.
[53] In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[54] 15 U.S.C. 78o–3(b)(6).
[55] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) imposes the same requirements on a national securities exchange.

The Commission finds that the proposed rule changes are consistent with these Sections of the Act. The Commission finds that the NASD and the NYSE have proposed rules that accurately, reasonably, and efficiently implement the requirements of the PATRIOT Act as it applies to their members. While the Commission acknowledges that the commenters have raised possible burdens these proposed rules place upon certain entities that are required to implement anti-money laundering compliance programs by April 24, 2002, the Commission agrees with NASD Regulation and the NYSE that they have no authority to grant exceptions or exemptions to these federally mandated requirements and deadlines. The Commission believes that NYSE and NASD members that are subject to the requirements of the PATRIOT Act must have written anti-money laundering programs in place by April 24, 2002, and must implement those procedures in a timely fashion. The Commission also recognizes, however, that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

With regard to all other issues raised by the commenters, the Commission is satisfied that NASD Regulation and the NYSE have adequately and accurately addressed the commenters' concerns.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[56] that the proposals SR–NASD–2002–24 and SR–NYSE–2002–10 be and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[57]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10313 Filed 4–25–02; 8:45 am]

**BILLING CODE 8010–01–U**

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45788; File No. SR–NSCC–2002–01]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Making Technical Changes to Its Rules Related to the Timing of Clearing Fund Deposits

April 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 23, 2002, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to make a technical correction to NSCC Rule 4 relating to the timing of clearing fund deposits.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On June 15, 2001, the Commission approved proposed rule change SR–NSCC–2001–04 which modified and consolidated NSCC's clearing fund rules.[3] The purpose of the filing was to: (1) move all NSCC members subject to clearing fund requirements, and not only those member firms that were subject to surveillance status, to risk-based margining and (2) modify the rules to provide that additional clearing fund deposits must be made on the same day requested and within the time frame established by NSCC. The filing stated, in part, that all clearing fund requirements and other deposit requirements shall be made by members within one hour of demand unless otherwise determined by NSCC.[4] At that time, the prior notification requirement found in Section 7 of Rule 4 of NSCC's Rules and Procedures should have been deleted because it is inconsistent with the time frame in that filing. Inadvertently, this deletion was not made. The purpose of this proposed rule change is to delete the inconsistent prior notification provisions of NSCC Rule 4.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC since the proposed rule change clarifies the clearing fund deposit process and assures the safeguarding of funds within NSCC's custody and control.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the approval of NSCC's rule change is consistent with this section because it

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 44431 (June 15, 2001), 66 FR 33280.

[4] NSCC Rules and Procedures Procedure XV, II.(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).

will enable NSCC to resolve a discrepancy that exists in its rules and procedures with regard to the time frame for deposits of clearing fund and to more quickly collect additional clearing fund requirements, which was one intended purpose of NSCC's approved filing SR–NSCC–2001–04.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow NSCC to avoid confusion among participants regarding the time within which additional clearing fund deposits must be received by NSCC.

**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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2002–01 and should be submitted by May 17, 2002.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2002–01) be and hereby is approved.

[6] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10314 Filed 4–25–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–45787; File No. SR–OCC–2001–11]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to IntraDay Margin Deposits

April 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 7, 2001, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. 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 proposed rule change would amend OCC Rule 609 to make explicit the procedures applicable to deposits of intraday margin.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule changes 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. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the newly added language to Rule 609 is to make explicit OCC's policies with respect to required deposits of intraday margin.

OCC can require a deposit of intraday margin for a variety of reasons. Most often, deposits of intraday margin are required in response to changes in market conditions that affect the value of clearing members' positions and/or collateral. Currently, Rule 609 states that OCC's Chairman, Management Vice Chairman, and President each are authorized to require any clearing member to make such deposits within such time period as the officer may prescribe.

Pursuant to a long-standing policy, intraday margin deposits must be satisfied in immediately available funds within one hour of OCC's issuance of a debit instruction against the applicable bank account of a clearing member. This policy will now be explicitly set forth in Rule 609 although the authority to prescribe a different settlement time, including a shorter settlement time, will be preserved. In order to expedite processing, the individuals authorized to require intraday margin deposits will now include any officer of OCC so authorized by the Chairman, Management Vice Chairman, or President.

The proposed change is consistent with the purposes and requirements of section 17A of the Exchange Act because it makes explicit OCC's procedures for managing required deposits of intraday margin, which should promote the safeguarding of securities and funds.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments relating to the proposed rule change have not yet been solicited or received. OCC will notify the Commission of any written comments received by OCC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

as the Commission may designate up to ninety 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 OCC consents, the Commission will:

(a) by order approve the 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 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 Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2001–11 and should be submitted by May 17, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–10309 Filed 4–25–02; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice #3980]**

### United States International Telecommunication; Advisory Committee Telecommunication Advisory Committee Radiocommunication Sector (ITAC–R); Notice of Meeting

The Department of State announces a meeting of the National Committee of the Radiocommunications Sector of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to the International Telecommunication Union (ITU). This meeting will address preparations for the ITU–R World Radiocommunication Conference 2003 (WRC–03).

The ITAC–R will meet from 1:30 to 3:30 on May 7, 2002 at the Department of State Dean Acheson auditorium. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov*. Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: April 16, 2002.

**Cecily C. Holiday,**

*Director, ITU–R Affairs, U.S. Department of State.*

[FR Doc. 02–10331 Filed 4–25–02; 8:45 am]

BILLING CODE 4710–45–P

## DEPARTMENT OF STATE

**[Public Notice 3960]**

### Shipping Coordinating Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, May 21, 2002, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report the results of the Eighty-Fourth Session of the International Maritime Organization (IMO) Legal Committee (LEG 84), scheduled for April 22 through 26, 2002.

At LEG 84, the Legal Committee will review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol) to determine if the instruments need to be updated in light of the September 11, 2001 terrorist attacks against the United States of America. The Committee will also examine the draft Wreck Removal Convention with the objective of having the draft ready for a Diplomatic Conference in the 2004–5 biennium. In addition, the Legal Committee will consider a proposal to increase the limits of compensation under the 1992 protocols to the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage. The Legal Committee will then turn its attention to the status of the implementation of the International Convention on Liability and Compensation for Damage in Connection With the Carriage of Hazardous and Noxious Substances by Sea. Time also will be allotted to address any other issues on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. Due to building security, it is recommended that those who plan on attending call or send an e-mail two days ahead of the meeting so that we may place your name on a list for security personnel to reference. For further information please contact Captain Joseph F. Ahern or Lieutenant Carolyn Leonard-Cho, at U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *cleonardcho@comdt.uscg.mil,* telephone (202) 267–1527; fax (202) 267–4496.

Dated: April 10, 2002.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 02–10328 Filed 4–25–02; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice 3961]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, 4 June, in Room 4420, at U. S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 51st Session of the

Technical Cooperation Committee (TCC 50) and 88th Session of Council of the International Maritime Organization (IMO). The TCC 51 meeting will be held at IMO Headquarters on 12–13 June 2002. The Technical Cooperation Committee will focus on the following items:

—Technical assistance aspects of maritime security;
—Regional Co-ordination and Delivery;
—IMO Women in Development Program;
—Institutional Development and Fellowships; and
—Report on the status of funding for the translation of model courses.

The 88th Session of the Council is scheduled for 10–14 June 2002, at the IMO Headquarters in London. Items of interest include:

—Committees reports;
—Report on the International Conference on Liability and Compensation for Bunker Oil Pollution Damage;
—Work Program and Budget for 2002–2003;
—Review of the Organization's financial framework in accordance with Assembly resolution A.877(21);
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs its function;
—World Maritime University
—IMO International Maritime Law Institute;
—Relations with intergovernmental and non-governmental organizations; and
—Assembly matters.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U. S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: April 10, 2002.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 02–10329 Filed 4–25–02; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF STATE

**[Public Notice 3963]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, June 13, 2002 in Room 6103 of the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the Seventh Session of International Maritime Organization (IMO) the Sub-Committee on Bulk Liquids and Gases to be held at the IMO Headquarters in London, England from June 24, 2002 to June 28, 2002.

The primary matters to be considered include:

— Matters related to the probabilistic methodology for oil outflow analysis
—Review of Annex I of International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)
—Review of Annex II of MARPOL 73/78
—Evaluation of safety and pollution hazards of chemicals and preparation of consequential amendments
—Amendments to requirements on electrical installations in the International Bulk Chemical and the International Gas Carrier Codes
—Application of MARPOL requirements to Floating Production, Storage and Offloading/Floating Storage Units (FPSOs and FSUs)
—Requirements for personnel protection involved in the transportation of cargoes containing toxic substances in all types of tankers
—Oil tagging systems
—Development of guidelines for ships operating in Arctic ice-covered waters

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander J. M. Michalowski, U.S. Coast Guard (G–MSO–3), Room 1214; 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: April 10, 2002.

**Stephen Miller,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 02–10330 Filed 4–25–02; 8:45 am]

BILLING CODE 4710–07–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 02–04–C–00–GRB To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Austin Straubel International Airport, Green Bay, WI

**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 Austin Straubel International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before date which is 30 days after date of publication in the **Federal Register.**

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas W. Miller, Airport Director of the Austin Straubel International Airport at the following address: 2077 Airport Drive, Green Bay, WI 54313–5596.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Brown County, Wisconsin under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450–2706, (612) 713–4359. 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 Austin Straubel International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 5, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by Brown County, Wisconsin, 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 July 30, 2002.

The following is a brief overview of the application.

*Proposed charge effective date:* October 1, 2002.

*Proposed charge expiration date:* February 1, 2003.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $528,943.

*Brief description of proposed project:* Terminal Entrance Road Expansion.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Austin Straubel International Airport.

Issued in Des Plaines, Illinois on April 18, 2002.

**Mark McClardy,**

*Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 02–10237 Filed 4–25–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 02–07–C–00–MKE To Impose a Passenger Facility Charge (PFC) at General Mitchell International Airport and To Use the Revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport, Milwaukee, WI

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before May 28, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, WI at the following address: 5300 S. Howell Avenue, Milwaukee, WI 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and to use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 3, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Milwaukee 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 26, 2002.

The following is a brief overview of the application.

*Proposed charge effective date:* December 1, 2011.

*Proposed charge expiration date:* May 1, 2005.

*Level of the proposed PFC:* $3.00.

*Total estimated PFC revenue:* $37,240,744.

*Brief description of proposed projects:* Impose and Use: C concourse-hydrant fueling system, separate taxiway circuits and add duct bank, runway 7R/25L edge lights, renovate road to south maintenance area, construct ground run up enclosure, Part 150 update, reconstruct corporate hangar road, relight terminal roadway, airfield electrical system upgrade, elevator controls upgrade, PFC administration costs, D concourse expansion, replace taxiway B and C, north ticketing expansion, runway and taxiway rehabilitation (Lawrence J. Timmerman Airport).

*Impose Only:* Outer taxiway extension, International Arrivals Building (IAB) ramp extension.

*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.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plains, Illinois on April 18, 2002.

**Mark McClardy,**

*Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 02–10238 Filed 4–25–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 02–06–C–00–SAW To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sawyer International Airport, Marquette, MI

**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 Sawyer International Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before May 28, 2002.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. The application may be reviewed in person at this location.

In addition, one copy of any comments submitted to the FAA must be failed or delivered to Mr. Harold R. Pawley, Airport Manager, Sawyer International Airport at the following address: Sawyer International Airport, 225 Airport Avenue, Gwinn, Michigan 49841.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sawyer International Airport under section 158.24 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Arlene B. Draper, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). 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 Sawyer International Airport under the

provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 5, 2002 the FAA determined that the application to impose and use the revenue from a PFC submitted by Sawyer International Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, not later than August 2, 2002.

The following is a brief overview of the application.

*Proposed charge effective date:* December 1, 2002.

*Proposed charge expiration date:* May 1, 2004.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $227,558.

*Brief description of proposed projects:* North Access Road; Taxiway Rehabilitation; Passenger Boarding Bridge; Snow Removal Equipment; Runway Rehabilitation; Taxiway Signage; Refurbish Beacon.

*Class or classes of air carriers which the public agency has requested to be required to collect PFCs:* Marquette County has not requested approval to exclude a class or classes of carriers from the PFC collection requirements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sawyer International Airport, 225 Airport Avenue, Gwinn, Michigan 49841.

Issued in Des Plaines, Illinois on April 18, 2002.

**Barbara J. Jordan,**

*Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 02–10236 Filed 4–25–02; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**St. Louis Steam Train Association**

[Docket Number FRA–2002–11701]

The St. Louis Steam Train Association (SLSTA) has petitioned the Federal Railroad Administration for a temporary waiver of compliance for time on duty limitations from the requirements of Title 49, U.S.C. 21103(a), which requires the association to limit the time on duty of its train employees to 12 hours total time on duty in a 24-hour period.

The SLSTA is a not-for-profit corporation that leases, maintains, and operates former St. Louis and San Francisco steam locomotive number 1522. The SLSTA occasionally operates locomotive 1522 on the general railroad system as motive power for trains operated for historical, excursion, or other purposes. The SLSTA has three individuals who are certified locomotive engineers and who operate the controls of the locomotive under the provisions of Title 49 Code of Federal Regulations, part 240. In addition, the association has three individuals who act as traditional firemen. The SLSTA requests relief to utilize its train and engine crews for up to 16 hours in the event of unusual circumstances. The association does not plan for its train and engine crew employees to perform service for more than 12 hours. However, due to the nature of its operations that occasionally involve operating on the general railroad system and its limited staff, unexpected and unusual circumstances may terminate the operation of the train prior to its final destination. The SLSTA states that allowing an engineer to operate beyond the normal 12-hour limit will not compromise safety, in that, host-railroad pilots and supervisors will also be on board the locomotive while it is being operated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2002–11701) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on April 22, 2002.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 02–10234 Filed 4–25–02; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34189]**

### Richmond Pacific Railroad Corporation—Lease, Operating and Trackage Rights Exemption—Rail Lines of Union Pacific Railroad Company and The Burlington Northern and Santa Fe Railway Company

Richmond Pacific Railroad Corporation (applicant), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate (including some operations by trackage rights) over 10 miles of rail lines owned by Union Pacific Railroad Company (UP) and The Burlington Northern and Santa Fe Railway Company (BNSF) in Contra Costa County, CA.

The transaction could have been consummated on or after April 9, 2002, the effective date of the exemption (7 days after the exemption was filed).[1]

The purpose of the transaction[2] is to allow: (1) Applicant to lease from UP, for freight rail operations, trackage on the Seaver Industrial Lead, from milepost 0.20 near the Stege Wye to the end of the track at milepost 2.46 (2.26 miles), and on the Richmond Industrial

[1] Applicant proposed to consummate the transaction on or about April 8, 2002. The exemption notice was filed on April 2, 2002. Under 49 CFR 1150.42, the exemption is effective 7 days after the notice is filed.

[2] Applicant states that the transaction involves several agreements between UP and applicant which include a lease agreement, an interchange agreement, an operating agreement, a commercial marketing agreement and an assignment and assumption agreement. It also involves a non-exclusive lease agreement between BNSF and applicant.

Lead, from milepost 0.00 near the San Pablo Wye to milepost 1.01, including all industry tracks, the San Pablo Wye, and San Pablo house track (1.5 miles); (2) UP and applicant to interchange freight cars, locomotives, cabooses and other equipment adjacent to the UP main line at the Stege Wye on interchange trackage from milepost 7.5 to milepost 10.7 (3.2 miles); (3) UP to permit applicant to operate freight rail service on subsidiary trackage adjacent to the UP main line from milepost 10.7 near the Stege Wye to milepost 13.74 near the San Pablo Wye (3.04 miles); (4) UP and applicant to agree upon rail car switching or interchange charges for various types of freight cargo shipments originated or terminated by UP or applicant; (5) UP to assign its rights under certain agreements related to the leased premises to applicant and to allow applicant to assume the obligations of UP under such agreements; and (6) BNSF and applicant to interchange equipment at the 23rd Street yard and to deliver equipment to locations along the Seaver Industrial Lead using joint track leased to applicant by BNSF and UP, operating rights on BNSF-owned track, and on track leased by BNSF to applicant.

The notice is filed under 49 CFR 1150.41. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34189, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Ronald C. Peterson, Esq., Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP, 333 Market Street, Suite 2300, San Francisco, CA 94105–2173.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.''

Decided: April 18, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 02–10029 Filed 4–25–02; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 19, 2002.

The Department of the 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 28, 2002, to be assured of consideration.

### Bureau of Alcohol, Tobacco and Firearms (BATF)

*OMB Number:* 1512–0129.

*Form Number:* ATF F 4473 (5300.9) Part I.

*Type of Review:* Extension.

*Title:* Firearms Transaction Record, Part I, Over-The-Counter.

*Description:* The form is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is also used in law enforcement investigations/inspection to trace firearms.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Recordkeepers:* 10,225,000.

*Estimated Burden Hours Per Recordkeeper:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 3,408,333 hours.

*OMB Number:* 1512–0144.

*Form Number:* ATF F 2736 (5100.12) and ATF F 2737 (5100.67).

*Type of Review:* Extension.

*Title:* Specific and Continuing Transportation Bond-Distilled Spirits and/or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six.

*Description:* ATF F 2736 (5100.12) and ATF F 2737 (5100.67) are specific bonds which protect the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. They identify the shipment, the parties, the date and the amount of bond coverage.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 1 hour.

*Clearance Officer:* Jacqueline White, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226. (202) 927–8930.

*OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503. (202) 395–7860.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 02–10250 Filed 4–25–02; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

**[Notice No. 943]**

### Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, United States Code (U.S.C.), and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. chapter 40, Importation, Manufacture, Distribution, and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, U.S.C. Accordingly, the following is the 2002 List of Explosive Materials subject to regulation under 18 U.S.C. chapter 40. It includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents.

The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of title 18, U.S.C. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

In the 2002 List of Explosive Materials, ATF has added five terms to

the list of explosives, has further defined two explosive materials, and has made amendments to two explosive materials to more accurately reference these materials.

The five additions to the list are as follows:

1. Azide explosives
2. HMTD [hexamethylenetriperoxidediamine]
3. Nitrate explosive mixtures
4. Picrate explosives
5. TATP [triacetonetriperoxide]

We have added these explosive materials to the List because their primary or common purpose is to function by explosion. ATF has encountered the criminal use of some of these materials in improvised devices. ''Nitrate explosive mixtures'' is intended to be an all-encompassing term, including all forms of sodium, potassium, barium, calcium, and strontium nitrate explosive mixtures.

The two explosive materials that we have further defined by including their chemical names are listed as follows:

1. DIPAM [dipicramide; diaminohexanitrobiphenyl]
2. EDNA [ethylenedinitramine]

The two amendments to previously listed explosive materials are as follows:

1. ''Nitrates of soda explosive mixtures'' has been deleted and replaced with ''Sodium nitrate explosive mixtures'' to reflect current terminology.
2. PBX was previously defined as ''RDX and plasticizer.'' We are changing the definition to reflect that PBX is an acronym for ''plastic bonded explosive.''

This revised list supersedes the List of Explosive Materials dated September 14, 1999 (Notice No. 880, 64 FR 49840; correction notice of September 28, 1999, 64 FR 52378) and will be effective on April 26, 2002.

**List of Explosive Materials**

*A*

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate composite propellant.
Ammonium perchlorate explosive mixtures.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

*B*

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

*C*

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

*D*

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

*E*

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

*F*

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

*G*

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

*H*

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

*I*

Igniter cord.
Igniters.
Initiating tube systems.

*K*

KDNBF [potassium dinitrobenzo-furoxane].

*L*

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

*M*

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

*N*

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

*O*

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

*P*

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)]-3,5-dinitropyridine.

*R*

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

*S*

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

*T*

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

*U*

Urea nitrate.

*W*

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

*Water-in-oil emulsion explosive compositions.*

*X*

Xanthamonas hydrophilic colloid explosive mixture.

**FOR FURTHER INFORMATION CONTACT:** Chad Yoder, ATF Specialist, Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–7930).

Signed: April 19, 2002.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 02–10324 Filed 4–25–02; 8:45 am]

**BILLING CODE 4810–31–P**

## UNITED STATES INSTITUTE OF PEACE

### Announcement of Senior Fellowship Competition

**AGENCY:** United States Institute of Peace.

**ACTION:** Notice.

**SUMMARY:** The agency is soliciting applications for Senior Fellowships from scholars or practitioners who conduct research related to the peaceful resolution of international conflict. Fellowship entails residence at agency in Washington, DC, for up to ten months beginning October 1, 2003.

**DATES:** Application Available Upon Request; Receipt Date for Return of Applications: September 16, 2002; Notification of Awards: April, 2003.

**ADDRESSES:** For application materials, visit the Institute's Web site at *www.usip.org,* or contact: United States Institute of Peace, Jennings Randolph Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–6063 (fax), (202) 457–1719 (TTY), jrprogram@usip.org (email).

**FOR FURTHER INFORMATION CONTACT:** Jennings Randolph Program, Phone (202) 429–3886.

Dated: April 17, 2002.

**Bernice J. Carney,**

*Director, Office of Administration.*

[FR Doc. 02–10276 Filed 4–25–02; 8:45 am]

BILLING CODE 6820–AR–M

Federal Register

Friday,
April 26, 2002

# Part II

# Department of Education

## Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research; Notice

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed priorities.

**SUMMARY:** The Assistant Secretary for Special Education and Rehabilitative Services proposes funding a priority for a Persons Aging with Hearing and Vision Loss project and a priority on the Evaluation of the Changing Universe of Disability and Systems Change Activities under the Disability and Rehabilitation Research Projects (DRRP) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2002–2004. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals aging with hearing and vision loss or individuals with disabilities.

**DATES:** We must receive your comments on or before May 28, 2002.

**ADDRESSES:** Address all comments about these proposed priorities to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*

You must include the term *Persons Aging with Hearing and Vision Loss* or *Evaluation of the Changing Universe of Disability and Systems Change Activities* in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:**

### Invitation To Comment

We invite you to submit comments regarding these proposed priorities.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these priorities in room 3412, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

The New Freedom Initiative (NFI) emphasizes the importance of assistive and universally designed technologies, other employment initiatives, and promotion of full access to community-based living. The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html*

NIDRR's published Long-Range Plan (the Plan), focusing on both individual and systemic factors that impact functional capability, includes the following elements: employment outcomes, health and function, technology for access, community integration and independent living, and associated activities such as the development of outcome measures and disability statistics. The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*

### Disability and Rehabilitation Research Project (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities to:

(a) Develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities; and

(b) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973 (the Act).

### Priorities

*Persons Aging With Hearing and Vision Loss*

*Background*

The primary study populations are older Americans who have experienced hearing or vision loss earlier in their lives and who, with advanced age, are experiencing the loss of the alternate sense. There is a need to identify individuals who are aging with hearing and vision loss from a broad and balanced sample of subjects, as exemplified by U.S. Census data.

One of the most important changes in the United States over the last 50 years has been the rapid increase in the number of people living into their 70s, 80s and beyond. Today, average life expectancy is 78 years compared to 47 years in 1900 (Campbell, et al., (*Surveillance for Sensory Impaired, Activity Limitations, and Health-Related Quality of Life Among Older Adults*, NHIS, National Center for Environmental Health, 1999). The number of Americans age 55 and over is projected to increase twice as fast as the population as a whole (Schmeider & Halfman, *Statistics on visual impairment on older persons, disability in children, life expectancy*, Journal of Visual Impairment and Blindness, Vol. 91, pgs. 602–606, 1997).

Furthermore, a growing number of the people who are living longer are those who sustained a disability at some point earlier in their lives. Many of these individuals will remain in the workforce due to extensions of the traditional retirement age. The increase in longevity in this century brings with it an increase in the amount of time spent in all major activities, including work and retirement (Weinstein B.E., *Geriatric Audiology*, Thieme Med. Publishers, Inc., NY, NY 2000).

However, as people age, one of the most significant problems that they face is the presence of a disability. For example, loss of vision and hearing become more prevalent with aging, affecting millions of Americans. When either of these disabilities is already present, the onset of a secondary disability is especially problematic, particularly when the individual is faced with additional age-related disabilities.

One-third of persons over 65 years of age have a hearing loss sufficient to interfere with speech perception, and the prevalence rises with increasing age (*A Report of the Task Force on the National Strategic Research Plan*, NIDCD, 1989). There is also a growing number of under-served individuals with a combination of multiple sensory, physical, and cognitive impairments (Malakpa S., *Job placement of blind and visually impaired people with additional disabilities*, RE: View, Vol. 26, pgs. 67–77, 1994).

Low vision or blindness frequently coexists with other disabilities including hearing loss, cognitive impairments, and mobility limitations. Individuals with multiple disabilities present technological challenges and require complex adjustments to achieve functionality in and across environments (Greenbaum, et al., *Use of motorized wheelchair in conjunction with a guide dog for legally blind and disabled*, Archives of Physical Medicine and Rehabilitation, Vol. 79(2), pgs. 216–217, 1998). Functional status is diminished for sensory impaired subjects. Combined vision and hearing impairments have greater effect on function than single sensory impairments and influence functional status independent of mental status and co-morbid illness. For example, blind people who acquire significant hearing problems have the core of their already constrained communication system threatened. Persons with significant hearing loss, who lose visual acuity, are equally affected. Overall, this suggests that interventions to improve sensory function may improve functional independence (Keller, et al., *The effect of visual and hearing impairment on functional status*, Journal of Geriatric Sociology, 47(11), pgs. 1319–25, 1999).

Data from the Survey of Income and Program Participation (SIPP), 1997, indicate that 3.9 million (12.1 percent) persons age 65 and older had difficulty seeing the words and letters in newspapers even when wearing glasses or contact lenses; of that group, 1.1 million (3.3 percent) were unable to see the words and letters at all, while 2.8 million (8.8 percent) had visual problems that were not severe. The SIPP also measures hearing problems. Even when wearing a hearing aid, 4.3 million (13.4 percent) had difficulty hearing normal conversation. Of that group, about 500,000 (1.5 percent) were unable to hear what was said in normal conversation while about 3.8 million (11.9 percent) had hearing problems that were not severe.

The number of individuals with both severe hearing and visual impairments (deaf-blind) is small. But, just as the number of elders will be growing in absolute numbers and as an increasing proportion of the population, the number of elders experiencing severe sensory loss is likely to increase as well (Crews John E., *Aging and Disability: The issues for 1990's*, In Boone (ed.): Challenge to Independence, pgs. 47–59, U. Arkansas Press, Little Rock, AR, 1998). The greatest challenges faced by multiple sensory impaired people are an absence of functional communication modes and access to information technology. Unlike individuals who, blind from an early age, learned Braille as part of their developmental language in special classes or in institutions for the blind, people who lose their vision in adulthood rarely master Braille for communication purposes. To date, technologies for such people have focused primarily on tactile interpreting for face-to-face communication (Engleman, et al., *Deaf-blindness and communication: Practical knowledge and strategies*, Journal of Visual Impairment and Blindness, Vol. 92(11) pgs. 783–798, 1999).

In a recent report on data from the National Health Interview Survey (NHIS) study, Campbell, Mority, Zack and Blackman (1999) determined that older adults who reported vision and hearing impairments were two times more likely than their peers without impairments to report difficulty walking (48.3 percent vs. 22.2 percent), three times more likely to report difficulty getting outside (32.8 percent vs. 11.9 percent), and almost 2.5 times more likely to report difficulty getting into or out of bed or a chair (25.0 percent vs. 10.4 percent). In addition, older adults who experience both vision and hearing impairments were three times more likely than their peers without impairments to report difficulty preparing meals (20.7 percent vs. 7.8 percent) and more likely to report difficulty managing medication (13.4 percent vs. 5.0 percent).

Furthermore, older adults who reported both vision and hearing loss were more likely than those without either vision or hearing impairments to have: (a) fallen during the preceding year (37.4 percent vs. 19.8 percent), (b) broken a hip (7.6 percent vs. 4.5 percent), (c) reported a higher prevalence of hypertension (53.4 percent vs. 44.3 percent), (d) reported heart disease (32.2 percent vs. 20.6 percent), or (e) are twice as likely to experience a stroke (17.4 percent vs. 7.3 percent) (Campbell, et al., (*Surveillance for Sensory Impaired, Activity Limitations, and Health-Related Quality of Life Among Older Adults*, NHIS, National Center for Environmental Health, 1999).

Untangling the relationships among sensory loss, co-morbidities and secondary conditions, and activity limitations poses an important challenge for public health, the development of public policy, vocational rehabilitation service providers, community integration efforts, and fulfillment of the NFI. For example, the relation between sensory limitations and activity limitations is not clearly understood, more information is needed about the relation between underlying conditions, activity limitations, and secondary conditions (Campbell, 1999).

In order to further our understanding of co-morbidity, studies that examine community planning efforts for housing and transportation, the effect of policy and planning efforts on the integration of older persons with vision and hearing problems into the community, and the influence of sensory and activity limitations in aging populations on rehabilitation outcomes are crucial. Finally, more information is needed regarding strategies that many older adults, who have a vision and hearing disability, employ to sustain participation in the community.

**Priority 1**

The Assistant Secretary proposes to establish a Disability and Rehabilitation Research Project on Persons Aging with Hearing and Vision Loss. The purpose of this absolute priority is to explore ways to improve outcomes for persons who are blind or who are deaf and who are now experiencing a secondary onset of hearing loss or vision impairment resulting from aging. The DRRP will conduct research, development, training, and dissemination activities and evaluate model approaches for improving employment and community integration options, including more viable communication systems, for such individuals who are 55 years of age, or older. In carrying out this purpose the DRRP must:

(1) Investigate the prevalence of age-related onset of deafness among older American blind individuals and age-

related onset of blindness among older American deaf individuals and the impact on the employment and community integration options, including more viable communication systems for each population;

(2) Identify and evaluate technology and service delivery options, such as transportation, housing, and community integration activities for individuals with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging;

(3) Identify and evaluate access to use of technologies, including assistive devices and telecommunication or other existing communication systems, such as tactile interpreter support, needed to assist persons with early onset deafness or blindness and late onset hearing or vision loss and their effectiveness with persons experiencing secondary sensory loss resulting from aging; and

(4) Using available dissemination mechanisms, with appropriate assistive technical modification, disseminate findings, and develop strategies to educate both consumers and providers, especially vocational rehabilitation workers, in use of these techniques.

In addition, the DRRP must:

- Coordinate the efforts of this DRRP with other NIDRR, Office of Special Education Programs (OSEP), and Rehabilitation Services Administration (RSA) projects that address related activities such as Blindness, Deafness, Deaf-Blind, Aging, Accessible Housing, Accessible Transportation, Telecommunication, Independent Living, and Interpreter Training programs;
- Solicit direct input from stakeholders (e.g., persons who are deaf, blind, and deaf-blind; service providers; and employers) as part of the ongoing planning, development, and implementation of the DRRP's research activities;
- Demonstrate efforts to secure supplementary funding that will permit the DRRP more latitude in exploring additional related studies, in addition to the Federal monies available from this NIDRR grant; and
- Identify and investigate a study population that includes a balanced sample of subjects representative of national demographics.

**Evaluation of the Changing Universe of Disability and Systems Change Activities**

*Background*

Demographic, social and environmental trends affect the prevalence and distribution of various types of disabilities as well as the demands of those disabilities on social policy and service systems. Past studies related to the changing universe of disability have included, as one focus, those which can be identified on the basis of changing etiologies for existing disabilities, or the appearance of new disabilities.

The changing universe of disability also refers to broader changes such as growth in segments of the population with higher prevalence rates for certain disabilities and the consequences of changes in public policy, health care services, and medical and assistive technologies. At the present time, significant policy changes at the Federal level and implementation of those policies promise a substantial and progressive impact on the provision of various services and supports to all people with disabilities. Recent major policy developments include the Supreme Court's Olmstead decision, the New Freedom Initiative (NFI), and the Workforce Investment Act (WIA).

These new policies may provide additional opportunities for people with significant disabilities to remain in or enter the workplace, to live within the community, and to have increased access to assistive technologies. Development of plans to evaluate and monitor the course of these policies over time is critical for understanding the impact of systems change activities on the changing universe of disability. Such assessment requires the identification or development of appropriate sources of data and the analytic work required to identify the implications of policy changes for financing of, access to, and use of home- and community-based long-term care services, rehabilitation systems including vocational rehabilitation, and assistive technologies on a highly dynamic population.

NIDRR-funded research on the changing universe of disabilities has assisted with better understanding of factors such as new etiologies, as mentioned earlier. In their early writing on the topic, Seelman and Sweeney had postulated that ''poverty is the primary screening indicator of the many variables that increase the risk of disability (Seelman K., and Sweeney S., The Changing Universe of Disability, *American Rehabilitation,* Autumn-Winter 1995).'' Subsequent analyses of relationships between poverty and disability have identified factors, such as access to health care, where one lives, and exposure to environmental risks, that influence prevalence and distribution (Fujiura G., Quality of Life and the Poverty Agenda; Emergent Disability in America, In press, 2000; Fujiura G., Yamaki K., Czechowicz S., Disability Among Ethnic and Racial Minorities in the United States, *Journal of Disability Policy Studies,* Issue 9, 1998). In identifying an array of factors associated with the ''changing causes and patterns of disabilities,'' one must also address ''the disability related consequences, including functional loss, employment, and social behavior (Seelman and Sweeney, 1995).'' Ultimately, the researcher must carefully focus on evaluation of the impact of policy or systems change while controlling for the range of other variables that affect disabilities, including those factors that are unique to underserved and unserved populations. With a carefully constructed analytic framework, research can address the paucity of information about the degree to which rehabilitation services are provided to unserved or underserved populations, within the context of the changing universe of disability. In addition, studies can illuminate how policies and systems change influence access, usage, and rehabilitation service outcomes for these populations.

**Priority 2**

The Assistant Secretary proposes to establish a Disability and Rehabilitation Research Project on the Evaluation of the Changing Universe of Disability and Systems Change Activities. The purpose of the proposed absolute priority is to evaluate the implications over time of systems change activities for populations within the changing universe of disability. The DRRP must:

(1) Identify and evaluate existing or proposed data systems that can be used to monitor systems change activities at the State or Federal level or both, including policy changes related to the NFI, the WIA, and the Olmstead decision;

(2) Identify, evaluate, and project the impact of systems change activities and new policies for people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(3) Develop proposals for new systems or data variables, or changes, as necessary, to existing data systems that will facilitate use of such data to eliminate gaps in the availability of mechanisms to monitor the impact of systems change activities on people with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved;

(4) Disseminate findings and recommendations to modify monitoring data systems or to institute new monitoring approaches; and

(5) Conduct research to identify and evaluate the implications of policy changes or other systems change activities on public and private rehabilitation programs and services for persons with newly emergent disabilities or changing manifestations of disability or both, including those who are unserved and underserved.

In carrying out these purposes the applicant must:

- Involve consumers or their families, as appropriate, in all stages of the research and demonstration endeavor;
- Demonstrate culturally appropriate and sensitive methods of data collection, measurements, and dissemination addressing needs of individuals with disabilities from diverse backgrounds;
- By the end of the fourth year, convene a national conference to disseminate and discuss information about the affect of systems change activities on persons with newly emergent disabilities or changing manifestations of disability or both including those who are unserved and underserved and proposals to address gaps in such activities; and
- Serve as a resource to researchers, consumers and consumer groups, planners, and policymakers for conceptual and statistical information that addresses the changing universe of disability, including systems change issues. *Applicable Program Regulations:* 34 CFR part 350.

**Electronic Access to This Document**

You may review 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 this 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 this 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*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

**Program Authority:** 29 U.S.C. 762(g) and 764(b).

Dated: April 23, 2002.

**Loretta L. Petty,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–10356 Filed 4–25–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Friday,
April 26, 2002

Part III

# Department of Health and Human Services

## Announcement of Availability of Funds for Family Planning General Training and Technical Assistance Projects; Notice

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of Availability of Funds for Family Planning General Training and Technical Assistance Projects

**AGENCY:** Office of the Secretary, Office of Public Health and Science, Office of Population Affairs, Department of Health and Human Services.

**ACTION:** Notice.

**Authority:** Section 1003 of the Public Health Service (PHS) Act.

**SUMMARY:** The Office of Population Affairs (OPA) announces the availability of funds for Fiscal Year (FY) 2002 Family Planning General Training and Technical Assistance grants. Funds are available to provide both training and specialized technical assistance to family planning personnel in order to maintain the high level of performance of family planning services projects funded under Title X of the PHS Act. The OPA solicits applications for competing grant awards to support one general training center in each of the ten Department of Health and Human Services' (DHHS) regions.

**DATES:** Applications must be received in the Office of Grants Management, or clearly postmarked, no later than June 10, 2002. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will not be accepted for review, and will be returned.

**ADDRESSES:** Applications kits may be requested from, and applications submitted to: Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, TX 75202.

Application kits are also available online at the Office of Population Affairs web site at *http://opa.osophs.dhhs.gov* or may be requested by fax at (214) 767–3425.

**FOR FURTHER INFORMATION CONTACT:**

*Administrative and Budgetary Requirements*

Regions I–X: Maudeen Pickett, Office of Grants Management for Family Planning Services, 214–767–3401.

*Program Requirements*

Regional Program Consultants for Family Planning: Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)—Suzanne Theroux, 617–565–1063; Region II (New Jersey, New York, Puerto Rico, Virgin Islands)—Robin Lane, 212–264–3935; Region III (Delaware, Washington, D.C., Maryland, Pennsylvania, Virginia, West Virginia)—Louis Belmonte, 215–861–4641; Region IV (Kentucky, Mississippi, North Carolina, Tennessee, Alabama, Florida, Georgia, South Carolina)—Cristino Rodriguez, 404–562–7900; Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)—Janice Ely, 312–886–3864; Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)—Evelyn Glass, 214–767–3088; Region VII (Iowa, Kansas, Missouri, Nebraska)—Elizabeth Curtis, 816–426–2924; Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)—Jill Leslie, 303–844–7856; Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands)—Nadine Simons, 415–437–7984; Region X (Alaska, Idaho, Oregon, Washington)—Janet Wildeboor, 206–615–2776.

**SUPPLEMENTARY INFORMATION:**

### Definitions

For the purposes of this announcement, the following definitions apply:

*Application/Proposal* (used interchangeably)—a request for financial support of a project submitted to OPA on specified forms and in accordance with instructions provided.

*Grant*—financial assistance in the form of money, awarded by the Federal Government to an eligible recipient (a *grantee* or *recipient* is the entity that receives a Federal grant and assumes the legal and financial responsibility and accountability for the awarded funds and performance of activities approved for funding).

*Project*—those activities described in the grant application and supported under the approved budget.

*Family Planning Training*—''job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services'' [42 CFR 59.202(e)]. This training should include abstinence education for pre-adolescents, adolescents and young adults.

*Family Planning Technical Assistance*—specific, highly skilled family planning training provided to a single organization based on an identified need that enables the organization to promote and improve the delivery of family planning services, to include abstinence education.

*Evidence-based*—relevant scientific evidence that has undergone comprehensive review and rigorous analysis.

*Eligible Applicants*—any public or nonprofit private entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a Title X family planning training and technical assistance grant. Faith-based organizations are eligible to apply for these Title X family planning training and technical assistance grants.

### Background

This notice announces the availability of approximately $3,500,000 in funding, and solicits applications for general training and technical assistance projects to assist in the establishment and operation of one regional training center in each of the ten PHS regions. Grants will be funded within certain ranges as set out in Table I below. Funding of individual grants within each funding range will be based on the Regional Health Administrator's assessment of such factors as the training and technical assistance needs within the region and the cost and availability of personnel for the project.

Competing grant applications are invited for training and technical assistance projects as follows:

TABLE I

| Region | States | Total funding range |
|---|---|---|
| I | CN, ME, MA, NH, RI, VT | $237,000–287,000 |
| II | NJ, NY, PR, VI | 378,000–428,000 |
| III | DE, DC, MD, PA, VA, WV | 392,000–442,000 |
| IV | KY, MS, NC, TN, AL, FL, GA, SC | 459,000–509,000 |

TABLE I—Continued

| Region | States | Total funding range |
|---|---|---|
| V | IL, IN, MI, MN, OH, WI | 397,000–447,000 |
| VI | AR, LA, NM, OK, TX | 371,000–421,000 |
| VII | IA, KS, MO, NE | 237,000–287,000 |
| VIII | CO, MT, ND, SD, UT, WY | 231,000–281,000 |
| IX | AZ, CA, HI, NV and the 6 US Associated Pacific Jurisdictions. | 331,000–381,000 |
| X | AK, ID, OR, WA | 231,000–281,000 |

**Statutory and Regulatory Authority**

Title X of the PHS Act, 42 U.S.C. 300 *et seq.*, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants ''to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).'' The broad range of services should include abstinence education. Section 1003 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to provide the training for personnel to carry out family planning service programs. (Catalog of Federal Domestic Assistance Number 93.260). Section 1008 of the Act, as amended, stipulates that ''none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.''

The regulations set out at 42 CFR part 59, subpart C, govern grants to provide training for family planning service providers. Prospective applicants should refer to the regulations in their entirety. Training provided must be in accordance with the requirements regarding the provision of family planning services under Title X. These requirements can be found in the Title X statute, the implementing regulations which govern project grants for family planning services (42 CFR part 59, subpart A), and the ''Program Guidelines for Project Grants for Family Planning Services,'' issued in January 2001. Copies of the Title X statute, regulations, and Program Guidelines may be obtained by contacting the Office of Grants Management for Family Planning Services (at the address above), or downloaded from the OPA web site at *http://opa.osophs.dhhs.gov.*

**Role and Operation of the Training and Technical Assistance Program**

The purpose of the family planning general training program is to ensure that personnel working in Title X family planning services projects have the skills, knowledge and abilities necessary for the effective delivery of family planning services. Training supported under these grants is intended to provide specialized information that is evidence-based. The purpose of the training is to ensure that family planning program services and management are of high quality.

Successful applicants will be responsible for the development and overall management of the general training program within the PHS Region for which the grant is awarded. The PHS Project Officer in the respective Region will have final approval for all training plans and plans for the use of resources. Each grantee will be required to work closely with federal, state and/or local government entities, family planning providers, other community-based organizations and other training providers (*e.g.,* HRSA AIDS Education Training Centers, CDC Prevention Training Centers, Administration for Children and Families (ACF) Infant Adoption Awareness Training Program, etc.) to maximize resources and achieve program objectives.

Proposals should be developed with a focus on the Title X program priorities and key issues identified below. Additionally, specific training priority topics will be identified for each year of the project period. Applicants should demonstrate flexibility in resource utilization, including training plan design, in order to respond to training priority topics, new initiatives, and program need during each year of the project period.

**Title X Program Priorities**

The following priorities represent overarching goals for the Title X program:

(1) Assurance of continued high quality clinical family planning and reproductive health services that will improve the overall health of individuals;

(2) Increasing access to family planning and reproductive health services by partnering with public health providers and other community-based organizations that have related interests and that work with similar populations;

(3) Emphasis on clinical services for hard-to-reach populations, *e.g.,* uninsured or under-insured women, males in need of clinical services, adolescents, substance abusers, migrant workers, and the homeless; and

(4) Assuring access to a broad range of family planning and reproductive health clinical services, including provision of highly effective contraceptive methods; breast and cervical cancer screening and prevention; STD and HIV prevention education, counseling, and testing; and abstinence education and counseling. The broad range of services does not include abortion as a method of family planning.

**Key Issues**

The following key issues impact the current and future delivery of family planning services, and will require significant, specialized training efforts:

(1) The U.S. Department of Health and Human Services' priorities and Healthy People 2010 objectives (http://www.health.gov/healthypeople);

(2) Medicaid waivers, managed care, State Children's Health Insurance Program (SCHIP), Temporary Assistance to Needy Families (TANF), Title XX of the Social Services Block Grant, state support, and private insurance coverage related to family planning and reproductive health services, teen pregnancy and abstinence education (*e.g.,* Title XX of the PHS Act Adolescent Family Life (AFL) Program, Title V of the Social Security Act—SPRANS and State Block Grants for Abstinence Education), and ACF Infant Adoption Awareness Training Program;

(3) Increased need for current and reliable data to use in program planning and monitoring program performance;

(4) Use of electronic technologies in program activities and management;

(5) Use of evidence-based information to support program activities; and

(6) Legislative mandates such as counseling teens on involving families

and avoiding coercive sexual relationships, and program compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape or incest.

Applicants should demonstrate a broad range of expertise and skill in providing training programs, managing training resources, and working with consultants and service providers. Applicants should demonstrate the capacity to utilize electronic technologies and evidence-based training delivery techniques. The proposed project plan should demonstrate knowledge of evidence-based learning theory and adult learning behavior, and application to proposed activities. Applicants should include evidence of their ability to design, implement, and evaluate training that prepares family planning project personnel to increase effectiveness in working with select population groups (racial, ethnic, linguistic) and with persons of differing educational and physical abilities.

The proposal should demonstrate the applicant's expertise and ability to develop, implement and evaluate training in the areas of information, education and communication; program management; and clinical service delivery. Within each of these areas, at a minimum, the grantee will be expected to provide training that includes the following topics:

**Information, Education and Communication**

- Increasing effectiveness in working with hard-to-reach and diverse populations to reduce health disparities;
- Use of electronic technologies in program activities and management;
- Use of print and mass media to achieve program goals and objectives.

**Program Management**

- Government requirements related to privacy and transmission of client information;
- Improving the management skills of family planning grantee staff;
- Increasing the ability of family planning grantee staff to assess, plan, design and utilize management information systems;
- Designing, implementing and utilizing data reports in project operations;
- Utilizing financial systems to monitor, track, record and control Title X and other financial resources according to Federal grants requirements;
- Improving program efficiency and enhancing cost savings and recovery mechanisms; and
- Utilizing the Office of Population Affairs electronic grants management system.

*Clinical Activities*

- Improving the performance of clinical staff (professional and other) involved in health care delivery through continuing education and quality assurance activities;
- Educational clinical activities addressing intimate partner violence;
- Clinical issues which impact reproductive health and family planning, (e.g., HIV/AIDS, sexually transmitted diseases [STDs], cervical and breast cancer, adolescent pregnancy, and abstinence counseling);
- Title X Program requirements, legislative mandates, and compliance with state reporting laws regarding child abuse, child molestation, sexual abuse, rape, or incest;
- Current family planning and reproductive health methods, drugs, devices, and technologies;
- Best practices for presenting non-directive counseling, including adoption counseling for pregnant clients.

In addition to providing general training on the issues mentioned above, successful applicants must also demonstrate the capacity to develop and implement a system for providing technical assistance to Title X service providers in the applicable PHS region. Technical assistance consists of specific, specialized or highly skilled family planning training that is usually provided to a single organization based on an identified need. The objective of this assistance is to provide projects with the technical resources needed to address Title X priorities and key issues impacting family planning. In facilitating the provision of technical assistance, the successful applicant will work closely with the Regional PHS Project Officer.

Successful proposals will provide evidence of the applicant's ability to identify and deploy qualified and competent consultants in specialized and highly technical fields related to family planning program and management issues. The proposal should include a plan for making all necessary arrangements with consultants in association with approved requests for technical assistance.

All technical assistance provided with this grant must have prior approval of the PHS Project Officer. A portion of the total grant award will be earmarked for technical assistance, and a final budget will be negotiated between the successful applicant and the PHS Regional Project Officer.

**Evaluation**

Applicants must include an evaluation plan of high quality which assesses all aspects of the training program. Project evaluation should be consistent with the scope of the training project, and should include evaluation of the content of the training program and effectiveness of training in meeting the stated objectives.

**Application Requirements**

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents. It is the practice of the Office of Population Affairs to maintain a summary of funded grants, and to post this information on the OPA web site. The abstract will be used as the basis for this posting and for other requests for summary information.

Applications must be submitted on the Form OPHS–1 (Revised 6/01) and in the manner prescribed in the application kits available from the Office of Grants Management for Family Planning Services at Dallas, TX and on the OPA web site. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Applicants should submit their applications in accordance with the deadline requirements set out in the **DATES** section of this announcement. Applications that do not conform to the requirements of the program announcement or meet the applicable requirements of 42 CFR part 59, subpart C, will not be accepted for review, and will be returned to the applicant.

Any public or private nonprofit organization or agency located in a state is eligible to apply for a Title X family planning training and technical assistance grant. Faith-based organizations are eligible to apply for these Title X family planning training and technical assistance grants. It is not required that an entity applying for a grant be physically located in the region to be served by the proposed project. Awards will be made only to those organizations or agencies which demonstrate the capability of providing

the proposed services and which have met all applicable requirements.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations, and information included in this announcement to guide them in developing their applications. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may provide a roster of consultants, curriculum vitae, examples of organizational capabilities, or other supplemental information.

**Application Consideration and Assessment**

Eligible competing grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

1. The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205 (25 points);

2. The extent to which the training program promises to fulfill the family planning services delivery needs of the area to be served, which may include, among other things:

(i) Development of a capability within family planning service projects to provide pre- and in-service training to their own staffs;

(ii) Improvement of the family planning services delivery skills of family planning and health services personnel;

(iii) Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services;

(iv) Expansion of family planning services, particularly in rural areas, through new or improved approaches to program planning and deployment of resources;

(20 points total for this section)

3. The extent to which the proposed training and technical assistance program will increase the delivery of services to people, particularly low-income groups, with a high percentage of unmet need for family planning services (15 points);

4. The administrative and management capability and competence of the applicant (15 points);

5. The competence of the project staff in relation to the services to be provided (15 points); and

6. The capacity of the applicant to make rapid and effective use of the grant assistance, including evidence of flexibility in the utilization of resources and training plan design (10 points).

In making grant award decisions, the Regional Health Administrator in each Region will fund one project which will, in his or her judgment, best promote the purposes of sections 1001 and 1003 of the Act, within the limits of funds available for such projects.

Grants will be available for project periods of up to three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

**Review Under Executive Order 12372**

Applicants under this announcement are subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities,'' as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission of the relevant SPOC. The SPOC's comment(s) should be forwarded to the Office of Grants Management for Family Planning Services, 1301 Young Street, Suite 766, Dallas, Texas 75202. To be considered, such comments should be received by the Office of Grants Management for Family Planning Services by June 10, 2002.

**Notification of Grant Award**

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project applicant has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: April 22, 2002.

**Mireille B. Kanda,**

*Acting Director, Office of Population Affairs.*

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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**H.R. 1432/P.L. 107–160**
To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''. (Apr. 18, 2002; 116 Stat. 123)

**H.R. 1748/P.L. 107–161**
To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the ''Tom Bliley Post Office Building''. (Apr. 18, 2002; 116 Stat. 124)

**H.R. 1749/P.L. 107–162**
To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the ''Herbert H. Bateman Post Office Building''. (Apr. 18, 2002; 116 Stat. 125)

**H.R. 2577/P.L. 107–163**
To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the ''Bob Davis Post Office Building''. (Apr. 18, 2002; 116 Stat. 126)

**H.R. 2876/P.L. 107–164**
To designate the facility of the United States Postal Service located in Harlem, Montana, as the ''Francis Bardanouve United States Post Office Building''. (Apr. 18, 2002; 116 Stat. 127)

**H.R. 2910/P.L. 107–165**
To designate the facility of the United States Postal Service located at 3131 South Crater Road in Petersburg, Virginia, as the ''Norman Sisisky Post Office Building''. (Apr. 18, 2002; 116 Stat. 128)

**H.R. 3072/P.L. 107–166**
To designate the facility of the United States Postal Service located at 125 Main Street in Forest City, North Carolina, as the ''Vernon Tarlton Post Office Building''. (Apr. 18, 2002; 116 Stat. 129)

**H.R. 3379/P.L. 107–167**
To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the ''Raymond M. Downey Post Office Building''. (Apr. 18, 2002; 116 Stat. 130)

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