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Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 982

**[Docket No. FV02–982–1 FIR]**

## Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that established interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

**EFFECTIVE DATE:** August 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. 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 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. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 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.

This rule continues in effect marketing percentages that allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The quantity to be marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

The National Agricultural Statistics Service (NASS) has estimated hazelnut production at 48,000 tons for the Oregon

and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The Board adjusted the crop estimate down to 44,588 tons by taking into consideration the average crop disappearance over the preceding three years (7.12 percent) and the undeclared carry-in (6 tons.) Disappearance is the difference between orchard-run production (crop estimate) and the available supply of merchantable product available for sale by handlers. This difference or disappearance consists of unharvested hazelnuts, cull product that is harvested and delivered to handlers but later discarded, or product used on the farm, sold locally, or otherwise disposed of by producers. The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted trade demand by 80 percent and dividing the result by the adjusted crop estimate (2,201 tons × 80 percent/44,588 tons = 3.9495 percent.) The preliminary free percentage thus initially released 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use, and the restricted percentage withheld 42,804 tons for the export and kernel market.

Under the order, the Board must meet again on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.,* desirable carry-out). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 4.9363 percent free and 95.0637 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were recommended at 6.1048 percent free and 93.8952 percent restricted effective May 31, 2002. The final free percentage releases 2,722 tons of inshell hazelnuts from the 2001 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

| | Tons |
|---|---|
| Inshell Supply: | |
| (1) Total production (crop estimate) | 48,000 |
| (2) Less substandard, farm use (disappearance; 7.12 percent of Item 1) | 3,418 |
| (3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2) | 44,582 |
| (4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation) | 6 |
| (5) Supply subject to regulation (Item 3 plus Item 4) | 44,588 |
| Inshell Trade Demand: | |
| (6) Average trade acquisitions of inshell hazelnuts for three prior years | 3,473 |
| (7) Less declared carry-in as of July 1, 2001 (not subject to regulation) | 1,272 |
| (8) Adjusted Inshell Trade Demand (Item 6 minus Item 7) | 2,201 |
| (9) Desirable carry-out on August 31, 2002 (15 percent of Item 6) | 521 |
| (10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9) | 2,722 |

| Percentages | Free | Restricted |
|---|---|---|
| (11) Interim final percentages (Item 8 divided by Item 5) × 100 | 4.9363 | 95.0637 |
| (12) Interim final free in tons (Item 8) | 2,201 | ..... |
| (13) Interim final restricted in tons (Item 5 minus Item 8) | ..... | 42,387 |
| (14) Final percentages (Item 10 divided by Item 5) × 100 | 6.1048 | 93.8952 |
| (15) Final free in tons (Item 10) | 2,722 | ..... |
| (16) Final restricted in tons (Item 5 minus Item 10) | ..... | 41,866 |

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the goal of the Guidelines.

**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 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.

Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. There are approximately 800 producers of hazelnuts in the production area and approximately 19 handlers subject to regulation under the order. Average annual hazelnut revenue per producer is approximately $35,700. This is computed by dividing National Agriculture Statistics Service (NASS) figures for the average value of production for 1999 and 2000 ($28.563 million) by the number of producers. The level of sales of other crops by hazelnut producers is not known. In addition, based on Board records, about 95 percent of the handlers ship under $5,000,000 worth of hazelnuts on an annual basis. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Currently, U.S. hazelnut production is allocated among three market outlets: inshell domestic, inshell export, and shelled (kernel) markets. Handlers and producers receive the highest return on inshell domestic, less for inshell export, and the least for kernels (shelled). Based on Board records of average shipments for 1997–2000, the percentage going to each of those markets was 13 percent (domestic inshell), 46 percent (export inshell), and 41 percent (kernels).

The inshell market can be characterized as having limited demand and being prone to oversupply and low producer prices in the absence of supply restrictions. This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the continental United States. On average, 76 percent of domestic inshell hazelnut shipments occur between October 1 through November 30, primarily to supply holiday nut demand.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry address its marketing problems by keeping inshell hazelnut supplies in balance with domestic needs. Volume controls fully supply the domestic inshell market while preventing an oversupply of that market. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

This rule continues in effect volume control procedures for the 2001–2002 marketing year that established marketing percentages (free and restricted percentages) determining the quantity of inshell hazelnuts that may be marketed in domestic markets. The free percentages reflect the quantity that may be marketed in domestic inshell markets and the restricted percentages are the quantity that must be exported, shelled, or otherwise disposed of by handlers. The computations for 2001–2002 are explained herein.

The Board is required to meet prior to September 20 of each marketing year to establish its marketing policy for that year. At its marketing policy meeting, the Board computes and announces its estimate of inshell trade demand, which is the quantity of inshell hazelnuts that handlers typically ship to the domestic market throughout the marketing season. If it determines that volume regulations would tend to effectuate the declared policy of the Act, the Board also computes and announces the preliminary free and restricted percentages for that year. At subsequent meetings, the Board determines interim final percentages and final percentages. The interim and final free percentages may be the same as, or higher than, the preliminary free percentage.

The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years' trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. If market conditions warrant, the Board may increase the three-year average by up to 25 percent.

Establishing the preliminary free percentage releases 80 percent of the inshell trade demand to the domestic market. The purpose of releasing only 80 percent is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on the preliminary crop estimate. NASS has estimated hazelnut production at 48,000 tons for the Oregon and Washington area.

At its November 15, 2001, meeting, the Board computed the available supply of merchantable product for sale by handlers by subtracting the average crop disappearance over the preceding three years (7.12 percent) from the 48,000-ton hazelnut crop estimate. Disappearance consists of (1) unharvested hazelnuts, (2) culled product (nuts that are harvested and delivered to handlers but later discarded), or (3) product used on the farm, sold locally, or otherwise disposed of by producers. Subtracting an additional 6 tons (the undeclared carryin) yielded the adjusted crop estimate of 44,588 tons.

The Board computed the adjusted inshell trade demand of 2,201 tons by taking the difference between the average of the past three years' sales (3,473 tons) and the declared carry-in from last year's crop (1,272 tons.)

The Board computed and announced preliminary free and restricted percentages of 3.9495 percent and 96.0505 percent, respectively, at its August 30, 2001, meeting. The Board computed the preliminary free percentage by multiplying the adjusted inshell trade demand by 80 percent and dividing the result by the adjusted crop estimate: (2,201 tons × 80 percent)/ 44,588 tons = 3.9495 percent. Establishing the 3.9495 percent preliminary free percentage allowed the initial release of 1,761 tons of hazelnuts from the 2001 supply for domestic inshell use. Establishing the 96.0505 percent restricted percentage had the effect of allocating 42,804 tons to the export and kernel markets.

Under the order, the Board must meet again on or before November 15 each year to recommend interim final and final percentages, using current crop estimates. The interim final percentages are calculated in the same way as the preliminary percentages. Computing and announcing the interim final percentage allows the release of the remaining 20 percent (to total 100 percent) of the inshell trade demand previously computed by the Board. In establishing final free percentage and restricted percentages, the Board may release up to an additional 15 percent of the average of the preceding three years'

trade acquisitions, to provide an adequate carryover into the following season (*i.e.,* desirable carry-out).

The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by USDA. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 2001, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The recommended interim final free and restricted percentages were 4.9363 percent free and 95.0637 percent restricted. Recommended final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carry-out, were 6.1048 percent free and 93.8952 percent restricted, effective May 31, 2002. Establishing the final free percentage releases for domestic use the full amount of the adjusted inshell trade demand of inshell hazelnuts from the 2001 supply (2,722 tons).

The final marketing percentages are based on the Board's final production estimate and the following supply and demand information for the 2001–2002 marketing year:

| | Tons |
|---|---|
| Inshell Supply: | |
| (1) Total production (crop estimate) | 48,000 |
| (2) Less substandard, farm use (disappearance; 7.12 percent of Item 1) | 3,418 |
| (3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2) | 44,582 |
| (4) Plus undeclared carry-in as of July 1, 2001 (subject to regulation) | 6 |
| (5) Supply subject to regulation (Item 3 plus Item 4) | 44,588 |
| Inshell Trade Demand: | |
| (6) Average trade acquisitions of inshell hazelnuts for three prior years | 3,473 |
| (7) Less declared carry-in as of July 1, 2001 (not subject to regulation) | 1,272 |
| (8) Adjusted Inshell Trade Demand (Item 6 minus Item 7) | 2,201 |
| (9) Desirable carry-out on August 31, 2002 (15 percent of Item 6) | 521 |
| (10) Adjusted Inshell Trade Demand plus desirable carry-out (Item 8 plus Item 9) | 2,722 |

| Percentages | Free | Restricted |
|---|---|---|
| (11) Interim final percentages (Item 8 divided by Item 5) × 100 | 4.9363 | 95.0637 |
| (12) Interim final free in tons (Item 8) | 2,201 | ..... |
| (13) Interim final restricted in tons (Item 5 minus Item 8) | ..... | 42,387 |
| (14) Final percentages (Item 10 divided by Item 5) × 100 | 6.1048 | 93.8952 |
| (15) Final free in tons (Item 10) | 2,722 | ..... |
| (16) Final restricted in tons (Item 5 minus Item 10) | ..... | 41,866 |

In addition to complying with the provisions of the order, the Board also considered USDA's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to at least 110 percent of prior years' shipments before allocating supplies for the export inshell, export kernel, and domestic kernel markets. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. The established final percentages will make available an additional 521 tons for desirable carry-out effective May 31, 2002. The total free supply for the 2001–2002 marketing year is 3,994 tons of hazelnuts, which is the sum of the final trade demand of 3,473 tons (average trade acquisitions for three prior years) and the 521 ton desirable carry-out. This amount is 115 percent of prior years' sales and exceeds the 110 percent goal of the Guidelines.

The high level of production and carryin were key market factors leading to the 6.1048 percent final free percentage. Hazelnut production in 2001 is estimated to be an all-time record, 1,000 tons higher than the previous record set in 1997. Even if carryin had been zero, the amount that handlers typically ship into the domestic inshell market (*i.e.,* average trade acquisitions of 3,473 tons) equals about 8 percent of the supply (44,588 tons subject to regulation). However, the free tonnage carryin level of 1,272 tons was also high (37 percent of the quantity of inshell hazelnuts that handlers typically ship), meaning that even less of the new production was needed to fully supply the 2001–2002 domestic inshell market. Although the domestic inshell market is a relatively small proportion of total sales (13 percent of total shipments), it remains a profitable market segment. The volume control provisions of the marketing order are designed to avoid oversupplying this particular market segment, because that would likely lead to substantially lower producer prices. The other market segments, inshell exports and kernels, are expected to continue to provide good outlets for U.S. hazelnut production.

Since low production years typically follow high production years (a consistent pattern for hazelnuts), lower production is expected in 2002, and burdensome carryin levels will likely be significantly reduced.

Recent production and price data reflect the stabilizing effect of the volume control regulations. Industry statistics show that total hazelnut production has varied widely over the 10-year period between 1991 and 2000, from a low of 16,500 tons (inshell) in 1998 to a high of 47,000 tons in 1997. Production in the shortest crop year and the biggest crop year were 55 percent and 157 percent, respectively, of the 10-year average tonnage of 29,880. The coefficient of variation (a standard statistical measure of variability; ''CV'') for hazelnut production over the 10-year period is 35 percent. In contrast, the CV for hazelnut producer prices is 16 percent, less than half the CV for production. The considerably lower variability of prices versus production

provides an illustration of the order's price-stabilizing impacts.

Comparing producer revenue to cost is useful in highlighting the impact on producers of recent product and price levels. A recent hazelnut cost of production study from Oregon State University estimated cost of production per acre to be approximately $1,340 for a typical 100-acre hazelnut enterprise. Average hazelnut producer revenue per bearing acre (based on NASS acreage and value of production data) equaled or exceeded that typical cost level twice between 1995 and 2000. Average producer revenue was below typical costs in the other years. Without the stabilizing impact of the order, producers may have lost more money. The volume regulations contribute to orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season. This regulation provides equitable allotment of the most profitable market, the domestic inshell hazelnut market. That market is available to all handlers, regardless of size.

As an alternative to this regulation, the Board discussed not regulating the 2001–2002 hazelnut crop. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to USDA release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the United States. This production represents, on average, less than 5 percent of total U.S. production for other tree nuts, and less than 5 percent of the world's hazelnut production.

Last season, 82 percent of the kernels were marketed in the domestic market and 18 percent were exported. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand other markets with emphasis on the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

Inshell hazelnuts produced under the order compete well in export markets because of quality. Europe has historically been the primary export market for U.S. produced inshell hazelnuts, with a 10-year average of 5,452 tons out of total average exports of 10,236 tons. Recent years have seen a significant shift in export destinations. Last season, inshell shipments to Europe totaled 3,986 tons, representing 28 percent of exports, with the largest share going to Germany. Inshell shipments to Southwest Pacific countries, and Hong Kong in particular, have increased dramatically in the past few years, rising to 58 percent of total exports of 14,400 tons in 2000. The industry continues to pursue export opportunities.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. 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. This final rule does not change those requirements. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and participate in Board deliberations. Like all Board meetings, those held on August 31, and November 15, 2001, were public meetings and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on March 14, 2002. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period which ended May 13, 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: *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 Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (67 FR 11406, March 14, 2002) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 982**

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

## PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 67 FR 11406 on March 14, 2002, is adopted as a final rule without change.

Dated: July 1, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–16973 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–46–AD; Amendment 39–12798; AD 2002–13–10]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F Airplanes; Model MD–10–10F and –30F Airplanes; and Model MD–11 and –11F Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15,

–30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; Model MD–10–10F and –30F airplanes; and Model MD–11 and –11F airplanes. This AD requires repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 12, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 2002.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** *Technical Information:* Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5263; fax (562) 627–5210.

*Other Information:* Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 687–4241, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@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:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F (KC–10A and KDC–10), –40, and –40F series airplanes; Model MD–10–10F and –30F series airplanes; and Model MD–11 and –11F series airplanes; was published in the **Federal Register** on September 20, 2001 (66 FR 48388). That action proposed to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary.

## Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the manufacturer has issued Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. The proposed AD refers to the original issue, dated December 11, 2000, and Revision 01, dated July 16, 2001, of that service bulletin, as acceptable sources of service information for McDonnell Douglas Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes. Revision 02 of the service bulletin contains no new procedures, but adds a single airplane, which was inadvertently omitted from previous issue of the service bulletin, to the effectivity listing.

The FAA has revised applicable paragraphs of this final rule to refer to Revision 02 as an acceptable source of service information. However, the applicability statement of this final rule continues to refer to Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01. Because the effectivity listing of Revision 02 adds an airplane, we find that requiring accomplishment of the actions in this AD on that airplane would necessitate issuance of a supplemental notice of proposed rulemaking and re-opening of the comment period. Considering the nature of this unsafe condition and the number of airplanes in the affected fleet, we find that it would be inappropriate to delay issuance of this final rule in this way. The FAA may consider additional rulemaking to require accomplishment of the actions in this AD on the airplane added to Revision 02 of the referenced service bulletin.

## Comments

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

## Allow Use of Equivalent Equipment

Three commenters, together with the Air Transport Association of America (on behalf of its members), note that the proposed AD specifies the use of a Quadtech 1864 megohm meter for the electrical continuity and resistance tests that would be required by paragraph (a) of the AD. The commenters note that the referenced service bulletins allow the use of an equivalent megohm meter that meets current and voltage requirements. One of the commenters explains that it is common for test equipment to change frequently and the required model specified in the AD may not be available in the future.

The FAA concurs that an equivalent megohm meter that meets current and voltage requirements, as specified in the applicable referenced service bulletin, is acceptable for doing the required tests. We have revised paragraph (a) of this final rule accordingly.

## Extend Compliance Time

Two commenters, as well as the Air Transport Association on behalf of their members, request that we extend the compliance time for the initial inspection from the proposed period of six months after the effective date of the AD. One commenter asks for 12 months and another for 18 months on the basis that the proposed compliance time may not be sufficient to allow operators to do the requirements during scheduled maintenance. The commenter that requests 18 months states that such an extension would provide an acceptable level of safety. As its rationale, the commenter notes that it is not aware of any previous incidents of arcing of the connectors that occurred without corresponding fuel boost/transfer pump circuit protection, and a low-fuel-pressure light illuminated during these incidents. Further, the commenter explains that another AD has mandated new cockpit procedures that eliminate the possibility of continued arcing and significantly reduce the likelihood of an ignition source in the fuel tank in the event of a pump failure.

We do not concur. The intent of the proposed tests and inspections is to find and fix arcing damage or installation defects of the boost/transfer pump, pump connector, and associated wiring, in order to minimize pump failures or subsequent damage. In the continuing investigation of arcing damage of pumps and connectors, we have found other instances of arcing that occurred without fuel boost/transfer pump circuit protection and without cockpit indication that arcing damage has occurred. Because of the continuing incidents of arcing damage during operation, we find that it would be inappropriate to extend the compliance time for the requirements of this AD. No change to the final rule is necessary in this regard.

### Revise Cost Impact

Two commenters request that we revise the estimated cost impact of the proposed AD. They state that the estimate of 65 work hours and a total cost of $3,900 per airplane is low. The commenters want the cost estimate to include the cost for repairing pumps and replacing wiring harnesses. One commenter stresses the poor reliability of the boost pump housing check valves.

We do not concur. The cost impact estimate in AD actions is limited to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions, such as repair or replacement (''corrective actions, if necessary''). Such ''on-condition'' repair actions would be required to be accomplished, regardless of AD requirements, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to the final rule is necessary in this regard.

### Explanation of Changes to Final Rule

The FAA has revised the applicability statement in this final rule to identify model designations as published in the most recent type certificate data sheet for the affected models. We have also revised related model designations in the preamble.

Also, for clarification, we have revised the definition of a ''general visual inspection'' in this final rule.

Also, we have revised Note 1 of this final rule to clarify that airplane FUEL TANKS on which the fuel/boost pump and wiring connector have been removed and the fuel tank made inoperable are not subject to the requirements of this AD.

### Conclusion

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

### Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

### Cost Impact

There are approximately 399 Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes; and Model MD–10–10F and –30F airplanes; of the affected design in the worldwide fleet. The FAA estimates that 313 airplanes of U.S. registry will be affected by this AD, that it will take approximately 65 work hours per airplane to accomplish the required tests and inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators of these airplanes is estimated to be $1,220,700, or $3,900 per airplane, per test or inspection cycle.

There are approximately 179 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 work hours per airplane to accomplish the required tests and inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $538,200, or $4,680 per airplane, per test or inspection cycle.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2002–13–10 McDonnell Douglas:** Amendment 39–12798. Docket 2001–NM–46–AD.

*Applicability:* Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes; as listed in Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; and Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000; certificated in any category.

**Note 1:** Airplane fuel tanks on which the fuel/boost pump and wiring connector have been physically removed and the fuel tank made inoperable are NOT subject to the requirements of this AD.

**Note 2:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

**Repetitive Tests and Inspections**

(a) Within 6 months after the effective date of this AD, do tests (using a digital multimeter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as specified in the applicable service bulletin) for electrical continuity and resistance and general visual inspections to detect discrepancies (*e.g.,* damage, arcing, loose parts, wear) of the fuel boost/transfer pump (alternating current pumping unit) by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000 (for Model MD–11 and –11F airplanes); or Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000, or Revision 01, dated July 16, 2001, or Revision 02, dated December 7, 2001 (for Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes); as applicable. Repeat the tests and inspections thereafter every 18 months.

**Note 3:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

**Corrective Actions, If Necessary**

(b) If the result of any test required by paragraph (a) of this AD is outside the limits specified in the applicable service bulletin identified in that paragraph, or if any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, accomplish corrective actions (e.g., replacement of connector/wire assembly with serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump), as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000 (for Model MD–11 and –11F airplanes); or Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000, Revision 01, dated July 16, 2001, or Revision 02, dated December 7, 2001 (for Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes); as applicable.

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

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

**Special Flight Permits**

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

**Incorporation by Reference**

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000; Boeing Alert Service Bulletin DC10–28A228, including Appendix, dated December 11, 2000; Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; or Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on August 12, 2002.

Issued in Renton, Washington, on June 25, 2002.

**Kalene C. Yanamura,**

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

[FR Doc. 02–16531 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–13–P

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 30

## Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is granting an exemption to firms designated by the Brazilian Bolsa de Mercadorias & Futuros (''BM&F'') from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought.

**EFFECTIVE DATE:** July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lawrence B. Patent, Esq., Associate Chief Counsel, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

**SUPPLEMENTARY INFORMATION:** The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by the Bolsa de Mercadorias & Futuros (''BM&F'') From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's rules.[1] These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2001).

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's rules based upon substituted compliance with the regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, ''Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules'' (''Appendix A''), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an ''as needed'' basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association (''NFA''); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

By letter dated May 24, 2001 and subsequent correspondence through November 14, 2001, BM&F petitioned the Commission on behalf of members of the Exchange who are Clearing Members or Commodities Brokerage Houses, located and doing business in Brazil, for an exemption from the application of the Commission's Part 30 rules to those firms. In support of its petition, BM&F states that granting such an exemption with respect to such firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act (''Act'') and the rules thereunder.

Based upon a review of the petition, supporting materials filed by BM&F and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have been met and that compliance with applicable Brazilian law and BM&F rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by BM&F as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;
—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);
—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;
—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and
—Those sections of Part 1 of the Commission's rules relating to books and records which apply to transactions subject to Part 30,

based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Brazil.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Brazil who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement for a minimum level of working capital and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, required disclosures to prospective customers and prohibitions on improper trading advice;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, BM&F, and the Brazilian regulatory authorities on an ''as needed'' basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Brazil, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, the antifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of BM&F for products that customers located in the U.S. may trade.[4] The relief does not

[2] 52 FR 28990, 29001 (August 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

[4] This Order granting exemptive relief does not authorize the offer or sale of any contract beyond the scope of the Part 30 rules or otherwise inconsistent with the CEA. Thus, for example, BM&F members may not offer or sell to U.S. customers any security futures product. See, e.g., Sections 2(a)(1)(c) and (d) of the Commodity Exchange Act.

extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[5] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[6] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The relief also does not extend to trading, directly or indirectly, on any other non-U.S. exchanges. Should BM&F seek to extend the Rule 30.10 relief set forth herein to permit designated members to solicit and accept orders from customers located in the U.S. for otherwise permitted transactions on any other non-U.S. exchange, it must apply for and receive prior approval from the Commission.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Brazil; such firm is engaged in business with customers in Brazil as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers made in the U.S. will be made on or subject to the rules of BM&F and the Commission will receive prompt notice of all material changes to the relevant laws in Brazil, any rules promulgated thereunder and BM&F rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than Brazilian customers under all relevant provisions of Brazilian law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an ''as needed'' basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Brazil upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2), from directly applying to do business in the U.S.;

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program;

(f) Undertakes to comply with the applicable provisions of Brazilian laws and BM&F rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted; and

(g) Consents that all futures transactions for customers located in the U.S. will be undertaken from a location in Brazil (except as otherwise permitted by the Commission) solely with respect to transactions on or subject to the rules of BM&F, and which U.S. customers may trade.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[7] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

This Order will become effective as to any designated BM&F member firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraph (2). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and BM&F.

This Order is issued pursuant to Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A, have been met. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

[5] See, e.g., 17 CFR part 18 (2001).

[6] See, e.g., 17 CFR parts 17 and 21 (2001).

[7] 62 FR 47792, 47793 (September 11, 1999). Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualifying firms.

Issued in Washington, DC on June 28, 2002.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–16911 Filed 7–5–02; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–02–070]**

## Drawbridge Operation Regulations: Little Harbor, NH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR1B Bridge, mile 1.0, between New Castle and Rye, New Hampshire. This deviation from the regulations, effective from July 15, 2002 through July 16, 2002, allows the bridge to remain in the closed position for vessel traffic. This temporary deviation is necessary to facilitate scheduled maintenance repairs at the bridge.

**DATES:** This deviation is effective from July 15, 2002 through July 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

**SUPPLEMENTARY INFORMATION:** The existing drawbridge operating regulations are listed at 33 CFR 117.699.

The bridge owner, New Hampshire Department of Transportation (NHDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary electrical repairs at the bridge.

This deviation to the operating regulations, effective from 7 a.m. on July 15, 2002 through 3:30 p.m. on July 16, 2002, allows the SR1B Bridge to remain in the closed position for vessel traffic. There have been few requests to open this bridge in past years since this is a back channel to the Piscataqua River. Vessels may take an alternative route on the Piscataqua River to transit.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02–17006 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–02–071]**

## Drawbridge Operation Regulations: Hampton River, NH

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the SR1A Bridge, mile 0.0, across the Hampton River in New Hampshire. This deviation from the regulations, effective from December 2, 2002 through January 30, 2003, allows the bridge to remain in the closed position for vessel traffic. This temporary deviation is necessary to facilitate scheduled maintenance on the bridge.

**DATES:** This deviation is effective from December 2, 2002 through January 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

**SUPPLEMENTARY INFORMATION:** The existing drawbridge operating regulations are listed at 33 CFR 117.697.

The bridge owner, New Hampshire Department of Transportation (NHDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate necessary mechanical repairs at the bridge.

This deviation to the operating regulations, effective from December 2, 2002 through January 30, 2003, allows the SR1A Bridge to not open for vessel traffic. This repair work will be performed during the winter months when the bridge has few requests to open.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02–17007 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–02–076]**

## Drawbridge Operation Regulations: Eastchester Creek, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the South Fulton Avenue Bridge, mile 2.9, across Eastchester Creek in New York. This deviation allows the bridge owner to keep the bridge in the closed position from 8 a.m. on Monday through 4:30 p.m. on Thursday, from July 22, 2002 through August 22, 2002. This action is necessary to facilitate structural maintenance on the bridge.

**DATES:** This deviation is effective from July 22, 2002 through August 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The South Fulton Avenue Bridge has a vertical clearance of 6 feet at mean high water, and 13 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.793.

The bridge owner, Westchester County Department of Public Works, requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled structural maintenance, sidewalk replacement, at the bridge.

This deviation from the operating regulations allows the bridge owner to keep the bridge in the closed position from 8 a.m. on Monday through 4:30 p.m. on Thursday, July 22, 2002 through August 22, 2002.

This work is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: June 25, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02–17005 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–02–085]**

**RIN 2115–AA97**

## Safety Zone: Sag Harbor Fireworks Display, Sag Harbor, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a fireworks display located in Sag Harbor Bay, Southampton, NY. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Sag Harbor Bay.

**DATES:** This rule is effective from 9:30 p.m. on July 6, 2002, until 10:30 p.m. on July 7, 2002.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–065) and are available for inspection or copying at Coast Guard Group/Marine Safety Office, 120 Woodward Ave., New Haven, CT 06512, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** BM2 R.L. Peebles, Marine Events Petty Officer, Coast Guard Group/MSO Long Island Sound (203) 468–4408.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making the rule effective less than 30 days following publication. An NPRM was considered unnecessary because the safety zone is a local event that will have minimal impact on the waterway. The zone is only enforced for 1 hour and vessels can be given permission to transit the zone during all but about 15 minutes of this time. Vessels may transit around the zone at all times. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Interests of public safety compel prompt establishment of this zone to protect waterway users from the hazards associated with this scheduled fireworks display.

### Background and Purpose

The Coast Guard proposes to establish a temporary safety zone in the waters of Sag Harbor Bay. The safety zone encompasses all waters of sag Harbor Bay within a 1200 foot radius of approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983). The proposed safety zone is intended to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone covers the minimum area needed and imposes the minimum restrictions necessary to ensure the protection of all vessels.

### Discussion of Rule

The safety zone is for a fireworks display in Sag Harbor Bay, sponsored by Sag Harbor Yacht Club. The safety zone will be in effect from 9:30 p.m. to 10:30 p.m. on July 6, 2002. In the event of inclement weather on July 6, 2002, this rule will be enforced from 9:30 p.m. until 10:30 p.m. on July 7, 2002. The safety zone encompasses all waters of Sag Harbor Bay within a 1200 foot radius of approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983).

Public notifications will be made prior to the event via the Local Notice to Mariners and Marine Information Broadcasts. Marine traffic will be allowed to transit around the safety zone at all times. Vessels will not be precluded from mooring at or getting underway from recreational or commercial piers in the vicinity of the zone. No vessel may enter the safety zone without permission from the Captain of the Port, Long Island Sound.

### 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 final rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, the opportunity for vessels to transit around the zone during the event, the ability of vessels to moor at or get underway from commercial or recreational piers in the vicinity of the zone, and the advance notifications that will be made.

The size of this safety zone was determined using National Fire Protection Association and the Captain of the Port Long Island Sound Standing Orders for 12 inch mortars fired from a barge combined with the Coast Guard's knowledge of tide and current conditions in the area.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Sag Harbor Bay during the times this zone is activated.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: it is a local event with minimal impact on the waterway, vessels may still transit around the zone during the event, the zone is only enforced for 1 hour and vessels can be given permission to transit the zone except for all but about 15 minutes during this time. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the zone. Before the effective period, public notifications will be made via Local Notice to Mariners and Marine Information Broadcasts.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact BM2 Ryan Peebles, in the Operations Center at Coast Guard Group/Marine Safety Office Long Island Sound, CT, at (203) 468–4408.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. 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.

**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.

**Environment**

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

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

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

**Regulation**

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

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

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

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

2. From 9:30 p.m. on July 6, 2002, through 10:30 p.m. on July 7, 2002, add temporary § 165.T01–065 to read as follows:

**§ 165.T01–065 Safety Zone: Sag Harbor Fireworks Display, Southampton, NY.**

(a) *Location.* The following area is a safety zone: All waters of Sag Harbor Bay within a 1200 foot radius of the fireworks barge in approximate position 41°00′29″ N, 072°17′33″ W (NAD 1983).

(b) *Enforcement times and dates.* This section will be enforced from 9:30 p.m. until 10:30 p.m. on July 6, 2002. In the event of inclement weather on July 6, 2002, this rule will be enforced from 9:30 p.m. until 10:30 p.m. on July 7, 2002.

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

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, Long Island Sound.

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

Dated: June 25, 2002.

**J.J. Coccia,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 02–17002 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL SERVICE

## 39 CFR Part 111

## Eligibility Standards for Free Matter for the Blind and Other Physically Handicapped Persons

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts a proposal to amend the *Domestic Mail Manual (DMM)* to clarify and simplify the eligibility standards for free matter for the blind and other physically handicapped persons in conformance, to the extent practicable, with similar standards adopted by the Library of Congress (LOC) for its National Library Service for the Blind and Physically Handicapped (NLS). In addition, other standards applicable to the use of free matter for the blind and other physically handicapped persons are clarified.

**EFFECTIVE DATE:** August 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 703–292–3652.

**SUPPLEMENTARY INFORMATION:** Congress established the free matter privilege in 1904 to provide reading materials for the blind when sent by public institutions and public libraries as a loan and when returned by the blind readers to those institutions (Ch. 1612, 33 Stat. 313, Public Law No. 171). In 1931, the National-Books-for-the-Blind

program was established under the auspices of the Library of Congress to provide books for use by adult residents of the United States, ''including the several States, Territories, insular possessions, and the District of Columbia.'' (Ch. 400, 46 Stat. 1487, Public Law No. 787). The Library of Congress issued standards for making arrangements for circulation of books (using the free matter privilege) to and from blind users through libraries designated as local or regional centers.

In 1966, Congress expanded the National Books-for-the-Blind program to include other physically handicapped persons (Public Law 89–522, 2 U.S.C. 135a and 135b). Congress expanded the program to meet the reading needs of physically handicapped persons who cannot read or use conventional printed books because of impaired eyesight or other factors that make these persons physically unable to manipulate these materials. Certification by competent authority of individuals for eligibility to participate in the program was (and remains today) pursuant to regulations prescribed by the Library of Congress. From this time on, the program became known as the National Library Service for the Blind and Physically Handicapped (see 36 CFR 701.10).

Consistent with the intent of Congress embodied in the Act that created the Library of Congress National Library Service for the Blind and Physically Handicapped, the Postal Reorganization Act (39 U.S.C. 3403(a)(1)) expanded the free matter privilege to include mail for the use of the blind or other persons who cannot use or read conventionally printed material because of a physical impairment. The persons must be certified by competent authority in accordance with the regulations established by the Library of Congress. Under the current law, Congress reimburses the Postal Service for free matter mailings (39 U.S.C. 2401(c)). Accordingly, the Postal Service is clarifying its eligibility standards for the free matter privilege to incorporate, as closely as practicable, the standards devised by the Library of Congress for establishing eligibility and certification for participation in the National Library Service for the Blind and Physically Handicapped (see 36 CFR. 701.10).

On September 1, 2000, the Postal Service published a proposed rule in the **Federal Register** (65 FR 53212) amending the postal standards for free matter for the blind and other physically handicapped persons. Based on comments received, the Postal Service published a second, revised proposed rule for comment on January 3, 2002 (67 FR 275). The revised rule contained two major changes. First, it eliminated the requirement that organizations maintain individual records of eligible recipients and made the maintenance of such records optional. Second, the new proposal required mailers of free matter who entered mailings of 200 or more pieces to register with the Post Office(s) of mailing and to submit statements of mailing. A form requiring minimal mailing information would have been developed for this purpose. In addition, the proposal included a provision that the Postal Service may audit an organization's use of the free matter privilege. The proposal explained that this specification was new to the *Domestic Mail Manual* but codified existing authority and practice.

The Postal Service received eight comments on the January 3, 2002, proposal. The comments generally supported the overall goal to clarify standards for eligibility and most expressed support for or did not object to the clarifying language for eligibility in 1.3 and certifying authority in 1.4. Accordingly, these proposed standards are adopted without change. However, one comment requested that a provision be added that clarifies that mailings of acceptable matter may be mailed by organizations. The Postal Service acknowledges that the comment is correct and consistent with the standards for the mailing of free matter. However, since 1.1 already addresses these circumstances by permitting matter for the use of blind or other physically handicapped persons to be mailed free of postage, an additional provision is not incorporated in the new standards. One comment supported the proposal in its entirety and one objected only to any change that would not allow the mailing of cassette talking machines. The proposed rule does not contemplate changing the standards for acceptable matter mailed as free matter. Therefore, cassette talking machines and other devices for use by eligible recipients remain acceptable to be mailed as free matter.

There were several common objections to the proposal. Six comments objected to the proposal requiring free matter mailers to submit statements of mailings for mailings of 200 pieces or more. Three of the six comments expressed concern about the additional administrative burden of submitting statements of mailing, and three comments objected to the proposal in 1.5 that required an organization to certify on the statements of mailing that each recipient is eligible to receive free matter. By law, free matter may be sent only to eligible persons. The proposed certification standard for organizations using the free matter privilege to mail matter to eligible persons did not change mailers' obligations. Nevertheless, the Postal Service has removed the standards in 1.5, Certification of Eligible Recipients by Organizations, and 5.2, Reporting Mailings, from this final rule to accommodate the concerns of the comments. The proposed requirement for registration and submission of statements of mailing for large volume mailings was intended to facilitate a more precise count of free matter volume and appropriation to the Postal Service to cover the revenue forgone on this mail. However, in view of the comments, the Postal Service finds that this need does not outweigh the administrative burden that would be placed on mailers. Accordingly, under this final rule, mailers of free matter will not at this time be required to submit statements of mailing with free matter mailings of more than 200 pieces. Furthermore, the Postal Service has eliminated the proposal in 5.1 that would have required a mailer to register with the Post Office(s) of mailing prior to submitting mailings of over 200 pieces.

Two comments expressed concerns about the provision in 1.5 that discussed potential audits of mailers of free matter by the Postal Service. This section attempts to clarify what is already in practice today. As stated in the January 3, 2002, proposal, any organization that mails under the free matter privilege, whether maintaining individual records or not, is subject to Postal Service reviews of the eligibility of the addressees.

Any method of audit is determined on a case-by-case basis. For example, an audit may include a review of the individuals on the organization's mailing list to ensure they meet the eligibility standards for receipt of free matter. The procedures used in these reviews may depend on the records maintained by the organization. Record keeping by organizations making use of the free matter privilege will facilitate any audits that take place. For example, if the organization chooses to maintain records substantiating that each person on its mailing list is eligible to receive free matter, the Postal Service might be able to complete an audit simply by reviewing a sample of those records. If the organization does not maintain such records, the Postal Service might need to contact an outside source, such as the Library of Congress, for addressees registered with that organization to determine whether the addressees are eligible to receive free matter. If no other source is available to provide that

confirmation, the Postal Service might, as a last resort, contact the individual addressees directly. However, it should be noted that, under current policy, all recipients of free matter are required to provide such evidence of eligibility to their postmasters. This policy will not change under this proposal. Postmasters will still be required to maintain a list of eligible recipients under their jurisdiction.

It should be noted that whether or not an organization maintains records to confirm that addressees meet the eligibility standards for free matter, the entry of matter at the ''free'' rates is the mailer's certification that the matter qualifies for free matter privileges and that the recipients are eligible to receive free matter.

Two organizations expressed concern that the potential for audits of mailing lists containing names of those receiving free matter creates privacy issues that should be addressed before such audits are undertaken. As noted earlier, the authority to audit and practice of auditing mailing lists is not new. And, to the knowledge of the Postal Service, no breaches of privacy have occurred. Moreover, by statute (39 U.S.C. 410(c)(1), 412), the Postal Service is required to keep the names and addresses of its patrons confidential. As a result, there will be no releases of the names and addresses of individual patrons based on the collection of the information as part of assuring that those using and benefiting from the free matter privilege are qualified individuals.

Two comments had concerns about the Postal Service's definition of advertising. The two comments misinterpreted the standard to prohibit material such as a ''meeting notice.'' As a general standard for any material sent as free matter, the material may not contain any advertising. The Postal Service does not consider meeting notices and other informational material as advertising unless it falls within the Postal Service definition of advertising. Under DMM standards, advertising is defined as:

1. All material of which a valuable consideration is paid, accepted, or promised, that calls attention to something to get people to buy it, sell it, seek it, or support it.

2. Reading matter or other material of which an advertising rate is charged.

3. Articles, items, and notices in the form of reading matter inserted by custom or understanding that textual matter is to be inserted for the advertiser or the advertiser's products in which a display advertisement appears.

4. An organization's advertisement of its own services or issues, or any other business of the publisher, whether in display advertising or reading matter. See DMM E211.1. In order to alleviate any confusion, this language has been incorporated into the free matter standards.

The Postal Service also adopts additional standards clarifying what may be mailed as free matter. These do not create substantive changes, but codify existing policies.

Three comments expressed concern that the proposed change in 2.1a was intended to further limit the standards for acceptable matter mailed as free matter. To the contrary, the change simply clarifies section (a) to say ''reading matter in braille or 14-point or larger sightsaving type'' is eligible to be sent as free matter. There was no change in sections (b) through (e) which list other acceptable matter that may be mailed as free matter.

Two comments requested that the Postal Service extend the standards for free matter to include handwritten letters that are written or printed in 14-point or larger type. This issue was addressed in the January 3, 2002, proposed rule. To reiterate the Postal Service's position, the history of the free matter privilege does not support that the intent was to include handwritten letters. Section 3404 of Title 39 specifically requires that letters sent using the privilege must be ''in raised characters, or sightsaving type, or in the form of sound recordings * * *'' Since the Postal Service does not have the authority to consider such a change, this request is outside the scope of this final rule.

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

Administrative practice and procedure, Postal Service.

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

## 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. Revise the Domestic Mail Manual as follows:

**E Eligibility**

**E000 Special Eligibility Standards**

* * * * *

*[Revise E040 to insert the word ''physically'' before the word ''handicapped'' in each instance where it appears.]*

*E040 Free Matter for the Blind and Other Physically Handicapped Persons*

* * * * *

1.0 BASIC INFORMATION

**1.1 General**

*[Revise 1.1 to read as follows:]*

Subject to the standards below, matter may be entered free of postage if mailed by or for the use of blind or other persons who cannot read or use conventionally printed materials due to a physical handicap. The provisions of E040 apply to domestic mail only.

* * * * *

*[Revise title and text of 1.3 to read as follows:]*

**1.3 Eligibility**

The following persons are considered to be blind or unable to read or use conventionally printed material due to a physical handicap for purposes of this section:

a. Certified participants in the Library of Congress National Library Service for the Blind and Physically Handicapped (NLS).

b. Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting lenses, or whose widest diameter of visual field subtends angular distance no greater than 20 degrees.

c. Other physically handicapped persons certified by competent authority as meeting one or more of the following conditions:

(1) Having a visual disability, with correction and regardless of optical measurement, that prevents the reading of standard printed material.

(2) Being unable to read or unable to use standard printed material as a result of physical limitations.

(3) Having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner.

(4) Meeting the requirements of eligibility resulting from a degenerative, variable disease that renders them unable to read or use conventional printed material because of impaired eyesight or other physical factors. These persons are eligible during the time in which they are certified by a competent authority as unable to read or use conventional materials.

d. Eligible participants must be residents of the United States, including

the several states, territories, insular possessions, and the District of Columbia, or American citizens domiciled abroad.

*[Revise title and text of 1.4 to read as follows:]*

**1.4 Certifying Authority**

For purposes of this standard:

a. The postmaster may extend the free matter privilege to an individual recipient based on personal knowledge of the individual's eligibility.

b. In cases of blindness, visual impairment, or physical limitations, ''competent authority'' is defined to include doctors of medicine; doctors of osteopathy; ophthalmologists; optometrists; registered nurses; therapists; and professional staff of hospitals, institutions, and public or private welfare agencies (e.g., social workers, caseworkers, counselors, rehabilitation teachers, and superintendents). In the absence of any of these, certification may be made by professional librarians or by any person whose competence under specific circumstances is acceptable to the Library of Congress (see 36 CFR 701.10(b)(2)(i)).

c. In the case of reading disability from organic dysfunction, ''competent authority'' is defined as doctors of medicine and doctors of osteopathy.

*[Add new 1.5 to read as follows:]*

**1.5 Qualifying Individuals**

The USPS may require individuals claiming entitlement to the free matter privilege to furnish evidence of eligibility consistent with the standards in 1.3 and 1.4, or verify by other means that the recipients are eligible to receive free matter.

2.0 MATTER SENT TO BLIND OR OTHER PHYSICALLY HANDICAPPED PERSONS

**2.1 Acceptable Matter**

Subject to 2.2, this matter may be mailed free:

*[Revise item a by adding ''in braille or 14-point or larger sightsaving type'' to read as follows:]*

a. Reading matter in braille or 14-point or larger sightsaving type and musical scores.

* * * * *

**2.2 Conditions**

The matter listed in 2.1 must meet these conditions:

*[Revise item d by adding the definition of advertising to read as follows:]*

d. The matter contains no advertising. Advertising is defined as:

(1) All material of which a valuable consideration is paid, accepted, or promised, that calls attention to something to get people to buy it, sell it, seek it, or support it.

(2) Reading matter or other material of which an advertising rate is charged.

(3) Articles, items, and notices in the form of reading matter inserted by custom or understanding that textual matter is to be inserted for the advertiser or the advertiser's products in which a display advertisement appears.

(4) An organization's advertisement of its own services or issues, or any other business of the publisher, whether in display advertising or reading matter.

* * * * *

3.0 MATTER SENT BY BLIND OR OTHER PHYSICALLY HANDICAPPED PERSONS

**3.1 Acceptable Letters**

*[Revise 3.1 to read as follows:]*

Only letters in braille or in 14-point or larger sightsaving type or in the form of sound recordings, and containing no advertising, may be mailed free, and only if unsealed and sent by a blind or other physically handicapped person as described in 1.3.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02–16908 Filed 7–5–02; 8:45 am]

BILLING CODE 7710–12–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 264–0354a; FRL–7234–5]**

## Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that address definitions.

**DATES:** This rule is effective on September 6, 2002, without further notice, unless EPA receives adverse comments by August 7, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460

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

Imperial County Air Pollution Control District, 150 South Ninth Street, El Centro, CA 92243–2801

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

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

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### I. The State's Submittal

*A. What Rules Did the State Submit?*

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| ICAPCD | 101 | Definitions | 37235 | 37329 |

On May 7, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

ICAPCD adopted a version of Rule 101 on September 14, 1999, which EPA approved into the SIP on July 11, 2001. Rule 101 was adopted on December 11, 2001 and submitted to EPA for SIP approval on March 15, 2002.

*C. What Is the Purpose of the Submitted Rule Revisions?*

Rule 101 has been revised to include a definition for crematories and pathological incinerators for the purpose of clarification of Rule 302, Fee schedule; Schedule 10, Crematories and Pathological Incinerators. Rule 302, Schedule 10, is used to assess Permit to Operate fees for crematories and pathological incinerators. The TSD has more information about this rule.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

This rule describes administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, this rule must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

*B. Do the Rules Meet the Evaluation Criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. There are no issues associated with this notice. The TSD has more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 7, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 6, 2002. This will incorporate these rules into the federally enforceable SIP.

**III. Background Information**

*A. Why Were These Rules Submitted?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. This rule was developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of this rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |

**IV. 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. 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 September 6, 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 24, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

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

## PART 52—[AMENDED]

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

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

## Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(297)(i)(B) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(297) * * *

(i) * * *

(B) Imperial County Air Pollution Control District.

(*1*) Rule 101, adopted on July 28, 1981 and amended on December 11, 2001.

* * * * *

[FR Doc. 02–16864 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA247–0330a; FRL–7220–8]**

## Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and El Dorado County Air Pollution Control District (EDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from crude oil separation and storage operations, liquid reactive organic compound storage, and organic liquid loading and transport. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on September 6, 2002 without further notice, unless EPA receives adverse comments by August 7, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

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

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

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

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## I. The State's Submittal

### *A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SBCAPCD | 325 | Crude Oil Production and Separation Rule | 07/19/01 | 11/7/01 |
| SBCAPCD | 326 | Storage of Reactive Organic Compound Liquids | 01/18/01 | 05/08/01 |
| EDCAPCD | 244 | Organic Liquid Loading and Transport Vessels | 09/25/01 | 11/9/01 |

EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V on the following dates: on February 22, 2002 for SBCAPCD Rule 325; July 20, 2001 for SBCAPCD Rule 326; and, on January 18, 2002 for EDCAPCD Rule 244. These completeness criteria must be met before formal EPA review may begin.

### *B. Are There Other Versions of These Rules?*

EPA approved versions of SBCAPCD Rules 325 and 326 into the SIP on May 6, 1996. We approved a version of EDCAPCD Rule 244 into the SIP on August 27, 2001. Between these dates and today's action, CARB submitted a prior version of only Rule 325. This version of Rule 325 was adopted on January 18, 2001 and submitted by CARB on May 8, 2001. While we can act on only the most recently submitted version, these past rule revisions will be reviewed along with the latest revisions to Rule 325.

### *C. What Is the Purpose of the Submitted Rule Revisions?*

*SBCAPCD Rule 325*—Crude Oil Production and Separation is a rule designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in producing, gathering storing, processing, and separating crude oil and natural gas prior to transfer from these facilities to transport facilities and networks. VOCs are emitted from containing vessels such as tanks and transfer lines due to the high vapor pressure of the processed crude oil and organic compounds. Rule 325 limits these vapor emissions by recapture, disposal, or combustion.

SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids is a rule designed to reduce VOC emissions at industrial sites engaged in storing any organic liquids with a vapor pressure greater than 0.5 pounds per square inch atmospheric. Rule 326 establishes vapor pressure containment and control requirements for organic liquid storage tanks. Rule 326 also sets specific requirements for vapor loss control devices, closure devices, external floating roofs, and internal floating roofs.

SBCAPCD's July 19, 2001 amendments to Rule 325 included these significant changes to the 1996 SIP approved version.

—Test methods were revised to include EPA Methods 5030B, 5035, and 8015B to determine the reactive organic compound content of liquids in milligrams per liter.

SBCAPCD's January 18, 2001 amendments to Rule 325 and Rule 326 included these significant changes to the respective versions within the SIP.

—Definitions for Heavy Oil, Light Oil, and HOST Test Method were added.
—The HOST Test Method (''Test Method for Vapor Pressure of Reactive Organic Compounds in Heavy Crude Oil Using Gas Chromatography'') was added.
—A Heavy Oil Compliance Schedule was added to Rule 325.
—A compliance schedule for true vapor pressure sampling was added to Rule 326.

EDCAPCD Rule 244—Organic Liquid Loading and Transport Vessels is a rule designed to reduce VOC emissions at industrial sites engaged in loading and unloading organic liquids with a vapor pressure greater than 1.5 pounds per square inch atmospheric into and from tank trucks, trailers, or railroad tank cars. Rule 244 establishes vapor pressure containment and control requirements for organic liquid storage tanks such as gasoline loading facilities, transport vessels, and non-gasoline loading facilities.

EDCAPCD's September 25, 2001 amendments to Rule 244 included these significant changes to the 2001 SIP approved version.

—A definition for Bulk Terminal was added.
—Required vapor recovery rates at gasoline loading facilities were increased from 95% to 99%.

The respective TSD for each rule has more information about these rule revisions.

## II. EPA's Evaluation and Action

### *A. How Is EPA Evaluating the Rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD and EDCAPCD regulate an ozone nonattainment area (see 40 CFR part 81), so Rules 325, 326 and 244 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. ''Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants,'' EPA–450/2–83–007, USEPA, December 1983.
4. ''Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA–450/2–78–047, USEPA, December 1978.
5. ''Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks,'' EPA–450/2–77–036, USEPA, December 1977.
6. ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,'' EPA–450/2–78–051, USEPA, December 1978.

### *B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability, RACT, and SIP relaxations.

The emission limits, requirements, and work practices of SBCAPCD Rules 325 and 326 conform with the EPA's CTG and remain unchanged compared to the SIP version of the rule. Also, Rules 325 and 326 contain adequate record keeping and test methods provisions for monitoring the compliance of regulated facilities. SBCAPCD's changes incorporate new test methods into the rule. These changes clarify the rules and allow for more precise determinations of compliance. As such, both submitted Rule 325 and 326 do not interfere with reasonable further progress or attainment.

EDCAPCD Rule 244's limits, requirements, and work practices conform with the EPA's CTG and remain unchanged compared to the SIP version of the rule. Also, Rule 244 contains adequate record keeping and test methods provisions for monitoring the compliance of regulated facilities. EDCAPCD's changes clarify and strenghthen the rule. As such, the submitted Rule 244 does not interfere with reasonable further progress or attainment.

The TSD for each respective rule has more information on our evaluation.

*C. EPA Recommendations To Further Improve the Rules*

Section B.2 of Rule 325 provides for exemption from the requirements of section D.1 of the rule during maintenance operations on vapor recovery systems or tank batteries. EPA policy on exemptions which apply to excess emissions that occur during malfunctions, start-up and shutdown is contained in a memorandum dated September 20, 1999, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown'' (the Excess Emissions Policy).

The Excess Emissions Policy states that EPA may approve SIP revisions providing source-category specific exemptions for excess emissions that occur during start-up and shutdown periods only if the source's control strategy is such that compliance with otherwise applicable emission limits or technology requirements is technologically infeasible during these periods. The policy also requires that the frequency and duration of the excess emissions be minimized to the maximum extent practicable. These requirements are based on sections 110(l) and 172(c)(1) of the Clean Air Act and are meant to ensure that the excess emissions provisions do not interfere with attainment, maintenance, or other applicable requirements. EPA has determined that maintenance activities might sometimes necessitate exemption from emissions limitations or technology requirements analogous to those available for start-up and shutdown under the Excess Emissions Policy. However, such exemptions must be narrowly tailored so that exemption is allowed only when compliance is rendered technologically infeasible by the maintenance activities.

The exemption in section B.2 of Rule 325 appears to be overly broad as it applies during any maintenance of a tank battery irrespective of whether such maintenance activity necessarily interferes with an operator's ability to meet the requirements of section D.1. Further, the Excess Emissions Policy requires that the duration of the exemption be minimized and that emissions be reduced as much as possible during the exemption. Section B.2 does not implement these requirements. However, section B.2 does limit the exemption to a maximum of 24 hours and requires prior notification of the Air Pollution Control District. Because this exemption is limited, EPA has determined that the rule's failure to fully conform to the requirements of the Excess Emissions Policy is not of sufficient concern to affect the approvability of the rule. However, EPA recommends that this exemption be redrafted to fully implement the provisions of the Excess Emissions Policy during the next revision of this rule.

*D. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by August 7, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on September 6, 2002. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## III. Background Information

*Why Were These Rules Submitted?*

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |
| May 15, 1991 | Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date. |

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''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 proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 52

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

Dated: May 2, 2002.

**Keith Takata,**

*Associate 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)(284)(i)(C), (c)(292)(i)(B), and (c)(296) to read as follows:

### § 52.220 Identification of plan.

* * * * *

(c) * * *

(284) * * *

(i) * * *

(C) Santa Barbara County Air Pollution Control District.

(*1*) Rule 326 adopted on December 14, 1993, and amended on January 18, 2001

* * * * *

(292) * * *

(i) * * *

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 325 adopted on January 25, 1994, and amended on July 19, 2001.

* * * * *

(296) New and amended regulations for the following APCD were submitted on November 9, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) El Dorado County Air Pollution Control District.

(*1*) Rule 244 adopted on March 27, 2001, and amended on September 25, 2001.

* * * * *

[FR Doc. 02–16857 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 011218304–1304–01; I.D. 070102A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery category in Zone 1.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 1, 2002, until 2400 hrs, A.l.t., December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl Pacific cod fishery category, which is defined at § 679.21(e)(3)(iv)(E), is 11,664 animals (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002).

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has

determined that the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for Pacific cod by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the 2002 bycatch allowance of red king crab specified for the trawl Pacific cod fishery in Zone 1 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

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

Dated: July 1, 2002.

**Virginia M. Fay**

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

[FR Doc. 02–16898 Filed 7–1–02; 4:46 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 67, No. 130
Monday, July 8, 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.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 110

**[CGD01–02–027]**

**RIN 2115–AA98**

## Anchorage Grounds; Frenchman Bay, Bar Harbor, ME

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish two anchorage grounds in Frenchman Bay near Bar Harbor, Maine. This action is necessary to provide designated anchorage grounds on Frenchman Bay thereby facilitating safe and secure anchorages, and improved Captain of the Port & Harbormaster coordination and management of congested harbor areas for an increasing number of large passenger vessels calling on the Port of Bar Harbor. This action is intended to increase safety for vessels through enhanced voyage planning and also by clearly indicating the location of anchorage grounds for ships proceeding along the Frenchman Bay Recommended Route for Deep Draft vessels.

**DATES:** Comments and related material must reach the Coast Guard on or before October 7, 2002.

**ADDRESSES:** Comments should be mailed to: Commander (oan) (CGD01–02–027), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Office of Aids to Navigation Branch, First Coast Guard District maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. J.J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, at (617) 223–8355.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Persons submitting comments should include their names and addresses, identify the docket number for this rulemaking (CGD01–02–027), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. We will consider all comments and material received during the comment period. We may change this proposed rule in view of the comments received.

### Public Meeting

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Office of Aids to Navigation Branch at the Address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If we determine that the opportunity for oral presentations will aid this rulemaking, we will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

In November 1999, the Maine Department of Transportation contracted with a local firm to produce a cruise ship traffic demand management study for the Town of Bar Harbor, Maine. One of the purposes was to develop a scheduling and reservation system for arriving cruise ships so that Town facilities would not be overburdened. The study included basic research into the history and outcomes of past cruise ship visits, observation of present cruise ship operations and anchorages. Based on the findings and recommendations of this study, the Penobscot Bay and River Pilots Association has requested that the Coast Guard establish two Federal anchorage grounds in Frenchman Bay near Bar Harbor, Maine.

Presently, there are no designated anchorage grounds in this area. The locations traditionally used for anchorage of large vessels calling on Bar Harbor are situated north and south of Bar Island. The proposed size and shape of the anchorage grounds are minimal. The proposed size and shape make best use of available water, designating anchorage locations for both large and small vessels, thereby reducing the amount of vessels anchored in and transiting through the harbor. These proposed anchorage locations would make the harbor safer given the large amount of current vessel traffic along with the foreseen increased use of this waterway.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

This rule does not intend to exclude fishing activity or the transit of vessels in the anchorage grounds. The Coast Guard anticipates the proposed anchorage grounds would cause minimal transit interference, by way of increased vessel anchorage.

### Discussion of Proposed Rule

The rule creates two new anchorage grounds. Anchorage ''A'' (general) would be that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

| Latitude | Longitude |
|---|---|
| 44°23′43″N | 068°11′00″W; thence to |
| 44°23′52″N | 068°11′22″W; thence to |
| 44°23′23″N | 068°10′59″W; thence to |
| 44°23′05″N | 068°11′32″W; returning to start. |

Anchorage ''B'' (general-primarily intended for vessels 200 feet and longer) would be that portion of Frenchman's Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

| Latitude | Longitude |
|---|---|
| 44°24′33″N | 068°13′09″W; thence to |

| Latitude | Longitude |
|---|---|
| 44°24′42″N | 068°11′47″W; thence to |
| 44°24′11″N | 068°11′41″W; thence to |
| 44°23′02″N | 068°13′03″W; returning to start. |

All proposed coordinates are North American Datum 1983. This proposal will significantly enhance safety of navigation and efficiency for large passenger vessels calling on the Port of Bar Harbor. Additionally, the new anchorage grounds would relieve some of the overcrowding in the existing Bar Harbor waterfront by reducing vessel anchorage and transit within the waterfront area thus further increasing vessel safety.

The rule would also increase vessel safety by providing the Captain of the Port vessel coordination capabilities. Vessels must be capable of moving with reasonable promptness when ordered by the Captain of the Port.

**Regulatory Evaluation**

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

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

This conclusion is based upon the fact that there are no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing the safety of maritime commerce.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule should have minimal economic impact on lobster fishing vessels and recreational boaters. This conclusion that the proposed rule should have a minimal economic impact on small entities is based upon the fact that there are no restrictions for entry or use of the proposed anchorage targeting small entities. The proposed regulation creates only two new anchorage areas; it does not govern its usage.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

**Collection of Information**

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

**Federalism**

The Coast Guard has analyzed this proposed rule under Executive Order 13132, Federalism, 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) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

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

does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

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

This rule proposes creating two new anchorage areas to the east of Bar Harbor. These designated anchorages would enhance the safety in the waters of Frenchman Bay, Maine by relieving vessel congestion within the bay. Thus, these two designated anchorages would provide a safer approach for deep draft vessels.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

For the reasons set forth in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

**§§ 110.130 through 110.134 [Redesignated]**

2. Redesignate § 110.130 through § 110.134 as follows:

| Old section | New section |
|---|---|
| § 110.130 | 110.132 |
| § 110.131 | 110.133 |
| § 110.132 | 110.134 |
| § 110.133 | 110.136 |
| § 110.134 | 110.138 |

3. Add § 110.130 to Part 110, Subpart B, to read as follows:

**§ 110.130 Bar Harbor, Maine.**

(a) *Anchorage grounds.* (1) Anchorage ''A'' is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

| Latitude | Longitude |
|---|---|
| 44°23′43″N | 068°11′00″W; thence to |
| 44°23′52″N | 068°11′22″W; thence to |
| 44°23′23″N | 068°10′59″W; thence to |
| 44°23′05″N | 068°11′32″W; returning to start. |

(2) Anchorage ''B'' is that portion of Frenchman Bay, Bar Harbor, ME enclosed by a rhumb line connecting the following points:

| Latitude | Longitude |
|---|---|
| 44°24′33″N | 068°13′09″W thence to |
| 44°24′42″N | 068°11′47″W thence to |
| 44°24′11″N | 068°11′41″W thence to |
| 44°23′02″N | 068°13′03″W returning to start. |

(b) *Regulations.* (1) Anchorage A is a general anchorage ground reserved for passenger vessels, small commercial vessels and pleasure craft. Anchorage B is a general anchorage ground reserved primarily for passenger vessels 200 feet and greater.

(2) These anchorage grounds are authorized for use year round.

(3) Temporary floats or buoys for marking anchors will be allowed in all anchorage areas.

(4) Fixed moorings, piles or stakes are prohibited.

(5) Any vessels anchored in this area shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

(6) The anchoring of vessels is under the coordination of the local Harbormaster.

Dated: June 21, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02–17003 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA 264–0354b; FRL–7234–6]**

## Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern definitions. We are proposing to approve a local rule that addresses definitions under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 7, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

Imperial County Air Pollution Control District, 150 South 9th Street, El Centro, CA 92243–2801

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4120.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: ICAPCD 101. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 24, 2002.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 02–16865 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA247–0330b; FRL–7220–9]**

## Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District, El Dorado County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and El Dorado County Air Pollution Control District (EDCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from crude oil separation and storage operations, liquid reactive organic compound storage, and organic liquid loading and transport. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by August 7, 2002.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

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

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and

El Dorado County Air Pollution Control District, 2850 Fairlane Court, Building C, Placerville, CA 95667.

**FOR FURTHER INFORMATION CONTACT:** Jerald S. Wamsley, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4111.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: SBCAPCD Rule 325—Crude Oil Production and Separation, SBCAPCD Rule 326—Storage of Reactive Organic Compound Liquids, and EDCAPCD Rule 244—Organic Liquid Loading and Transport Vessels. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 2, 2002.

**Keith Takata,**

*Associate Regional Administrator, Region IX.*

[FR Doc. 02–16858 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Secure Rural Schools and Community Self-Determination Act of 2000

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on an extension of an information collection associated with the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). Annually, each State Treasurer for those States containing National Forest System lands is requested to notify the Forest Service, by September 30, of the projected payment distributions to each county and, when required, each county's elected proportion of funds for Title II or for Title III of the act. Every two years, these States are also asked to provide the Forest Service with information on which counties elect to continue receiving their share of the State's payment under the 25 percent fund (16 U.S.C. 500) and which counties elect to receive their share of the State's full payment amount under the 2000 act.

**DATES:** Comments must be received in writing on or before September 6, 2002 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to the Director, Policy Analysis Staff, Forest Service, USDA, Mail Stop 1131, 1400 Independence Ave., SW., Washington, DC 20250–1131.

Comments also may be submitted to the Director via facsimile transmission to (202) 205–1074 or by e-mail to *tquinn01@fs.fed.us.*

The public may inspect comments received at Forest Service headquarters in the Yates Federal Building, 201 14th Street, SW., Room 1 SW., Washington, DC, during normal business hours. Visitors are encouraged to call (202) 205–1775 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Tom Quinn, Policy Analysis Unit, (202) 205–1775 or *tquinn01@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Description of Information Collection

*Title:* Secure Rural Schools and Community Self-Determination Act of 2000.

*OMB Number:* 0596–0165.

*Expiration Date of Approval:* 3/31/2002.

*Type of Request:* Extension with no revision.

*Abstract:* On May 23, 1908, the U.S. Congress enacted 16 U.S.C. 500, which created what is commonly known as the Twenty-Five Percent Fund. Under this act, States receive payment from the Federal Government of twenty-five percent of the revenues generated from the national forests that are located within their borders. On October 30, 2000, the Congress enacted the Secure Rural Schools, and Community Self-Determination Act (Public Law 106–393; hereafter, the act), which is intended to restore stability and predictability to the annual payments made to States and counties containing National Forest System lands and public domain lands managed by the Bureau of Land Management. Like the 25 percent fund, the counties may use the proceeds only for the benefit of public schools, roads, and other purposes.

The Secretary of Agriculture is directed to implement the act. Under the act, eligible counties and their States need to reach an agreement on the distribution of funds authorized by the act and the amount that each county will receive as its share of the State's full payment amount. Counties will need to determine whether they wish to continue to receive their share of the State's twenty-five percent payment or whether they choose their share of the State's full payment amount through the act. A decision to receive a share of the State's 25 percent payment is effective for two years; a decision to receive a share of the act's full payment amount stays in effect through fiscal year 2006.

Those counties choosing the full payment and receiving more than $100,000 under the act are required to make an election regarding the proportion of their funds (between fifteen and twenty percent) to be applied to Title II or Title III of the act. Title II allows the funds paid under the act to be used for special projects on Federal lands that meet the requirements described in Title II of the act, and Title III allows the funds to be spent on county projects that meet the requirements described under Title III of the act. Annually, each State Treasurer is requested to notify the Forest Service, by September 30, of the projected payment distributions to each county and, when required, each county's elected proportion of funds for Title II or for Title III.

Upon receipt, the Forest Service will evaluate the information from States in order to properly implement the act. States and counties must provide the requested information in order for the Forest Service to properly calculate and distribute the State's full payment amount authorized by Public Law 106–393 and, by extension, provide counties with their commensurate share of that full payment amount. This information collection is a vital and integral part of the Forest Service's ability to implement the act. Failure to implement the act would potentially lead to unnecessary harm to those schools and counties that benefit from the funds.

*Estimate of Annual Burden:* 30 minutes.

*Type of Respondents:* State Treasurers and Counties.

*Estimated Annual Number of Respondents:* 41.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 22 hours per year.

#### Comment is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the

agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the information collection submission for Office of Management and Budget approval.

Dated: July 2, 2002.

**Elizabeth Estill,**

*Deputy Chief, Programs and Legislation.*

[FR Doc. 02–17043 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plan for the Finger Lakes National Forest (Seneca and Schuyler Counties, NY)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent supplement.

**SUMMARY:** On May 2, 2002 the USDA Forest Service published in the **Federal Register,** a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Finger Lakes National Forest Land and Resource Management Plan (Forest Plan). A supplement to the NOI was published on June 19, 2002 extending the comment period from 60 to 90 days. A document titled, ''Implementing the Finger Lakes Land and Resource Management Plan—A Fifteen Year Retrospective'' (Retrospective) was referenced in the NOI and was not available at the beginning of the 60-day public comment period. Printing the Retrospective has taken longer than expected. To ensure that those who want to reference the Retrospective when commenting on the NOI may do so, the comment period on the NOI is being extended until August 31, 2002.

*Supplement:* The Finger Lakes National Forest is extending the comment period for the NOI until August 31, 2001. Written comments on the NOI will now be accepted until that time. All other information in the May 2, 2002 NOI remains the same.

Dated: June 28, 2002.

**Tamara S. Malone,**

*Deputy Forest Supervisor.*

[FR Doc. 02–16920 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plan for the Green Mountain National Forest (Addison, Bennington, Rutland, Washington, Windham, and Windsor Counties, VT)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Intent Supplement.

**SUMMARY:** On May 2, 2002 the USDA Forest Service published in the **Federal Register**, a Notice of Intent (NOI) to prepare an Environmental Impact Statement and to revise the Green Mountain National Forest Land and Resource Management Plan (Forest Plan). A supplement of the NOI was published on June 19, 2002 extending the comment period from 60 to 90 days. A document titled, ''Implementing the Green Mountain Land and Resource Management Plan—A Fifteen Year Retrospective'' (Retrospective) was referenced in the NOI and was not available at the beginning of the 60-day public comment period. Printing the Retrospective has taken longer than expected. To ensure that those who want to reference the Retrospective when commenting on the NOI may do so, the comment period on the NOI is being extended until August 31, 2002.

**SUPPLEMENTARY INFORMATION:** The Green Mountain National Forest is extending the comment period for the NOI until August 31, 2001. Written comments on the NOI will now be accepted until that time. All other information in the May 2, 2002 NOI remains the same.

Dated: June 28, 2002.

**Tamara S. Malone,**

*Deputy Forest Supervisor.*

[FR Doc. 02–16919 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ottawa National Forest, Ontonagon County, MI; Baltimore Vegetative Management Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Baltimore Vegetative Management Project (VMP) to disclose the effects of the following activities: Timber harvest; site preparation for natural and artificial regeneration; tree planting; dispersed parking area improvement and development; trail construction; relocating a portion of an existing snowmobile trail; classification of old growth; maintenance of permanent openings and mowing roads for wildlife habitat; fisheries habitat improvement; expansion of an existing gravel pit; and transportation management that would include road construction, road reconstruction, temporary road construction, road maintenance, road decommissioning and obliteration, and road closure to passenger vehicles.

The project area begins approximately 4 miles north of Bruce Crossing, Michigan, and lies to the east and west of US Highway 45 (US–45). It is in the Baltimore Opportunity Area on the Ontonagon Ranger District and the North Ewen Opportunity Area on the Bergland Ranger District.

**DATES:** Comments and suggestions concerning the scope of the analysis should be received within 30 days following publication of this notice. The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 2002, and the final environmental impact statement (FEIS) is expected in March 2003.

**ADDRESSES:** Written comments and suggestions concerning the scope of the analysis should be sent to: District Ranger, Ontonagon Ranger District, 1209 Rockland Road, Ontonagon, MI 49953.

**FOR FURTHER INFORMATION CONTACT:** John Strasser, Interdisciplinary Team Leader, Ontonagon Ranger District, Phone: (906) 884–2411.

**SUPPLEMENTARY INFORMATION:** The project area contains approximately 35,900 acres, of which approximately 28,475 are National Forest System acres, on the Ontonagon and Bergland Ranger Districts on the Ottawa National Forest, Ontonagon County, Michigan. The legal description of the project area contains all or parts of the following locations: T49N R38W, Sections 18, 19, 30; T49N R39W, Sections 1–36; T49N R40W, Sections 1–4, 8–17, 20–28, 33–36; and T50N R39W, Sections 27, 31–35, Michigan Meridian.

The proposed project area includes portions of management areas (MAs) 1.1, 8.1, 9.2, and 9.3, and is comprised of National Forest System lands and parcels of private land. The Ottawa Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

**Purpose and Need for Action**

The purpose and need for action is to:

(1) Promote and maintain processes that would enhance natural species diversity while providing a supply of wood products for regional and local needs to help support a stable economic base within the market area.

(2) Maintain and enhance habitat conditions that sustain viable populations of a variety of fish and wildlife species and enhance watershed conditions.

(3) Maintain a road system that allows for management of National Forest System lands and provides for public access while meeting other resource needs.

(4) Provide recreational opportunities to meet the public's needs.

(5) Provide for public safety.

**Proposed Action**

The Forest Service proposes treatments on approximately 3360 acres of National Forest System land that would harvest approximately 48,000 hundred cubic feet (CCF) (equivalent to approximately 61,000 cords) of timber through a variety of harvest methods. Silvicultural treatment systems that would be used include: clearcut with reserve trees on approximately 1975 acres, selection harvest on approximately 100 acres, commercial thinning on approximately 825 acres, shelterwood harvest on approximately 360 acres, and removal harvest on approximately 100 acres. This proposal includes 15 temporary openings greater than 40 acres (size range is approximately 50 to 186 acres), to treat Aspen forest types at high risk of loss to insect and disease (60 days' public notice period and Regional Forester review would be required prior to signing the Record of Decision for exceeding the forty-acre temporary opening limit set in 36 CFR 219.27(d)(2)). Connected treatment actions would include site preparation for natural and artificial regeneration on approximately 2200 acres, and supplemental conifer planting on approximately 400 acres. The proposal also includes the classification of approximately 1650 acres of old growth, of which approximately 290 acres would be classified as managed old growth and approximately 1360 acres would be classified as unmanaged old growth.

The proposed National Forest road management needed to access the treatment areas would include an estimated: 1.1 miles of new system road construction, 9.7 miles of system road reconstruction, 40.8 miles of system road maintenance, and 1.0 mile of temporary road construction. Temporary roads would be obliterated and allowed to revegetate to a natural state following completion of treatment activities.

In addition to the above proposed road treatments, the following road management would allow for future management of National Forest lands, provide for public access, and meet other resource needs. This includes an estimated: 28.1 miles of road decommissioning, 15.6 miles of system road reconstruction, 49.6 miles of system road maintenance, and 2.6 miles of road being unclassified. The 2.6 miles of unclassified road are no longer needed for long-term management of forest resources, but are access routes currently under special use permit or being used by leaseholders.

The proposed expansion of the Gauthier Gravel Pit would provide materials necessary for future transportation management.

The proposed wildlife and fisheries management activities, intended to maintain or enhance wildlife and fisheries habitat, would include: maintaining approximately 165 acres of permanent openings, mowing along approximately 13 miles of road to improve succulent forage for grouse, scarifying some sites for seeding or natural regeneration of conifers to increase the conifer component in existing conifer stands, hand-cutting small patches of Tag Alder adjacent to Aspen stands to rejuvenate woodcock habitat, add/create large coarse woody debris to some of the harvested Aspen stands for grouse and other species, and adding large woody debris at selected sites in the Baltimore River.

The proposed dispersed recreation management activities, intended to maintain or enhance existing recreation opportunities to meet current and expected future demand while protecting resources, would include: hardening, enhancing, or developing some dispersed recreation camping sites adjacent to Forest Roads 730 and 733, conversion of approximately 300 feet of existing unclassified road to a trail to protect resources while still allowing for Ontonagon River access, and improvement of a small parking area near the Ontonagon River access site.

The proposed management needed to address public health and safety concerns would include relocating a portion of snowmobile trail #3 that is currently located in the US–45 right of way. The existing trail location creates a less than ideal safety situation for motor vehicle users on the highway and also for snowmobilers.

**Possible Alternatives**

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest System lands will be considered. The EIS will disclose site-specific design criteria.

**Responsible Official**

Ralph E. Miller, Acting District Ranger, Ontonagon Ranger District, 1209 Rockland Rd., Ontonagon, MI 49953, is the Responsible Official. As the Responsible Official he will decide if the proposed project will be implemented. He will document the decision and reasons for the decision in the Record of Decision.

**Nature of Decision To Be Made**

The Ontonagon District Ranger will decide the following:

- Whether or not to implement vegetation management activities, and if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, site preparation, and reforestation).
- Identify road construction, reconstruction, maintenance, and temporary road construction necessary to provide access to accomplish treatments, or provide for long-term resource management, as well as any appropriate design criteria.
- Whether or not to permanently decommission, obliterate, or close roads to restrict passenger vehicle access or protect resources, and if so, where and how.
- Whether or not to expand an existing gravel pit, and if so, to what extent.
- Whether or not to maintain permanent openings and mow certain

roads, and if so, the location and size of openings to be maintained and roads to be mowed.

- What improvements or developments, if any, should be undertaken to enhance dispersed recreation opportunities.
- Whether or not to relocate a portion of snowmobile trail #3, and if so, where.
- What, if any, specific project monitoring requirements would be needed to assure design criteria are implemented and effective.

**Public Involvement and Scoping**

In July 1998, initial scoping was done for the Thumper Vegetation Management Project that was listed in the 1998 winter edition of the Ottawa Quarterly. The 1999 summer edition of the Ottawa Quarterly further included the Winterfest Timber Sale as part of the Thumper Vegetation Management Project. This project was never completed and is now included in the Baltimore analysis. Comments received regarding the Thumper Vegetation Management Project prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process by communicating or visiting with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, as well as other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Initiating public involvement.
- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identifying alternatives to the proposed action.
- Identifying potential environmental effects of this proposed action and the alternatives (*i.e.* direct, indirect, and cumulative effects and connected actions).

**Preliminary Issues**

Tentatively, a few preliminary issues of concern have been identified. These issues are briefly described below.

*Transportation System*

Implementation of the proposed action would decommission roads not needed for the long-term transportation system. Some additional segments of road would be managed as closed to some types of motorized use. This may affect the public's ability to use traditional access routes.

*Vegetation*

There are large areas of mature and declining Aspen that are at high risk of loss to insects or disease. When proposed harvest areas are added to recently harvested adjacent areas (0–10 years ago), several temporary open areas exceeding 40 acres would be created.

*Public Health and Safety*

A portion of snowmobile trail #3 is located in the US–45 right of way. The present trail location creates a situation where snowmobile traffic must parallel the highway, cross the highway several times, and cross the Ontonagon River by traveling over and along the US–45 bridge. This creates a less than ideal safety situation for motor vehicle users on the highway and also for snowmobilers. Within the scope of this project, proposing to relocate a portion of the existing trail could reduce the amount of trail within the US–45 right of way. For reasons outside the scope of this project, a separate analysis and document is needed to propose alternative methods for crossing the Ontonagon River, which could reduce the number of times the trail has to cross US–45 and eliminate snowmobiles having to travel over and along the US–45 bridge.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft EIS will be prepared for comment. The draft EIS is expected to be filed with the EPA and to be available for public review in November 2002. At that time the EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: June 24, 2002.

**Robert Lueckel,**

*Forest Supervisor.*

[FR Doc. 02–16586 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Oregon Coast Provincial Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Oregon Coast Provincial Advisory Committee (PAC) will meet on July 18, 2002. The meeting will begin at 9 a.m., in the Siuslaw National Forest Supervisor's Office, 4077 SW Research Way, Corvallis, Oregon. Agenda items, with a theme of ''Landscape Dynamics,'' will include an overview of the Coastal Landscape & Monitoring System (CLAMS), an overview of the University of Washington Landscape Management System, a Nestucca Adaptive Management Area overview, and a

round robin information sharing session. A fifteen-minute public comment period is scheduled for approximately 11:15 a.m. The committee welcomes the publics' written comments on committee business at anytime. The meeting should end around 2:30 p.m. Interested citizens are encouraged to attend. Lunch will be on your own.

**FOR FURTHER INFORMATION CONTACT:** Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541/750–7075 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: June 28, 2002.

**Gloria D. Brown,**

*Forest Supervisor.*

[FR Doc. 02–16942 Filed 7–5–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siuslaw Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Siuslaw Resource Advisory Committee (RAC) will meet on August 2, 2002. The meeting will begin at 9 a.m., in the Siuslaw Fire & Rescue Station, 2625 Highway 101 North, Florence, OR. Agenda items will include: An update by the Siuslaw NF Supervisor, feedback on the National Forest Counties & Schools Coalition Conference, 2002 projects status, fiscal adjustments for 2002, counties electronics for 2003, project success stories, Forest Work Camp in one grant, presentation of public projects, presentation of new Forest Service projects, a review of project selection criteria, and a public comment period. The public comment period is expected to begin at approximately 10:05 a.m. The meeting is expected to adjourn at 4 p.m. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, OR 97339.

Dated: June 28, 2002.

**Gloria D. Brown,**

*Forest Supervisor.*

[FR Doc. 02–16941 Filed 7–5–02; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Broadband Pilot Grant Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funds availability.

**SUMMARY:** The Rural Utilities Service (RUS) announces a pilot grant program for the provision of broadband transmission service in rural America. For fiscal year 2002, $20 million in grants will be made available through a national competition to applicants proposing to provide broadband transmission service on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' approach will target rural, economically-challenged communities and offer a means for the deployment of broadband transmission services to rural schools, libraries, education centers, health care providers, law enforcement agencies, public safety organizations as well as residents and businesses. This all-encompassing connectivity concept will give small, rural communities a chance to benefit from the advanced technologies that are necessary to foster economic growth, provide quality education and health care opportunities, and increase and enhance public safety efforts.

**DATES:** Applications for grants will be accepted as of the date of this notice through November 5, 2002. All applications must be delivered to RUS or bear postmark no later than November 5, 2002. Comments regarding the information collection requirements under the Paperwork Reduction Act must be received on or before September 6, 2002, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

**SUPPLEMENTARY INFORMATION:**

### Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements have been approved by emergency clearance under OMB Control Number 0572–0127.

Comments on this notice must be received by September 6, 2002.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

*Title:* Broadband Pilot Grant Program

*Type of Request:* New collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 152 hours per response.

*Respondents:* Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

*Estimated Number of Respondents:* 105.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 16,005 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

### General Information

The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS will provide financial assistance to eligible entities that propose, on a ''community-oriented connectivity'' basis, to provide broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services. RUS will provide

this assistance in the form of grants. RUS will give priority to rural areas that it believes have the greatest need for broadband transmission services.

Twenty million dollars in grant authority will be utilized to deploy broadband infrastructure to extremely rural, lower income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS will provide financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents. Under this Notice, grants will be made available, on a competitive basis, for the deployment of broadband transmission services to critical community facilities, rural residents, and rural businesses and for the construction, acquisition, or expansion and operation of a community center that provides free access to broadband transmission services to community residents for at least two years. Funding is also available for end-user equipment, software, and installation costs. A state-of-the-art community center will not only provide improved access but will aid rural residents in developing on-line businesses and will allow them to reap the benefits of Internet-based advanced placement courses, and continuing adult education. An application is limited to including only one project, as defined in this notice. Applicants wishing to serve multiple projects must submit an application for each project. Applicants will be required to provide a minimum matching contribution that is equal to 15 percent of the grant amount awarded.

**Agency Contacts**

For application information, contact the following individuals:

*Applications from:* Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Virgin Islands, West Virginia, Wisconsin: Mr. Kenneth Kuchno, Director, Eastern Area, Telecommunications, Rural Utilities Service, USDA, STOP 1599, 1400 Independence Avenue SW., Washington, DC 20250–1599, Telephone (202) 690–4673.

*Applications from:* Alaska, Idaho, Iowa, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Washington, Wyoming: Mr. Jerry Brent, Director, Northwest Area, Telecommunications, Rural Utilities Service, USDA, STOP 1595, 1400 Independence Avenue SW., Washington, DC 20250–1595, Telephone (202) 720–1025.

*Applications from:* Arizona, Arkansas, California, Colorado, Hawaii, Kansas, Louisiana, Nebraska, Nevada, New Mexico, Oklahoma, Texas, Utah, American Samoa, Federated States of Micronesia, Guam, Republic of Marshall Islands, Republic of Palau, Commonwealth of the Northern Marianas Islands: Mr. Ken Chandler, Director, Southwest Area, Telecommunications, Rural Utilities Service, USDA, STOP 1597, 1400 Independence Avenue SW., Washington, DC 20250–1597, Telephone (202) 720–0800.

**Definitions**

As used in this notice:

*Bandwidth* means the capacity of the radio frequency band or physical facility needed to carry the broadband transmission services.

*Basic broadband transmission service* means the broadband transmission service level provided by the applicant at the lowest rate or service package level for residential or business customers, as appropriate, providing such service meets the requirements of this notice.

*Broadband transmission service* means providing an information rate equivalent to at least 200 kilobits/second in the consumer's connection to the network, both from the provider to the consumer (downstream) and from the consumer to the provider (upstream).

*Community* means any incorporated or unincorporated city, town, village, or borough.

*Community center* means a public building, or a section of a public building, that is used solely for the purposes of providing free access to and/or instruction in the use of broadband Internet service, and is of the appropriate size to accommodate this sole purpose. The community center must be open and accessible to area residents before and after normal working hours and on Saturday or Sunday. Examples of facilities that may be partially used for the described purposes include school, library, or city hall.

*Computer access points* means a new computer terminal with access to basic broadband transmission service.

*Critical community facility* means a public school, public library, public medical clinic, public hospital, community college, public university, or law enforcement, fire and ambulance stations.

*Eligible applicant* shall have the meaning set forth in that paragraph entitled ''Eligible Applicant.''

*Eligible grant purposes* shall have the meaning set forth in that paragraph entitled ''Eligible Grant Purposes.''

*End-user equipment* means computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, inside wiring, interactive video equipment, or other facilities required for the provision and use of broadband transmission services.

*Matching contribution* means the applicant's qualified contribution to the project.

*Project* means the approved purposes financed by the grant and the applicant's matching contribution to serve one community and the contiguous, unincorporated areas located outside the community's boundaries.

*Rural area* means any area of the United States not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population of more than 20,000 inhabitants.

*Service area* means a single community and the contiguous, unincorporated areas located outside the community's boundaries.

*Spectrum* means a defined band of frequencies that will accommodate the broadband transmission services.

*Telecommunications terminal equipment* means the assembly of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the

goal for which the circuit or signal was established.

**Eligible Applicant**

To be eligible for a grant, the applicant must:

(a) Be a public body; an Indian tribe; a cooperative, nonprofit, limited dividend or mutual association; municipality; an incorporated or limited liability company; or other legally organized entity. The applicant may not be an individual or a partnership; and

(b) Have the legal authority to own and operate the broadband facilities as proposed in its application, to enter into contracts and to otherwise comply with applicable Federal statutes and regulations.

**Eligible Project**

To be eligible for a grant, the project must:

(a) Propose to serve a rural area where broadband transmission service does not currently exist;

(b) Propose to serve one community;

(c) Deploy basic broadband transmission service, free of all charges for at least 2 years, to all critical community facilities located within the proposed service area;

(d) Deploy basic broadband transmission service, free of all charges for at least 2 years, to the community center;

(e) Offer basic broadband transmission service to all residential and business customers within the proposed service area; and

(f) Provide a community center within the proposed service area and make broadband transmission service available, free of all charges to users within the center for at least 2 years. The community center must have, as a minimum, 10 computer access points or computer access points equal to 1 percent of the service area's population, whichever is greater.

**Eligible Grant Purposes**

Grant funds may be used to finance:

(a) The construction, acquisition, or lease of facilities, including spectrum, to deploy broadband transmission services to all critical community facilities and to offer such service to all residential and business customers located within the proposed service area;

(b) The improvement, expansion, construction, or acquisition of a community center that furnishes free access to broadband Internet service, provided that the community center is open and accessible to area residents before and after normal working hours and on Saturday or Sunday. Grant funds provided for such costs shall not exceed the greater of 5 percent of the grant amount requested or $100,000;

(c) End-user equipment needed to carry out the project;

(d) Operating expenses incurred in providing broadband transmission service to critical community facilities for the first 2 years of operations and to provide training and instruction. Salary and administrative expenses will be subject to review, and may be limited, by RUS for reasonableness in relation to the scope of the project; and

(e) The purchase of land, buildings, or building construction needed to carry out the project.

Grant funds may not be used to finance the duplication of any existing broadband transmission services provided by other entities.

Facilities financed with grant funds cannot be utilized, in any way, to provide local exchange telecommunications service to any person or entity already receiving such services.

**Matching Contributions**

The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be in the form of:

(a) Cash for eligible grant purposes; and

(b) In-kind contributions of purposes that could have been financed with grant funds under this notice. In-kind contributions must be new or non-depreciated assets with established monetary values. Manufacturers' or service providers' discounts are not matching contributions.

(c) The rental value of space provided within an existing community center, provided that the space is provided free of charge to the applicant;

(d) Salary expenses incurred for the individual(s) operating the community center.

(e) Expenses incurred in operating the community center.

Cost incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible grant purpose or matching contribution.

Rental values of space provided must be substantiated by rental agreements documenting the cost of space of a similar size in a similar location.

Rental values, salaries, and other expenses incurred in operating the community center will be subject to review by RUS for reasonableness in relation to the scope of the project.

Any financial assistance from Federal sources will not be considered as matching contributions unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution.

**Completed Application**

A completed application must include the following documentation, studies, reports and information in a form satisfactory to RUS. Applications should be prepared in conformance with the provisions of this notice and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Completed applications must include the following:

(a) *An application for Federal Assistance.* A completed Standard Form 424.

(b) *An executive summary of the project.* The applicant must provide RUS with a general project overview that addresses the following categories:

(1) A description of why the project is needed;

(2) A description of the applicant;

(3) An explanation of the total project cost;

(4) A general overview of the broadband telecommunications system to be developed, including the types of equipment, technologies, and facilities used;

(5) Documentation describing the procedures used to determine the unavailability of existing broadband transmission service; and

(6) A description of the participating community organizations (such as schools, health care providers, police and fire departments, etc.).

(c) *Scoring criteria documentation.* Each grant applicant must address and provide documentation on how it meets each of the scoring criteria detailed in the ''Scoring of Applications'' section hereafter.

(d) *System Design.* The applicant must submit a system design that contains the following, satisfactory to RUS:

(1) A narrative discussing the proposed community center and all costs of the project, all existing and proposed facilities that are a part of the project, the services to be provided by the project, and the proposed service area;

(2) Engineering design studies providing an economical and practical engineering design of the project, including a detailed description of the facilities to be funded, technical specifications, data rates, and costs; and

(3) A map of the proposed service area reflecting the proposed location of the community center and critical community facilities; and

(e) *A scope of work.* The scope of work must include, at a minimum:

(1) The specific activities and services to be performed under the project;

(2) Who will carry out the activities and services;

(3) The time-frames for accomplishing the project objectives and activities; and

(4) A budget for all capital and administrative expenditures reflecting the line item costs for eligible purposes for the grant funds, the matching contributions, and other sources of funds necessary to complete the project.

(f) *Community-oriented connectivity plan.* The applicant must provide a community-oriented connectivity plan consisting of the following:

(1) A listing of all critical community facilities to be connected, including public schools, public libraries, public medical clinics, public hospitals, community colleges, public universities, and law enforcement, fire and ambulance stations. The applicant must provide documentation of consultation with these groups, including commitments to participate in the proposed project;

(2) A description of the services available to local residents through the use of the community center;

(3) A listing of the proposed telecommunications terminal equipment, telecommunications transmission facilities, data terminal equipment, interactive video equipment, computer hardware and software systems, and components that process data for transmission via telecommunications, computer network components, communication satellite ground station equipment, or any other elements of the broadband telecommunications system designed to further the deployment and use of broadband transmission services, that the applicant intends to build or fund using RUS grant funds and matching contribution; and

(4) A description of the consultations with the appropriate telecommunications carriers (including interexchange carriers, cable television operators, enhanced service providers, providers of satellite services and telecommunications equipment manufacturers and distributors) and the anticipated role of such providers in the proposed broadband telecommunications system.

(g) *Financial information and sustainability.* The applicant must provide a narrative description demonstrating sustainability of the project, including having sufficient resources and expertise necessary to undertake and complete the project and how the project will be sustained following completion. The following financial information is required:

(1) Certified financial statements, if available; and

(2) 5 years of pro-forma financial information, evidencing the sustainability of the project.

(h) *A statement of experience.* Information on the owners and principal employees' relevant work experience that would ensure the success of the project. The applicant must provide a written narrative describing its demonstrated capability and experience, if any, in operating a broadband telecommunications system.

(i) *Evidence of legal authority and existence.* The applicant must provide evidence of its legal existence and authority to enter into a grant agreement with RUS and perform the activities proposed under the grant application.

(j) *Funding commitment from other sources.* If the project requires additional funding from other sources in addition to the RUS grant, the applicant must provide evidence that funding agreements have been obtained to ensure completion of the project.

(k) *Compliance with other Federal statutes.* The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

(1) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(2) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(3) 7 CFR part 3017—Government wide Debarment and Suspension (Nonprocurement).

(4) Government wide Requirements for Drug-Free Workplace.

(5) 7 CFR part 3018—New Restrictions on Lobbying.

(6) Certification regarding Architectural Barriers.

(7) Certification regarding Flood Hazard Precautions.

(8) An environmental report, in accordance with 7 CFR 1794.

(9) Certification that grant funds will not be used to duplicate lines, facilities, or systems providing broadband transmission services.

(10) Federal Obligation Certification on Delinquent Debt.

**Review of Grant Applications**

(a) All applications for grants must be delivered to RUS at the address listed above or postmarked no later than November 5, 2002 to be considered eligible for FY 2002 grant funding. RUS will review each application for conformance with the provisions of this Notice. RUS may contact the applicant for additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

(c) Applications conforming with this Notice will then be evaluated competitively by a panel of RUS employees selected by the Administrator, RUS, and be awarded points as described in the scoring criteria section below. The applications will be ranked and grants awarded in rank order until all grant funds are expended.

(d) Regardless of the score an application receives, if RUS determines that the project is technically or financially infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

**Scoring of Applications**

(a) All eligible applications will receive points for the following scoring criteria:

(1) The rurality of the project;

(2) The economic need of the project's service area (up to 20 points); and

(3) The benefits derived from the proposed service (up to 30 points).

(b) Scoring criteria:

(1) *The rurality of the project*—up to 40 points.

(i) This criterion will be used to evaluate the rurality of the community served by the project, in accordance with the following method of scoring. Rurality shall be determined by the 2000 population data contained in the U.S. Bureau of the Census at *http://factfinder.census.gov/servlet/BasicFactsServlet.* The following categories are used in the evaluation of rurality:

(A) Level 1 means any community having a population of less than 500 inhabitants.

(B) Level 2 means any community having a population of at least 500 and not in excess of 1,000 inhabitants.

(C) Level 3 means any community having a population over 1,000 and not in excess of 2,000 inhabitants.

(D) Level 4 means any community having a population over 2,000 and not in excess of 3,000 inhabitants.

(E) Level 5 means any community having a population over 3,000 and not in excess of 4,000 inhabitants.

(F) Level 6 means any community having a population over 4,000 and not in excess of 5,000 inhabitants.

(G) Level 7 means any community having a population over 5,000 and not in excess of 10,000 inhabitants.

(H) Level 8 means any community having a population over 10,000 and not in excess of 20,000 inhabitants.

(ii) Each application will receive points based on the location of the facilities financed using the definitions above.

(A) For a service area that includes a Level 1 community, it will receive 40 points.

(B) For a service area that includes a Level 2 community, it will receive 35 points.

(C) For a service area that includes a Level 3 community, it will receive 30 points.

(D) For a service area that includes a Level 4 community, it will receive 25 points.

(E) For a service area that includes a Level 5 community, it will receive 20 points.

(F) For a service area that includes a Level 6 community, it will receive 15 points.

(G) For a service area that includes a Level 7 community, it will receive 10 points.

(H) For a service area that includes a Level 8 community, it will receive 5 points.

(2) *The economic need of the project service area*—up to 30 points.

(i) This criterion will be used to evaluate the economic need of the service area. Applicants must utilize the per capita personal income by County, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *www.bea.doc.gov/bea/regional/reis/*. Applicants will be awarded points as outlined below for service provided in each county where the per capita personal income (PCI) is less than 70 percent of the national average per capita personal income (NAPCI):

(A) PCI is 75 percent or greater of NAPCI; 0 points;

(B) PCI is less than 75 percent and greater than or equal to 70 percent of NAPCI; 5 points;

(C) PCI is less than 70 percent and greater than or equal to 65 percent of NAPCI; 10 points;

(D) PCI is less than 65 percent and greater than or equal to 60 percent of NAPCI; 15 points;

(E) PCI is less than 60 percent and greater than or equal to 55 percent of NAPCI; 20 points;

(F) PCI is less than 55 percent and greater than or equal to 50 percent of NAPCI; 25 points;

(G) PCPI is less than 50 percent of NAPCPI; 30 points;

(ii) If an applicant proposes service in more than one county, an average score will be calculated based on each county's individual scores.

(3) *The benefits derived from the proposed service*—up to 30 points.

(i) This criterion will be used to score applications based on the documentation in support of the need for services, benefits derived from the services proposed by the project, and local community involvement in planning and implementation of the project. Applicants may receive up to 30 points for documenting the need for services and benefits derived from service as explained in this section.

(ii) RUS will consider:

(A) The extent of the applicant's documentation explaining the economic, education, health care, and public safety issues facing the community and the applicant's proposed plan to address these challenges on a community-wide basis;

(B) The extent of the project's planning, development, and support by local residents, institutions, and community facilities will be considered. This includes evidence of community-wide involvement, as exemplified in community meetings, public forums, and surveys. In addition, applicants should provide evidence of local residents' participation in the project planning and development;

(C) The extent to which the community center will be used for instructional purposes including Internet usage, Web-based curricula, and Web page development; and

(D) Web-based community resources enabled or provided by the applicant, such as community bulletin boards, directories, public web-hosting, notices, etc.

## Grant Documents

The terms and conditions of grants shall be set forth in grant documents prepared by RUS. The documents shall require the applicant to own all equipment and facilities financed by the grant. Among other matters, RUS may prescribe conditions to the advance of funds that address concerns regarding the project feasibility and sustainability. RUS may also prescribe terms and conditions applicable to the construction and operation of the project and the delivery of broadband transmission services to rural areas.

Dated: July 2, 2002.

**Curtis M. Anderson,**

*Deputy Administrator as Acting Administrator, Rural Utilities Service.*

[FR Doc. 02–17018 Filed 7–5–02; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–791–815]**

### Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the Republic of South Africa

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Crystal Crittenden or Mark Manning (Xstrata) at (202) 482–0989 or (202) 482–5253 and Timothy P. Finn or John Conniff (Highveld), at (202) 482–0065 or (202) 482–1009, respectively; AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

## 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 (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

## Preliminary Determination

We preliminarily determine that ferrovanadium from the Republic of South Africa (South Africa) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

## Case History

The investigation was initiated on December 17, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Ferrovanadium from the People's Republic of China and the Republic of South Africa*, 66 FR 66398 (December 26, 2001) (*Initiation Notice*).[1]

[1] The petitioners in this case are The Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

Since the initiation of the investigation, the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, at 66 FR 66398. On January 3, 10, and 17, 2002, the petitioners submitted comments on product coverage. On January 7, 15, and 17, 2002, Highveld Steel and Vanadium Corporation (Highveld) and Xstrata South Africa (Proprietary) Limited (Xstrata) submitted product coverage comments.

On December 27, 2002, the Department solicited comments from interested parties regarding model-matching criteria. *See* Letter from Holly Kuga (December 27, 2001). The petitioners and respondents submitted model-matching comments to the Department on January 9, 2002. The petitioners also submitted rebuttal model-matching comments on January 10, 2002.

On January 14, 2002, Xstrata submitted comments to the Department regarding the sales below cost investigation the Department initiated on December 17, 2001. The Department received a rebuttal to Xstrata's comments from the petitioners on January 17, 2002. On January 17, 2002, the Department received comments regarding the sales below cost investigation from Highveld.

On January 10, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from South Africa of ferrovanadium that are alleged to be sold in the United States at LTFV. *See Ferrovanadium From China and South Africa*, 67 FR 2236 (January 16, 2002).

After reviewing the comments on product coverage and characteristics, on January 18, 2002, the Department issued the antidumping duty questionnaire[2] to Highveld and Xstrata. The Department issued an abridged Section A questionnaire, requesting quantity and value (Q&V) data, to Vametco Minerals Corporation (Vametco) on January 29, 2002, for the purpose of including Vametco in the Department's respondent selection analysis. *See Selection of Respondents* section below. We received responses to our questionnaire from all respondents. We issued supplemental questionnaires, pertaining to sections A, B, C, and D of the antidumping questionnaire, to Highveld and Xstrata in February, March, April, and May 2002. Highveld and Xstrata responded to these supplemental questionnaires in February, March, April, May, and June 2002. On February 11, 2002, Xstrata provided information demonstrating that the home market was not viable and submitted Q&V data for its largest third-country markets. On March 1, 2002, the Department designated Germany as the appropriate third-country market for which to calculate Xstrata's normal value (NV). *See* Memorandum from Howard Smith to the File, ''The Appropriate Comparison Market for Xstrata South Africa (Proprietary) Limited in the Antidumping Duty Investigation of Ferrovanadium from the Republic of South Africa,'' dated March 1, 2002 (*Xstrata Third Country Market Selection Memorandum*). On March 12 and 15, 2002, the petitioners submitted amendments to the cost allegation contained in the petition for this investigation to include German-specific price and cost information placed on the record by Xstrata. The Department, in accordance with section 773(b)(2)(A)(i) of the Act, concluded that there was a reasonable basis to suspect that Xstrata is selling ferrovanadium in Germany at prices below the cost of production (COP) and initiated a cost investigation on ferrovanadium sales in Germany on March 26, 2002. *See* the *Cost of Production Analysis* section below.

On April 24, 2002, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation 50 days, from May 6, 2002, until June 25, 2002. *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Notice of Postponement of Preliminary Antidumping Duty Determinations*; 67 FR 20089 (April 24, 2002).

**Postponement of the Final Determination**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 21, 2002, Xstrata requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Xstrata also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination.. Accordingly, since we have made an affirmative preliminary determination, and the requesting party accounts for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of publication of the preliminary determination, and are extending the provisional measures accordingly. *See* Xstrata's letter to the Secretary, dated June 21, 2002.

**Period of Investigation**

The period of investigation (POI) is October 1, 2000, through September 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November 2001). *See* 19 CFR 351.204(b)(1).

**Scope of Investigation**

The scope of these investigations covers all ferrovanadium regardless of grade, chemistry, form, shape, or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as vanadium. It specifically excludes vanadium additives other than ferrovanadium, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000, and 8112.40.6000 are specifically excluded. Ferrovanadium is classified under HTSUS item number

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the COP of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

**Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can reasonably be examined. The petition identified three South African producers of ferrovanadium that export to the United States: Highveld, Vametco, and Xstrata. Due to limited resources, we determined that we could investigate only the two South African producers/exporters that accounted for the largest volume of exports to the United States during the POI. *See* the Memorandum from Howard Smith to Holly A. Kuga, ''Selection of Respondents for the Antidumping Investigation of Ferrovanadium from South Africa,'' which is on file in the Central Records Unit (CRU), room B–099 of the main Department of Commerce building. Therefore, we designated Highveld and Xstrata as mandatory respondents and sent them the antidumping questionnaire.

**Product Comparisons**

In accordance with section 771(16) of the Act, all products produced by the respondents in the home market and covered by the description in the *Scope of Investigation* section, above, and sold in the home market or designated third-country market (*i.e.*, the comparison market) during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied upon product grade and maximum and minimum product size to match U.S. sales of subject merchandise to NV.

**Fair Value Comparisons**

To determine whether sales of ferrovanadium from South Africa were made in the United States at LTFV, we compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to NVs.

**Use of Partial Facts Available**

During the course of this investigation, the Department issued seven supplemental questionnaires to Highveld requesting that the company provide certain information necessary for our determination. Despite the fact that the Department provided Highveld with repeated opportunities to provide the requested information, Highveld withheld certain information and failed to provide other information in the form and manner requested by the Department. As a result, the Department has determined to use facts available to calculate certain sales adjustments. These adjustments include U.S. commission/indirect selling expenses, home and U.S. market packing costs, U.S. warehousing expenses, and financing expenses associated with U.S. sales.

Furthermore, section 776(b) of the Act provides that the Department may use an inference that is adverse to the interests of a party in selecting from among the facts otherwise available if the Department finds that the party has failed to cooperate by not acting to the best of its ability. In this case the Department has found that Highveld failed to cooperate by not acting to the best of its ability with respect to these sales adjustments. Therefore, for the preliminarily determination, we have made an inference that is adverse to Highveld in selecting from among the facts available to calculate the sales adjustment noted above. For a detailed discussion of this issue, *see* the Memorandum from Howard Smith to Holly A. Kuga, ''Application of Partial Adverse Facts Available for the Preliminary Determination: Highveld Steel & Vanadium Limited,'' dated June 25, 2002.

**Constructed Export Price**

For both Highveld and Xstrata, we calculated CEP, in accordance with section 772(b) of the Act, for all sales to unaffiliated purchasers that took place after importation into the United States. Highveld and Xstrata reported only CEP sales in the United States. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP for all U.S. sales by Highveld and Xstrata on the packed FOB or delivered prices to unaffiliated purchasers in the United States and made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. Movement expenses included, where appropriate, foreign inland freight, international freight, marine insurance, foreign and U.S. brokerage and handling charges, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses, and warehousing expenses. In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses. Also, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

**Normal Value**

A. *Selection of Comparison Market (Third-Country Comparison)*

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or has sufficient aggregate value, if quantity is inappropriate) and that there is no particular market situation in the home market that prevents a proper comparison with the EP or CEP transaction. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. For this investigation, we found that Highveld had a viable home market for ferrovanadium. Thus, the home market is the appropriate comparison market for Highveld in this investigation, and we used the respondent's submitted home market sales data for purposes of calculating NV.

Xstrata did not have a viable home market in South Africa. Therefore, the Department considered the Q&V of Xstrata's POI sales of subject merchandise in the United States and the three largest third-country markets. In selecting the appropriate comparison market for Xstrata's U.S. sales, we applied the criteria listed in section 351.404(e) of the Department's regulations, which direct the Department to consider the similarity of the foreign like product exported to the third-country market to the subject merchandise exported to the United States; the volume of export sales to the third-country market; and such other factors as the Secretary considers appropriate.

After comparing Xstrata's U.S. market sales with the three third-country

market sales of subject merchandise, the Department selected Germany as the appropriate comparison market for Xstrata. *See Xstrata Third Country Market Selection Memorandum.*

In deriving NV, we made adjustments as detailed in the *Calculation of Normal Value Based on Constructed Value* section below.

B. *Date of Sale*

For reporting purposes, Highveld used the last day of the month in which the merchandise was picked up or delivered as the home market date of sale even though it indicated that the sales terms are finalized on the invoice date (*see* Highveld's April 19, 2002, supplemental at pages 5 and 6). The Department's practice is to consider the invoice date as the date of sale unless a different date better reflects the date on which the material terms of sale are established, or the invoice date is after the shipment date (*see Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000) and accompanying ''Decision Memorandum'' at Comment 15). Because the invoice date for Highveld's home market sales is subsequent to the shipment date, we have considered the shipment date that Highveld reported to be the date of sale.

Xstrata initially reported the date of sale as the contract date. On May 8, 2002, Xstrata reported that the invoice date is the more appropriate date to use as the date of sale because certain material terms of the sale are not set until the invoice date. Xstrata provided additional discussion of how the terms of sale changed after the contract date on April 17, May 8, and June 13, 2002. Because of this information, we have considered the invoice date to be the date of sale for Xstrata.

C. *Affiliated-Party Transactions and Arm's-Length Test*

During the POI, Highveld made home market sales to affiliated customers. We applied the arm's-length test to sales from Highveld to its affiliated customers by comparing them to sales of identical merchandise from Highveld to unaffiliated home market customers. If these affiliated party sales satisfied the arm's-length test, we used them in our analysis.

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all discounts and rebates, movement charges, direct selling expenses, commissions, and home market packing. Where, for the tested models of subject merchandise, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made to the affiliated party were at arm's-length. *See* 19 CFR 351.403(c) and 62 FR at 27355, *Preamble - Department's Final Antidumping Regulations* (May 19, 1997). Sales to affiliated customers in the home market which were not made at arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102.

Xstrata had no comparison market sales to affiliated customers during the POI.

D. *Cost of Production Analysis*

On November 26, 2001, in the petition for the imposition of antidumping duties, the petitioners alleged that sales of ferrovanadium in the home market were made at prices below the fully absorbed COP. Accordingly, the petitioners requested that the Department conduct a country-wide sales-below-cost investigation. Based upon the comparison of adjusted home market prices to the COP for South African producers, in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that home market sales of ferrovanadium produced in South Africa were made at prices below the COP and initiated a country-wide cost investigation. *See Initiation Notice*.

On February 11, 2002, Xstrata provided information demonstrating that the home market was not viable and submitted Q&V data for its largest third-country markets. On February 21, 2002, the petitioners submitted a country-specific cost allegation for each of the third-country markets presented by Xstrata. On March 1, 2002, the Department designated Germany as the appropriate third-country market for which to calculate NV. *See Xstrata Third Country Market Selection Memorandum*. On March 12 and 15, 2002, the petitioners filed amendments to the cost allegation contained in their February 21, 2002, submission to include Germany-specific price and cost information placed on the record by Xstrata. The Department, in accordance with section 773(b)(2)(A)(i) of the Act, concluded that there was a reasonable basis to suspect that Xstrata is selling ferrovanadium in Germany at prices below the COP and initiated a cost investigation on ferrovanadium sales in Germany. *See* Memorandum to Holly Kuga from the Team, ''Analysis of Petitioner's Allegations of Sales Below Cost of Production for Xstrata South Africa (Proprietary) Limited (Xstrata),'' dated March 26, 2002. As a result, the Department initiated, on March 26, 2002, a COP investigation with respect to Xstrata's sales in Germany.

The Department has conducted an investigation to determine whether the respondents made sales in the home market or third-country market at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for each respondent based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home market or third country market general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Highveld and Xstrata in their respective cost questionnaire responses, except, as noted below, in specific instances where the submitted costs were not appropriately quantified or valued.

a. Highveld. Highveld calculated the reported net interest expense ratio based on its own consolidated financial statements, rather than on the consolidated financial statements of its parent corporation. In accordance with the Department's longstanding practice, we recalculated the interest expense ratio by dividing the full-year interest expense by the cost of sales reported on the audited fiscal-year financial statements which correspond most closely to the POI at the highest level of consolidation (i.e., we used the financial statements of Highveld's corporate parent). *See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa*, 67 FR 35485 (May 20, 2002) and accompanying ''Decision Memorandum'' at Comment 7; see also the Memorandum from Timothy P. Finn to the File, ''Calculation Memorandum for the Preliminary Determination of the Investigation of Highveld Steel and Vanadium Corp. Ltd. (Highveld),'' dated June 25, 2002 (Highveld Calculation Memorandum).

b. Xstrata. We made no modifications to Xstrata's reported COP.

2. Test of Home Market and Third-Country Market Sales Prices

We compared the adjusted weighted-average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these

sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the comparison market prices, less any applicable discounts and rebates, movement charges, selling expenses, commissions, and packing.

3. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined that such sales were made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, because we compared prices to POI average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

E. *Calculation of Normal Value Based on Constructed Value*

Section 773(b)(1)(B) of the Act provides that if, after disregarding all sales made at prices below the COP, there are no comparison market sales made in the ordinary course of trade, NV shall be based on constructed value (CV). Pursuant to section 773(b)(1)(B) of the Act, because both respondents made all of their comparison market sales at prices below the COP, we disregarded all comparison market sales and based NV on CV. We calculated CV as the sum of each respondent's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, profit and U.S. packing costs. In addition, because all comparison market sales were made at prices below the COP, we calculated selling expenses and profit in accordance with section 773(e)(2)(B)(iii) of the Act. We based the selling expenses and profit for Highveld and Xstrata on figures obtained from each company's financial statements and available information regarding the selling expenses incurred by each. Section 773(a)(8) of the Act directs the Department to make certain adjustments to CV, as appropriate (*i.e.*, circumstance of sale adjustments). Pursuant to section 773(a)(8) of the Act, we have included, where possible, the appropriate adjustments in our calculation of CV. For further information, *see* the Memorandum from Mark Manning and Crystal Crittenden to the File, ''Calculation Memorandum for the Preliminary Determination of the Investigation of Xstrata South Africa (Proprietary) Limited (Xstrata),'' (*Xstrata Calculation Memorandum*) and the *Highveld Calculation Memorandum*, both dated June 25, 2002.

F. *Level of Trade/Constructed Export Price Offset*

Since all of Highveld's home market sales and Xstrata's third country sales failed the cost test, we are unable to use these sales as the basis of NV and instead must calculate NV based on CV. The selling expenses and profit for CV, as noted above, were obtained from Highveld's financial records, therefore, we have no basis for attributing a level of trade (LOT) to this CV. As such, we are unable to conduct a LOT analysis. For this reason, we made no LOT adjustment or CEP offset to either Highveld's or Xstrata's NV.

G. *Currency Conversions*

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank, the Department's preferred source for exchange rates.

**Verification**

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

**All Others Rate**

Section 735(c)(5)(A) of the Act provides for the use of an ''all others'' rate, which is applied to non-investigated firms. *See Statement of Administrative Actions, Uruguay Round Agreements Act*, Pub. L. 103–465, 103rd Cong. 2d Sess., H. Doc. 103–316, vol. I (1994) (SAA) at 873. This section states that the all others rate shall generally be an amount equal to the weighted average of the weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins based entirely upon the facts available. Therefore, we have preliminarily assigned to all other exporters of ferrovanadium from South Africa a margin that is based on the weighted-average margins calculated for Highveld and Xstrata.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrovanadium from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Highveld Steel and Vanadium Corporation Ltd | 45.58 |
| Xstrata South Africa (Proprietary) Limited | 37.29 |
| All Others | 41.72 |

**Disclosure**

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in accordance with 19 CFR 351.224(b).

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary sales at LTFV determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

**Public Comment**

Case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries

should be limited to five pages total, including footnotes. Further, the Department respectfully requests that all parties submitting written comments also provide the Department with an additional copy of the public version of any such comments on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

As noted above, the Department will make its final determination within 135 days after the date of the publication of the preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: June 25, 2002.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–16900 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–007]**

## Barium Chloride From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** John Conniff or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1009 or (202) 482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

### TIME LIMITS:

### Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245–day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

### Background

On November 21, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on barium chloride from the People's Republic of China, covering the period October 1, 2000, through September 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 66 FR 58432. The preliminary results are currently due no later than July 3, 2002.

### Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than August 3, 2002. *See* Decision Memorandum from Holly A. Kuga to Bernard T. Carreau, dated concurrently with this notice, which is on file in the Central Records Unit, Room B–099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: June 27, 2002.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration, Group II.*

[FR Doc. 02–16899 Filed 7–5–02; 8:45 am]

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–873]**

## Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Ferrovanadium from the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Karine Gziryan, or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081, and (202) 482–5193, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations codified at 19 CFR Part 351 (April 2002).

### Preliminary Determination

We preliminarily determine that ferrovanadium from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

*Case History*

This investigation was initiated on December 17, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Ferrovanadium from the People's Republic of China and the Republic of South Africa*, 66 FR 66398

(December 26, 2001) (*Initiation Notice*).[1] Since the initiation of the investigation, the following events have occurred.

On January 10, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of ferrovanadium imports from the PRC and the Republic of South Africa. *See Ferrovanadium From China and South Africa*, 67 FR 2236 (January 16, 2002). During January 2002, the Department provided participating parties with an opportunity to comment on scope and product characteristics. Only the petitioners submitted comments.

After reviewing the comments on product coverage and characteristics, on January 18, 2002, the Department issued its antidumping questionnaire[2] to the PRC's Ministry of Foreign Trade & Economic Cooperation (MOFTEC), the Embassy of the PRC in Washington D.C., and the companies identified in the petition, Jinzhou Ferroalloy (Group) Co, Ltd., Chengde Xinghua Vanadium Chemical Co., Ltd., and Pangang Group International Economic and Trading Corporation (Pangang). The Department requested that MOFTEC send the questionnaire to all companies that manufacture and export ferrovanadium to the United States, as well as all manufacturers that produce ferrovanadium for companies engaged in exporting subject merchandise to the United States, and the companies that export ferrovanadium to the United States, during the period of investigation (POI). Only Pangang responded to the Department's questionnaire. The Department issued supplemental questionnaires to Pangang, where appropriate.

On April 24, 2002, pursuant to section 733(c)(1)(B) of the Act, the Department postponed the preliminary determination of this investigation 50 days, from May 6, 2002, until June 25, 2002. *See Ferrovanadium from the People's Republic of China and the Republic of South Africa: Notice of Postponement of Preliminary Antidumping Duty Determinations*; 67 FR 20089 (April 24, 2002).

*Postponement of the Final Determination*

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 21, 2002, Pangang requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. Pangang also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, since we have made an affirmative preliminary determination, and the requesting party accounts for a significant proportion of exports of the subject merchandise, we have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination determination, and are extending the provisional measures accordingly. *See* Pangang's letter to the Secretary, dated June 21, 2002.

*Period of Investigation*

The POI is April 1, 2001 through September 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, November, 2001). *See* 19 CFR 351.204(b)(1).

*Scope of Investigation*

The scope of this investigation covers all ferrovanadium produced in the PRC, regardless of grade, chemistry, form, shape or size. Ferrovanadium is an alloy of iron and vanadium that is used chiefly as an additive in the manufacture of steel. The merchandise is commercially and scientifically identified as ferrovanadium. The scope of this investigation specifically excludes vanadium additives other than ferrovanadium, such as nitrided vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials such as slag, boiler residues and fly ash. Merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2850.00.2000, 8112.40.3000 and 8112.40.6000 is specifically excluded. Ferrovanadium is classified under HTSUS item number 7202.92.00. Although the HTSUS item number is provided for convenience and Customs purposes, the Department's written description of the scope of this investigation remains dispositive.

*Nonmarket Economy Country Status*

The Department has treated the PRC as a nonmarket economy (NME) country in previous antidumping investigations (*e.g., see Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000); and the *Notice of Final Determination of Sales at Less Than Fair Value Certain: Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001)). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as a NME country.

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

*Separate Rates*

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the

[1] The petitioners in this case are the Ferroalloys Association Vanadium Committee (TFA Vanadium Committee) and its members: Bear Metallurgical Company, Shieldalloy Metallurgical Corporation, Gulf Chemical & Metallurgical Corporation, U.S. Vanadium Corporation, and CS Metals of Louisiana LLC.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the COP of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). Pangang has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over its operations. We have considered whether Pangang is eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22545 (May 8, 1995).

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Pangang has placed on the record a number of documents to demonstrate the absence of *de jure* control, including its business license, and the ''Company Law of the People's Republic of China.'' Other than limiting Pangang's operations to the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the ''Company Law of the People's Republic of China'' and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

2. Absence of *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, Pangang has reported the following: (1) there is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection, and (4) there are no restrictions on the use of its export revenue and it is responsible for financing its own losses. Additionally, Pangang's questionnaire response does not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Pangang's questionnaire response reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over Pangang's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the ''NME entity.'' The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. Although the Department provided all PRC exporters of ferrovanadium with the opportunity to respond to its questionnaire, only Pangang submitted a response thereto. However, our review of U.S. import statistics reveals that there are other PRC companies, in addition to Pangang, that exported ferrovanadium to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond also significantly impedes this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have

based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id*. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate the recalculated dumping margin from the petition (see below). In the petition, the petitioners based export price (EP) on import values declared to the U.S. Customs Service. For the NV calculation, the petitioners based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs) on the quantities of inputs used by the petitioners.

With regard to the EP calculation in the petition, the information relied upon was based on publicly available sources, that is, official U.S. government statistics; therefore, we find that the U.S. price from the petition margin is sufficiently corroborated. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption data to that data on the record of this investigation. As discussed in a separate memorandum to the file, we found that the factors consumption data in the petition were reasonable and of probative value. *See* the memorandum to the file regarding corroboration of the petition data for the PRC-wide entity, dated June 25, 2002. The values for the factors of production in the petition were based on publicly available information for comparable inputs; therefore, we find that these surrogate values are sufficiently corroborated.

During the course of this investigation, several of the surrogate values used in the petition are new or have been revised. In order to take into account the more recent information, we recalculated the petition margin using, where possible, the new or revised surrogate values to value the petitioners' consumption rates. As a result of this recalculation, the PRC-wide rate is, for the preliminary determination, 78.52 percent. For the final determination, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparison

To determine whether Pangang's sales of ferrovanadium to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

We used EP methodology in accordance with section 772(a) of the Act because Pangang sold subject merchandise to unaffiliated U.S. customers prior to importation and because constructed export price (CEP) methodology was not otherwise warranted. At the time of sale, Pangang knew that its reported sales of the subject merchandise were destined for the United States.

We calculated EP based on the packed, delivered prices charged to the first unaffiliated customer for exportation to the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight, brokerage and handling, international freight, and marine insurance. Where foreign inland freight, marine insurance, and brokerage and handling were provided by NME companies, we used surrogate values from South Africa to value these expenses (*see* the Factors of Production Valuation Memorandum dated June 25, 2002, on file in the Central Records Unit (CRU) located in B–099 of the main Department of Commerce building). For sales with international freight provided by NME shipping companies we used as the surrogate value a freight cost obtained from U.S. customs import statistics (see the Factors of Production Valuation Memorandum).

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are 1) at a level of economic development comparable to that of the NME country; and 2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (*see* the memorandum from Jeffrey May to Holly Kuga dated February 28, 2002). However, we could find no evidence that any of these countries are significant producers of ''comparable merchandise.'' Where the countries normally considered at a level of economic development similar to that of the country in question do not produce comparable merchandise, the Department's practice is to find the most comparable surrogate country that is a

significant producer of comparable merchandise. *See Initiation Notice*, 66 FR 66398, 66400. Therefore, we requested and received from the Office of Policy a list of additional potential surrogate countries. We examined export and import statistics for each country on this list to determine if any of them are significant producers of ''comparable merchandise.''[3] We found evidence of significant production of ''comparable merchandise'' by only one of these countries, South Africa (*see* the memorandum from Karine Gziryan to the file regarding identification of significant producers of comparable merchandise dated June 25, 2002). Therefore, we have preliminarily calculated NV by applying South African values to Pangang's factors of production.Pangang's factors of production.

2. Factors of Production

In its questionnaire responses, Pangang reported factors of production for two companies which it identified as producers of the subject merchandise. After examining the record regarding the production process for ferrovanadium, we have preliminarily determined that one of the companies which Pangang identified as a producer of the subject merchandise in fact produces an input used in the production of subject merchandise, rather than the subject merchandise. Therefore, we have not relied upon the factors of production reported for this company. Rather, we have valued the input obtained from this company using South African surrogate values, and in accordance with section 773(c) of the Act, we calculated NV based on the factors of production utilized by the producer of the ferrovanadium during the POI.

Factors of production include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. *See* section 773(c) of the Act. To calculate NV, we multiplied the reported per-unit quantities by publicly available surrogate values from South Africa.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the surrogate values. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

We valued material inputs and packing materials (including vanadium slag, limestone, sulfuric acid, ammonium sulfuric acid, calcium chloride, soda, aluminum, inferior iron, paper bags, wooden pallets, wooden boxes, iron drums and plastic woven bags) using values from the appropriate Harmonized Tariff Schedule (HTS) number, from 2000 and 2001 South African imports and exports statistics reported in the United Nations Commodity Trade Statistics and the World Trade Atlas Import and Export Statistics. In accordance with the Department's practice, we used export values to calculate NV when import values for like products were not available. *See Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69503, (December 13, 1999).

We valued coke oven gas based on the value of natural gas published in the Energy Prices and Taxes quarterly statistics, III Quarter, 2001. Specifically, we calculated the value for coke oven gas by multiplying the value for natural gas by the ratio of the BTU equivalent of coke oven gas to the BTU equivalent of natural gas. We valued blast furnace gas based on the value of natural gas published in the Energy Prices and Taxes quarterly statistics, III Quarter, 2001. Specifically, we calculated the value for blast furnace gas by multiplying the value for natural gas by the ratio of the BTU equivalent of blast furnace gas to the BTU equivalent of natural gas.

We valued labor using the method described in 19 CFR 351.408(c)(3).

We valued electricity using the published prices for industrial electricity obtained from the South African Statistics.

To value truck freight rates, we used price quotes received from Freight Tainer, a South African transportation company. We valued rail rates using the surrogate value from South Africa employed in pure magnesium from the Russian Federation. *See Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 21319 (April 30, 2001). *See* also the Factors of Production Valuation Memorandum.

We based our calculation of selling, general and administrative (SG&A) expenses, overhead, and profit on the 2001 financial statement of Highveld Steel and Vanadium Corporation Limited, a South African producer of the subject merchandise.

For a complete analysis of surrogate values used in the preliminary determination, *see* the Factors of Production Valuation Memorandum.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing the U.S. Customs Service (Customs Service) to suspend liquidation of all entries of ferrovanadium from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

| Manufacturer/exporter | Weighted-Average Margin (percent) |
|---|---|
| Pangang Group International Economic & Trading Corporation | 73.29 |
| PRC-Wide Rate | 78.52 |

[3] Although Pangang claimed that India is a significant producer of comparable merchandise, it provided no evidence supporting its claim, nor did the Department find any indication that India was such a producer.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Pangang.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of ferrovanadium from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification report. Rebuttal briefs, whose content is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: June 25, 2002.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 02–16901 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–DS–S

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## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

**[Docket No. 011204291–2159–02]**

**RIN 0693–ZA47**

## Fire Research Grants Program; Availability of Additional Funds

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** On December 27, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2002 funding for its small grants programs, including the Fire Research Grants Program. NIST has recently received from the Department of Defense (DoD) $100,000 for the award of a grant or cooperative agreement as part of work conducted by NIST and DoD's Next Generation Fire Suppression Technology Program. NIST will award these funds under the Fire Research Grants Program. However, some of the requirements for the additional funds differ slightly from those announced for the Fire Research Grants Program. Therefore, all requirements and procedures applicable to proposals for this $100,000 appear in this notice.

**DATES:** Proposals must be received no later than 3:00 PM Eastern Daylight Time on August 7, 2002.

**SUPPLEMENTARY INFORMATION:**

**ADDRESSES:** Submit one signed original and two copies of the proposal to: Building and Fire Research Laboratory (BFRL), Attn.: Ms. Wanda Duffin, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8660, Gaithersburg, Maryland 20899–8660, Tel: (301) 975–6863, e-mail: *wanda.duffin@nist.gov,* Web site: *http://www.bfrl.nist.gov.*

One of the copies submitted may be in electronic format on a 3½″ diskette or CD-ROM (DOS-formatted, with text in Word 97 or 2000).

**Authority:** As authorized by 15 U.S.C. 278f, the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

### Program Description and Objectives

On December 27, 2001, the National Institute of Standards and Technology (NIST) announced in the **Federal Register** the availability of fiscal year 2002 funding for its small grants programs, including the Fire Research Grants Program (66 FR 66874). NIST has recently received from the Department of Defense (DoD) $100,000 for the award of a grant as part of work conducted by NIST and DoD's Next Generation Fire Suppression Technology Program. NIST will award these funds under the Fire Research Grants Program. A full description of the program is found in the December 27, 2001 **Federal Register** notice (66 FR 66874).

*Environmentally Acceptable Fire Suppressants:* The objective is to identify candidate fire suppressant chemicals that are effective, environmentally acceptable, and user-safe and that meet the operational requirements currently satisfied by halon 1301 in aircraft. In particular, NIST is seeking proposals to examine families of chemical compounds and determine by examination of the published literature, calculation and/or experiment (a) whether there are any potentially effective suppressants in the examined family(ies) and (b) the optimal such chemicals.

The proposal should, at a minimum, identify the family(ies) of compounds to be considered, the rationale for their selection, why there is reason to believe they will be effective, and how the attributes of the chemicals will be screened. The proposer should then describe how the optimal candidates will be identified, how many of these chemicals will be procured in sufficient quantity to verify the fire suppression efficiency, and how this verification will be performed. No testing on humans or animals is to be included. All partner and subcontractor

organizations and the technical principals shall be identified.

Travel budgets should include, at a minimum, one trip to the Halon Options Technical Working Conference, held each spring in Albuquerque, NM, and one trip to NIST in Gaithersburg, MD, in the autumn of each year.

NIST Technical Note 1443, ''Alternative Fire Suppressant Chemicals: A Research Review with Recommendations'' provides the most recent survey of the field and discusses desirable attributes of the chemicals. It should be consulted in preparing a proposal. It and additional background information on the research program of which this is a part can be found at the web site: *http://www.bfrl.nist.gov/866/NGP.*

The Project Leader and contact person for this topic is Richard Gann, and he can be reached at (301) 975–6866 or *richard.gann@nist.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, other non-profits, commercial organizations, international organizations, state, local and Indian tribal governments and Federal agencies with appropriate legal authority. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from non-NIST Federal agencies will be funded through an interagency transfer. Please Note: Before non-NIST Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another federal agency in excess of their appropriation. As this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

*Funding Availability:* A total of $100,000 is available to fund one grant or cooperative agreement in fiscal year 2002.

*Award Period:* Proposals will be considered for research projects from one to three years at a funding level not to exceed $100,000 per year. When a proposal for a multi-year project is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Funding for each subsequent year of a multi-year proposal will be contingent on satisfactory progress, continuing relevance to the mission of the program, and the availability of funds.

*Proposal Review Process:* All applications received in response to this announcement will be reviewed to determine whether or not they are complete and responsive. Incomplete or non-responsive applications will not be reviewed for technical merit. The Program will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Responsive proposals will be forwarded to the Project Leader who will assign them to appropriate reviewers. Proposals are evaluated for technical merit based on the evaluation criteria by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies, and experts from the fire research community at large. When non-Federal reviewers are used, reviewers may discuss the proposals with each other, but scores will be determined on an individual basis, not as a consensus. The Project Leader will make funding recommendations to the Chief, Fire Research Division based on the technical evaluation score and the relationship of the work proposed to the objectives of the program.

In making application selections, the Chief, Fire Research Division will take into consideration the results of the evaluations, the scores of the reviewers, the Project Leader's recommendation, the availability of funds, and relevance to the objectives of the Fire Research Grants Program, as described in the Program Description and Objectives section for this program.

The final approval of selected applications and award of financial assistance will be made by the NIST Grants Officer based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Applicants may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to award. The award decision of the Grants Officer is final. Applicants should allow up to 90 days processing time. The Program will retain one copy of each application that is not funded for three years for recordkeeping purposes. The remaining copies will be destroyed.

*Evaluation Criteria:* The technical evaluation criteria are as follows:

a. *Technical quality of the research.* Reviewers will assess the rationality, innovation and imagination of the proposal and the fit to NIST's in-house fire research program and the Next Generation Fire Suppression Technology Program (NGP). (0–35 points).

b. *Potential impact of the results.* Reviewers will assess the potential impact and the technical application of the results to our in-house programs, the fire safety community, and the NGP. (0–25 points )

c. *Staff and institution capability to do the work.* Reviewers will evaluate the quality of the facilities and experience of the staff to assess the likelihood of achieving the objective of the proposal. (0–20 points)

d. *Match of budget to proposed work.* Reviewers will assess the budget against the proposed work to ascertain the reasonableness of the request. (0–20 points)

*Matching Requirements:* Matching funds are not required.

*Application Kit:* For the *Fire Research Grants Program,* an application kit, containing all required application forms and certifications is available by contacting Ms. Wanda Duffin, (301) 975–6863, website: *http://www.bfrl.nist.gov/866/extramuralprogram.htm.*

*Additional Information:* The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh,* 172 F.Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

In addition, the following information is applicable to this program.

**Catalog of Federal Domestic Assistance Name and Number**

Measurement and Engineering Research and Standards—11.609

**FOR FURTHER INFORMATION CONTACT:** All grants related administration questions concerning these programs should be directed to the NIST Grants and Agreements Management Division at (301) 975–6328.

Where websites are referenced within this notice, those who do not have access to the internet websites may

contact the appropriate Program official to obtain information.

*Fees and/or Profit:* It is not the intent of NIST to pay fee or profit for any of the financial assistance awards that may be issued pursuant to this announcement.

*Automated Standardized Application for Payment System (ASAP):* During FY 2002 and becoming mandatory in FY 2003, the Department of Commerce will begin using the Department of Treasury's ASAP. NIST began using the ASAP system in July 2001 and continues to establish new accounts in ASAP. Awards made pursuant to this announcement may contain the ASAP payment clause. In order to receive payments for services under these awards, recipients will be required to register with the Department of Treasury and indicate whether or not they will use the on-line or voice response method of withdrawing funds from their ASAP established accounts. More information regarding ASAP can be found on-line at *http://www.fms.treas.gov/asap/index.html.*

**Paperwork Reduction Act**

The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

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 subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

**Type of Funding Instrument**

The funding instrument will be a grant or cooperative agreement, depending on the nature of the proposed work. A grant will be used unless NIST is ''substantially involved'' in the project, in which case a cooperative agreement will be used. A common example of substantial involvement is collaboration between NIST scientists and recipient scientists or technicians. Further examples are listed in Section 5.03.d of Department of Commerce Administrative Order 203–26, which can be found at *http://www.doc.gov/oebam/GCA manual.htm.* NIST will make decisions regarding the use of a cooperative agreement on a case-by-case basis. Funding for contractual arrangements for services and products for delivery to NIST is not available under this announcement.

**Classification**

This funding notice was determined to be ''not significant'' for purposes of Executive Order 12866.

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Applications under these programs are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for notices relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: July 2, 2002.

**Karen H. Brown,**

*Deputy Director, NIST.*

[FR Doc. 02–16987 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–13–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Coastal Zone Management: Federal Consistency Appeal by Collier Resources Company by an Objection by the State of Florida

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Dismissal of appeal.

On April 3, 2000, the Secretary of Commerce (Secretary) received a notice of appeal from Collier Resources Company (Appellant) pursuant to section 307(c)(3) (A) and (B) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.* and the Department of Commerce's implementing regulations 15 CFR part 930, subpart H. The appeal was taken from an objection by the State of Florida to Appellant's consistency certification for a National Park Service approval of a Landing Strips Plan of Operations to conduct geophysical exploration of a portion of their mineral estate beneath the Big Cypress National Preserve.

Appellant challenged Florida's CZMA objection on three procedural grounds: (1) Florida did not follow NOAA's regulations in listing the permits subject to CZMA consistency in its CMP and therefore, Appellant is not required to submit to CZMA consistency; (2) Florida's CZMA objection did not meet the requirements of NOAA's regulations; (3) Florida's CZMA objection is premature because Appellant had not submitted a consistency certification. Florida disputed all of Appellant's claims and, in addition, claimed that the Secretary of Commerce does not have authority under the CZMA to decide procedural matters such as those argued by Appellant.

In his letter dismissing this matter for good cause, the Under Secretary found that the Secretary of Commerce has the authority, as a matter of law, to review consistency appeals for compliance with CZMA Federal consistency procedures and issue decisions prior to development or consideration of the substantive issues; that Florida has not properly listed the National Park Service oil and gas exploration approvals in its coastal management program; that a consistency certification is an essential part of the Federal consistency review process and without it Florida cannot issue a valid objection. The Under Secretary decided that Florida's objection was not valid and dismissed the appeal for good cause.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, 301–713–2967.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: June 24, 2002.

**James R. Walpole,**

*General Counsel.*

[FR Doc. 02–17036 Filed 7–5–02; 8:45 am]

BILLING CODE 3510–08–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 070202B]**

### New England Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Skate and Monkfish Committees in July, 2002 to consider actions affecting New

England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will be held on Monday, July 22, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Danvers, MA and Portland, ME. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** *Monday, July 22, 2002, 9:30 a.m.*—Monkfish Oversight Committee Meeting.

Location: DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611.

The Committee will review the report of the Plan Development Team on options for revising the overfishing definition reference points and status determination criteria. The Committee will finalize its recommendations to the New England and Mid-Atlantic Councils for management alternatives to be analyzed in the Amendment 2 Draft Supplemental Environmental Impact Statement. Alternatives designed to achieve the approved goals and objectives include, but are not limited to: permit qualification criteria for vessels fishing south of 38°N; management program for a deepwater directed fishery in the Southern Fishery Management Area (SFMA); separation of monkfish days-at-sea (DAS) from multispecies and sea scallop DAS programs, including counting of monkfish DAS as 24-hour days; measures to minimize impacts of the fishery on endangered sea turtles; measures to minimize bycatch in directed in non-directed fisheries, including mesh size and other gear requirements; an exemption program for vessels fishing for monkfish outside of the Exclusive Economic Zone (EEZ) (in the NAFO Regulated Area); alternative measures to minimize impacts of the fishery on essential fish habitat (EFH); measures to improve data collection and research on monkfish, including mechanisms for funding cooperative research programs. The Committee may develop and recommend other management alternatives not included in the list above.

*Monday, July 22, 2002, 9:30 a.m.*—Skate Oversight Committee Meeting.

Location: Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee will include a discussion of outstanding issues identified by NMFS related to the Council's submission of the Draft Skate Fishery Management Plan (FMP) and Environmental Impact Statement (EIS). The committee will review and discuss PDT progress towards resolving the issues identified by NMFS. Also on the agenda will be a review of the revised sections of the Draft Skate FMP/EIS related to establishing a concrete link between skates and management measures in other fisheries and develop recommendations for Council consideration. They will review revised sections of the Draft Skate FMP/EIS related to specifications of Maximum Sustainable Yield (MSY)/Optimum Yield (OY) and rebuilding programs for overfished species and develop recommendations for Council consideration. There will also be a discussion of timing and location of public hearings for the Draft Skate FMP/EIS. The committee will also review progress towards development of a Skate Species Identification Guide.

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 listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 2, 2002.

**Theophilus R. Brainerd,**

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

[FR Doc. 02–17046 Filed 7–5–02; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:30 a.m., Thursday, July 11, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Rule Enforcement Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–17180 Filed 7–3–02; 2:33 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Tuesday, July 30, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Program Review.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–17181 Filed 7–3–02; 2:33 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10:00 a.m., Thursday, August 1, 2002.

**PLACE:** 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Commodity Futures Trading Commission Roundtable on Clearing Issues.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 02–17182 Filed 7–3–02; 2:33 pm]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Notice of Advisory Committee meeting

**AGENCY:** Department of Defense, DoD.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Defense Against Unconventional Use of Nuclear Weapons Against the U.S. Homeland will meet in closed session on August 6–8, 2002, at the Beckman Center, Irvine, CA. The Task Force will review the Department of Defense's (DoD) responsibilities, current capabilities, and the scope of activities conducted by DoD to ensure its future preparedness to prevent, deter, detect, identify, warn, defend against, respond to, and attribute attack of the U.S. homeland by unconventional delivery of conventional and unconventional nuclear weapons, as well as radiological weapons.

The mission of the DSB is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will determine the adequacy of the U.S. ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorist or sub national entities. The Task Force will also identify capabilities of the Department to provide protection against such nuclear attacks in support of national capabilities in homeland defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be close to the public.

Dated: June 28, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–16914 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Notice of Committee Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on B–52 Re-Engining will meet in closed session on July 15, 2002; August 27–28, 2002; and September 23, 2002, at the Institute for Defense Analysis, 4850 Mark Center Drive, Alexandria, VA. This Task Force will review and advise on key aspects of the policy and technology issues associated with re-engining the USAF B–52 fleet.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review the Department's policy and technology associated with re-engining the B–52 fleet. Re-engining has been undertaken for several weapons systems in the recent past, to include the KC–135 tanker fleet, and currently, the RC–135 fleet. Given the projected retention of the B–52 for several decades into the future, the Task Force will examine and assess the operational and supportability of B–52 re-engining from the perspectives of: effective operational weapons system employment, to include tanker demands; efficient ground and flight operations, to include fuel consumption factors; engine reliability and systems performance; technical and supportability risks of remaining with the TF–33 engine for future decades; streamlined support concepts from a best value viewpoint, to include total contractor support options; implementation issues, to include conventional as well as innovative acquisition and financing options; contracting and legal considerations—to include termination issues; and affordability of re-engining as compared to life extension concepts.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: June 28, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–16915 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense, DoD.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on the Role and Status of DoD Red Teaming Activities will meet in closed session on July 22, 2002, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review the role and status of Red Teaming in the Department of Defense (DoD) and recommend ways to make it a more effective tool.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defenses for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate current and past Red Team activities within the Department of Defense and its agencies, as well as other government and non-government organizations (including those initiated since September 11). The Task Force will prepare recommendations that are relevant to red teaming that portrays both state and non-state adversaries. It will also look at how the Department should work with other government departments and agencies to foster effective red teaming. The Task Force will address issues of red team products, processes and organization. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 28, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–16916 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board; Notice of Advisory Committee Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned will meet in closed session on July 18, 2002, in the Pentagon, Washington, DC. This Task Force will review current activities of Operation Enduring Freedom to determine both near and longer-term technical and operational considerations that could be used to improve this operation and future campaigns initiated in the War Against Terrorism.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate operational policy and procedures, command and control, intelligence, combat support activities, weapon system performance, and science and technology requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, this meeting will be closed to the public.

Dated: June 28, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 02–16917 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** DoD, Per Diem, Travel and Transportation Allowance Committee.

**ACTION:** Notice of Revised Non-Foreign Overseas Per Diem Rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 226. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 226 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**EFFECTIVE DATE:** July 1, 2002.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 225. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows.

Dated: June 28, 2002.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| THE ONLY CHANGES IN CIVILIAN BULLETIN 226 ARE UPDATES TO RATES FOR NOME, ST. GEORGE ISLAND, SEWARD, TALKEETNA, AND TOGIAK ALASKA. | | | | |
| ALASKA | | | | |
| ANCHORAGE [INCL NAV RES] | | | | |
| 05/01 - 09/15 | 161 | 85 | 246 | 05/01/2002 |
| 09/16 - 04/30 | 85 | 77 | 162 | 05/01/2002 |
| BARROW | 159 | 95 | 254 | 05/01/2002 |
| BETHEL | 129 | 66 | 195 | 05/01/2002 |
| CLEAR AB | 80 | 55 | 135 | 09/01/2001 |
| COLD BAY | 90 | 73 | 163 | 05/01/2002 |
| COLDFOOT | 135 | 71 | 206 | 10/01/1999 |
| COPPER CENTER | 99 | 63 | 162 | 05/01/2002 |
| CORDOVA | 105 | 89 | 194 | 05/01/2002 |
| CRAIG | 75 | 57 | 132 | 05/01/2002 |
| DEADHORSE | 95 | 67 | 162 | 05/01/2002 |
| DELTA JUNCTION | 79 | 58 | 137 | 05/01/2002 |
| DENALI NATIONAL PARK | | | | |
| 06/01 - 08/31 | 125 | 66 | 191 | 09/01/2001 |
| 09/01 - 05/31 | 90 | 63 | 153 | 09/01/2001 |
| DILLINGHAM | 95 | 69 | 164 | 05/01/2002 |
| DUTCH HARBOR-UNALASKA | 120 | 78 | 198 | 05/01/2002 |
| EARECKSON AIR STATION | 80 | 55 | 135 | 09/01/2001 |
| EIELSON AFB | | | | |
| 05/01 - 09/15 | 149 | 78 | 227 | 05/01/2002 |
| 09/16 - 04/30 | 75 | 70 | 145 | 05/01/2002 |
| ELMENDORF AFB | | | | |
| 05/01 - 09/15 | 161 | 85 | 246 | 05/01/2002 |
| 09/16 - 04/30 | 85 | 77 | 162 | 05/01/2002 |
| FAIRBANKS | | | | |
| 05/01 - 09/15 | 149 | 78 | 227 | 05/01/2002 |
| 09/16 - 04/30 | 75 | 70 | 145 | 05/01/2002 |
| FOOTLOOSE | 175 | 18 | 193 | 06/01/2002 |
| FT. GREELY | 79 | 58 | 137 | 05/01/2002 |
| FT. RICHARDSON | | | | |
| 05/01 - 09/15 | 161 | 85 | 246 | 05/01/2002 |
| 09/16 - 04/30 | 85 | 77 | 162 | 05/01/2002 |
| FT. WAINWRIGHT | | | | |
| 05/01 - 09/15 | 149 | 78 | 227 | 05/01/2002 |
| 09/16 - 04/30 | 75 | 70 | 145 | 05/01/2002 |
| GLENNALLEN | | | | |
| 05/01 - 09/30 | 137 | 61 | 198 | 09/01/2001 |
| 10/01 - 04/30 | 89 | 56 | 145 | 09/01/2001 |
| HEALY | | | | |
| 06/01 - 08/31 | 125 | 66 | 191 | 09/01/2001 |
| 09/01 - 05/31 | 90 | 63 | 153 | 09/01/2001 |
| HOMER | | | | |
| 05/15 - 09/15 | 109 | 76 | 185 | 06/01/2002 |
| 09/16 - 05/14 | 76 | 72 | 148 | 06/01/2002 |
| JUNEAU | 119 | 83 | 202 | 05/01/2002 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| KAKTOVIK | 165 | 86 | 251 | 05/01/2002 |
| KAVIK CAMP | 150 | 69 | 219 | 05/01/2002 |
| KENAI-SOLDOTNA | | | | |
| 04/01 - 10/31 | 95 | 76 | 171 | 05/01/2002 |
| 11/01 - 03/31 | 60 | 71 | 131 | 05/01/2002 |
| KENNICOTT | 159 | 77 | 236 | 05/01/2002 |
| KETCHIKAN | | | | |
| 05/01 - 09/30 | 130 | 80 | 210 | 05/01/2002 |
| 10/01 - 04/30 | 100 | 80 | 180 | 05/01/2002 |
| KING SALMON | | | | |
| 05/01 - 10/01 | 225 | 91 | 316 | 05/01/2002 |
| 10/02 - 04/30 | 125 | 81 | 206 | 05/01/2002 |
| KLAWOCK | 75 | 57 | 132 | 05/01/2002 |
| KODIAK | 105 | 81 | 186 | 05/01/2002 |
| KOTZEBUE | | | | |
| 05/01 - 08/31 | 167 | 99 | 266 | 06/01/2002 |
| 09/01 - 04/30 | 136 | 96 | 232 | 06/01/2002 |
| KULIS AGS | | | | |
| 05/01 - 09/15 | 161 | 85 | 246 | 05/01/2002 |
| 09/16 - 04/30 | 85 | 77 | 162 | 05/01/2002 |
| MCCARTHY | 159 | 77 | 236 | 05/01/2002 |
| METLAKATLA | | | | |
| 05/30 - 10/01 | 98 | 48 | 146 | 05/01/2002 |
| 10/02 - 05/29 | 78 | 47 | 125 | 05/01/2002 |
| MURPHY DOME | | | | |
| 05/01 - 09/15 | 149 | 78 | 227 | 05/01/2002 |
| 09/16 - 04/30 | 75 | 70 | 145 | 05/01/2002 |
| NOME | 120 | 103 | 223 | 07/01/2002 |
| NUIQSUT | 180 | 53 | 233 | 05/01/2002 |
| POINT HOPE | 130 | 70 | 200 | 03/01/1999 |
| POINT LAY | 105 | 67 | 172 | 03/01/1999 |
| PORT ALSWORTH | 135 | 88 | 223 | 05/01/2002 |
| PRUDHOE BAY | 95 | 67 | 162 | 05/01/2002 |
| SEWARD | | | | |
| 05/31 - 09/30 | 174 | 105 | 279 | 07/01/2002 |
| 10/01 - 05/30 | 79 | 96 | 175 | 07/01/2002 |
| SITKA-MT. EDGECUMBE | | | | |
| 05/16 - 09/16 | 159 | 98 | 257 | 05/01/2002 |
| 09/17 - 05/15 | 139 | 97 | 236 | 05/01/2002 |
| SKAGWAY | | | | |
| 05/01 - 09/30 | 130 | 80 | 210 | 05/01/2002 |
| 10/01 - 04/30 | 100 | 80 | 180 | 05/01/2002 |
| SPRUCE CAPE | 105 | 81 | 186 | 05/01/2002 |
| ST. GEORGE | 105 | 39 | 144 | 07/01/2002 |
| TALKEETNA | 100 | 89 | 189 | 07/01/2002 |
| TANANA | 120 | 103 | 223 | 07/01/2002 |
| TOGIAK | 100 | 39 | 139 | 07/01/2002 |
| UMIAT | 200 | 20 | 220 | 05/01/2002 |
| VALDEZ | | | | |
| 05/01 - 10/01 | 124 | 71 | 195 | 05/01/2002 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 10/02 - 04/30 | 69 | 66 | 135 | 05/01/2002 |
| WAINWRIGHT | 120 | 83 | 203 | 05/01/2002 |
| WASILLA | 95 | 60 | 155 | 01/01/2000 |
| WRANGELL | | | | |
| 05/01 - 09/30 | 130 | 80 | 210 | 05/01/2002 |
| 10/01 - 04/30 | 100 | 80 | 180 | 05/01/2002 |
| YAKUTAT | 110 | 68 | 178 | 03/01/1999 |
| [OTHER] | 80 | 55 | 135 | 09/01/2001 |
| AMERICAN SAMOA | | | | |
| AMERICAN SAMOA | 85 | 67 | 152 | 03/01/2000 |
| GUAM | | | | |
| GUAM (INCL ALL MIL INSTAL) | 135 | 69 | 204 | 11/01/2001 |
| HAWAII | | | | |
| CAMP H M SMITH | 112 | 72 | 184 | 06/01/2002 |
| EASTPAC NAVAL COMP TELE AREA | 112 | 72 | 184 | 06/01/2002 |
| FT. DERUSSEY | 112 | 72 | 184 | 06/01/2002 |
| FT. SHAFTER | 112 | 72 | 184 | 06/01/2002 |
| HICKAM AFB | 112 | 72 | 184 | 06/01/2002 |
| HONOLULU (INCL NAV & MC RES CTR) | 112 | 72 | 184 | 06/01/2002 |
| ISLE OF HAWAII: HILO | 108 | 69 | 177 | 06/01/2002 |
| ISLE OF HAWAII: OTHER | 89 | 54 | 143 | 05/01/2000 |
| ISLE OF KAUAI | | | | |
| 05/01 - 11/30 | 158 | 88 | 246 | 06/01/2002 |
| 12/01 - 04/30 | 203 | 93 | 296 | 06/01/2002 |
| ISLE OF KURE | 65 | 41 | 106 | 05/01/1999 |
| ISLE OF MAUI | 159 | 89 | 248 | 06/01/2002 |
| ISLE OF OAHU | 112 | 72 | 184 | 06/01/2002 |
| KEKAHA PACIFIC MISSILE RANGE FAC | | | | |
| 05/01 - 11/30 | 158 | 88 | 246 | 06/01/2002 |
| 12/01 - 04/30 | 203 | 93 | 296 | 06/01/2002 |
| KILAUEA MILITARY CAMP | 108 | 69 | 177 | 06/01/2002 |
| LUALUALEI NAVAL MAGAZINE | 112 | 72 | 184 | 06/01/2002 |
| MCB HAWAII | 112 | 72 | 184 | 06/01/2002 |
| NAS BARBERS POINT | 112 | 72 | 184 | 06/01/2002 |
| PEARL HARBOR [INCL ALL MILITARY] | 112 | 72 | 184 | 06/01/2002 |
| SCHOFIELD BARRACKS | 112 | 72 | 184 | 06/01/2002 |
| WHEELER ARMY AIRFIELD | 112 | 72 | 184 | 06/01/2002 |
| [OTHER] | 72 | 61 | 133 | 01/01/2000 |
| JOHNSTON ATOLL | | | | |
| JOHNSTON ATOLL | 0 | 14 | 14 | 05/01/2002 |
| MIDWAY ISLANDS | | | | |
| MIDWAY ISLANDS [INCL ALL MILITAR | 150 | 47 | 197 | 02/01/2000 |
| NORTHERN MARIANA ISLANDS | | | | |
| ROTA | 149 | 72 | 221 | 04/01/2000 |
| SAIPAN | 150 | 88 | 238 | 11/01/2001 |
| TINIAN | 85 | 71 | 156 | 05/01/2002 |
| [OTHER] | 55 | 72 | 127 | 04/01/2000 |
| PUERTO RICO | | | | |
| BAYAMON | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

| LOCALITY | MAXIMUM LODGING AMOUNT (A) + | M&IE RATE (B) = | MAXIMUM PER DIEM RATE (C) | EFFECTIVE DATE |
|---|---|---|---|---|
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| CAROLINA | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| FAJARDO [INCL CEIBA & LUQUILLO] | 82 | 54 | 136 | 01/01/2000 |
| FT. BUCHANAN [INCL GSA SVC CTR, | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| HUMACAO | 82 | 54 | 136 | 01/01/2000 |
| LUIS MUNOZ MARIN IAP AGS | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| MAYAGUEZ | 85 | 59 | 144 | 01/01/2000 |
| PONCE | 96 | 69 | 165 | 01/01/2000 |
| ROOSEVELT RDS & NAV STA | 82 | 54 | 136 | 01/01/2000 |
| SABANA SECA [INCL ALL MILITARY] | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| SAN JUAN & NAV RES STA | | | | |
| 04/11 - 12/23 | 155 | 71 | 226 | 01/01/2000 |
| 12/24 - 04/10 | 195 | 75 | 270 | 01/01/2000 |
| [OTHER] | 62 | 57 | 119 | 01/01/2000 |
| VIRGIN ISLANDS (U.S.) | | | | |
| ST. CROIX | | | | |
| 04/15 - 12/14 | 93 | 72 | 165 | 01/01/2000 |
| 12/15 - 04/14 | 129 | 76 | 205 | 01/01/2000 |
| ST. JOHN | | | | |
| 04/15 - 12/14 | 219 | 84 | 303 | 01/01/2000 |
| 12/15 - 04/14 | 382 | 100 | 482 | 01/01/2000 |
| ST. THOMAS | | | | |
| 04/15 - 12/14 | 163 | 73 | 236 | 01/01/2000 |
| 12/15 - 04/14 | 288 | 86 | 374 | 01/01/2000 |
| WAKE ISLAND | | | | |
| WAKE ISLAND | 60 | 32 | 92 | 09/01/1998 |

[FR Doc. 02–16918 Filed 7–5–02; 8:45 am]

BILLING CODE 5001–08–C

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before September 6, 2002.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 1, 2002.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

### Office of Educational Research and Improvement

*Type of Review:* New.

*Title:* Preschool Curricula Evaluation Research (PCER) Program.

*Frequency:* Semi-Annually.

*Affected Public:* Individuals or household.

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 7,217.

*Burden Hours:* 5,281.

*Abstract:* The primary objective of the PCER Program is to evaluate the effectiveness of selected preschool curricula on child development outcomes such as language skill, pre-reading and pre-math abilities, cognition, general knowledge, and social competence. Although there is a need for preschool programs to enhance their instructional content, there is weak evidence regarding the effectiveness of classroom curricula. These data will provide critical data to allow government agencies to recommend and preschool providers to choose among the array of available curricula. The respondents include children, teachers and parents.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2078. 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, Washingotn, 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 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. 02–16924 Filed 7–5–02; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

### Intent to Compromise Claim Against the Commonwealth of Puerto Rico Department of Education

**AGENCY:** Department of Education.

**ACTION:** Notice of intent to compromise claim with request for comments.

**SUMMARY:** The United States Department of Education (Department) intends to compromise a claim against the Commonwealth of Puerto Rico Department of Education (PRDE) now pending before the Office of Administrative Law Judges (OALJ), Docket No. 97–52–R. Before compromising a claim, the Department must publish its intent to do so in the **Federal Register** and provide the public an opportunity to comment on that action (20 U.S.C. 1234a(j)).

**DATES:** We must receive your comments on the proposed action on or before August 19, 2002.

**ADDRESSES:** Comments should be addressed to Kay Rigling, Esq., Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6E312, Washington, DC 20202–2110.

**FOR FURTHER INFORMATION CONTACT:** Kay Rigling, Esq., Telephone 202–401–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8399.

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 this proposed action. During and after the comment period, you may inspect all public comments in room 6E312, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

#### Assistance to Individuals With Disabilities in Reviewing Comments

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. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

**Background**

The claim in question arose when the Department's Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a program determination letter (PDL) on March 26, 1997. The PDL demanded a refund of $1,846,718 of funds provided to the PRDE for school years 1991–92 and 1992–93 under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 *et seq.* (1988)). Specifically, the Assistant Secretary found that the PRDE had used Chapter 1 funds to assess the educational needs of all public and private school children in violation of statutory and regulatory requirements that permitted the use of those funds only for programs designed to meet the special educational needs of low-achieving children. Accordingly, the Assistant Secretary disallowed the percent of the total assessment contract costs for 1991–92 and 1992–93 attributable to non-Chapter 1 students.

The PRDE filed a timely appeal with the OALJ. In response to a motion for partial summary judgment filed by the PRDE, the OALJ held that $1,017,440 of the Assistant Secretary's claim was barred from recovery by the statute of limitations in 20 U.S.C. 1234a(k). As a result, $829,278, representing costs incurred in school year 1992–93, remains at issue. The Administrative Law Judge assigned to the appeal granted the parties' joint motion to stay proceedings pending settlement negotiations.

During settlement discussions, the PRDE submitted substantial documentation to demonstrate that additional assessment costs were allowable Chapter 1 costs. For example, the PRDE demonstrated that certain fixed costs for in-service workshops and the preparation of required reports were necessary to meet Chapter 1 requirements, irrespective of the number of students assessed. Moreover, the PRDE demonstrated that it had properly assessed additional students no longer receiving Chapter 1 services in order to meet certain Chapter 1 requirements. After conducting a thorough review of this documentation, the Assistant Secretary has decided to accept the PRDE's documentation and withdraw $414,733 from the remaining claim, thereby reducing the claim to $414,545.

The Department proposes to compromise this remaining claim to $214,545. Based on litigation risks and costs of proceeding through the administrative and, possibly, court process for this appeal, the Department has determined that it would not be practical or in the public interest to continue this proceeding. In addition, in light of subsequent changes in the Chapter 1/Title I assessment requirements that permit testing all students, there is little or no likelihood of a recurrence of this problem. As a result, under the authority in 20 U.S.C. 1234a(j), the Department has determined that compromise of this claim for $214,545 is appropriate.

The public is invited to comment on the Department's intent to compromise this claim. Additional information may be obtained by calling or writing to Kay Rigling, Esq. at the telephone number and address listed at the beginning of this notice.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://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.

You may also view this document in text or PDF at the following site: *http://www.ed.gov.*

**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.gop.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 1234a(j).

Dated: July 2, 2002.

**Jack Martin,**

*Chief Financial Officer.*

[FR Doc. 02–16958 Filed 7–5–02; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Supplemental Environmental Impact Statement for Disposal of Immobilized Low-Activity Wastes From Hanford Tank Waste Processing

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its intent to prepare a supplemental environmental impact statement (Supplemental EIS) to the Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement (TWRS EIS, DOE/EIS–0189, August 1996). The TWRS EIS evaluated alternatives for the disposal of mixed, radioactive, and hazardous waste stored or projected to be stored in 177 underground storage tanks and approximately 60 active and inactive miscellaneous underground storage tanks associated with the Hanford Site's tank farm operations. The TWRS EIS also evaluated alternatives for the management and disposal of approximately 1,930 cesium and strontium capsules stored at the Hanford Site. This EIS included analyses of on-site disposal of immobilized (vitrified) low-activity waste resulting from chemical separation of the Hanford tank wastes. In its Record of Decision (62 FR 8693, February 1997), DOE decided on the Phased Implementation Alternative, to chemically separate and vitrify high-level and low-activity wastes retrieved from the tanks. In Phase I, the immobilized low-activity waste would be placed in near-surface, retrievable disposal vaults on-site. DOE is now reconsidering the type of disposal facility for the immobilized low-activity waste, the location of this disposal facility on the Site, and the physical form of the vitrified low-activity waste product. Accordingly, DOE invites public comment on the scope of the Supplemental EIS that would evaluate potential changes in the Department's plans.

**DATES:** The public scoping period begins with the publication of this Notice and extends through August 26, 2002. DOE invites all interested parties to submit written comments or suggestions during the scoping period. Written comments must be postmarked by August 26, 2002 and submitted to the DOE document manager (see **ADDRESSES** below). Comments postmarked after that date will be considered to the extent practicable.

Oral and written comments will be received at a public scoping meeting to be held on the date and at the location given below: Richland, Washington, August 20, 2002, 6:00 pm to 8:00 pm Red Lion Hanford House, Benton-Franklin Room, 802 George Washington Way, Richland, WA 99352.

For further information, see Public Scoping Meetings under **SUPPLEMENTARY INFORMATION** below.

**ADDRESSES:** Address comments on the scope of the Supplemental EIS to the DOE Document Manager: Ms. Gae M. Neath, U.S. Department of Energy, Post

Office Box 450, Mail Stop H6–60, Richland, WA 99352, Electronic Mail: Gae_M_Neath@rl.gov, Telephone: (509) 376–7828.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the TWRS EIS or the Supplemental EIS, contact Ms. Neath as described above. For information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–4600, Facsimile: (202) 586–7031, or leave a message at 1–800–472–2756 (toll free).

**SUPPLEMENTARY INFORMATION:** The Federal government established the Hanford Site, near Richland, Washington, in 1943, to produce plutonium for national defense as part of the Manhattan Project. Metallic uranium fuel was irradiated in nuclear reactors, and then the fuel was chemically processed to recover plutonium. Plutonium production at the Hanford Site stopped in 1988.

## Tank Wastes at the Hanford Site

Processing reactor fuel and related activities at the Hanford Site created a wide variety of radioactive wastes that have been stored in 177 underground tanks. Typically, the tank wastes are highly radioactive and mixed with hazardous waste.

There are 149 single-shell tanks storing about 125.7 million liters (ML) (33.2 million gallons (Mgal)) of waste at the Hanford Site. Single shell tanks have one steel wall, surrounded by reinforced concrete; they were constructed between 1944 and 1964 with a design life of 20 to 30 years. The single-shell tanks received waste from chemical processing until 1980. The capacity of most single-shell tanks is 1.9 ML to 3.8 ML (0.5 Mgal to 1.0 Mgal). The tanks are located under ground and are covered with 1.8 to 3 meters (6 to 10 feet) of earth. These tanks contain radioactive liquids, saltcake, and sludge. About half of the single-shell tanks have leaked or are assumed to have leaked. Approximately 3.9 ML (1.0 Mgal) of waste has leaked or spilled into the nearby soil. Over the years, much of the liquid stored in single-shell tanks has been evaporated or pumped to double-shell tanks as part of DOE's Interim Tank Stabilization Program to prevent further leakage.

There are twenty-eight 3.9 ML (1.0 Mgal) double-shell tanks at Hanford. The double-shell tanks were constructed between 1970 and 1986. Most of these tanks are designed for up to 50 years of storage. They are similar to the single-shell tanks, but double-shell tanks have a second steel containment wall. The space between the two walls is monitored for leaks, and none of the double-shell tanks has been known to leak. The double-shell tanks are used to treat and store a variety of liquid radioactive wastes from the single-shell tanks and from various Hanford Site processes. The double-shell tanks now contain about 79.5 ML (21.0 Mgal) of waste.

## Tank Waste Remediation System Environmental Impact Statement

The TWRS EIS addressed the management, treatment, storage, and disposal of the waste currently stored in the existing tanks and other wastes that may be generated during future decontamination and decommissioning activities at Hanford. The scope of the EIS included safe operations, waste retrieval, and treatment and disposal of tank waste. The EIS also addressed the management of approximately 1930 radioactive cesium and strontium capsules. The EIS evaluated 10 tank waste alternatives and 4 alternatives for managing the cesium and strontium capsules. The tank waste alternatives included a No Action Alternative and a range of action alternatives that involved varying degrees of tank waste retrieval and chemical separation of high-level and low-activity wastes. In all of the alternatives involving chemical separation of tank wastes, the high-level waste would be vitrified and stored until it could be shipped to a potential geologic repository. The low-activity waste would be immobilized and placed into near-surface concrete (grout) vaults on site.

The TWRS EIS Record of Decision (TWRS ROD) selected the Department's Preferred Alternative, the Phased Implementation Alternative, and deferred a decision on the cesium and strontium capsules. During Phase I (demonstration phase) of the Phased Implementation Alternative, DOE would retrieve a portion of the waste from the tanks and chemically separate the low-activity and high-level wastes. Demonstration-scale waste treatment facilities would be designed, constructed, and operated to immobilize tank waste. DOE also decided that immobilized low-activity waste would be prepared for future on site disposal in existing grout vaults. The phased approach would allow DOE to use the lessons learned from the demonstration phase to improve the design, construction, and operations of full-scale facilities constructed during Phase II.

In accordance with the TWRS ROD, DOE has continued to evaluate new information pertinent to Hanford tank waste remediation and is now reconsidering aspects of Phase I implementation for low-activity waste. Specifically, DOE is now considering a different type of disposal facility, a different on-site disposal location, and a different physical form of the vitrified low-activity waste product than were originally analyzed in the TWRS EIS. Accordingly, DOE has decided to prepare a Supplemental EIS.

## Proposed Action

DOE proposes to dispose of immobilized low-activity waste generated from the retrieval and treatment of tank wastes at the Hanford Site in near-surface trenches located in the 200 East Area of the Hanford Site. This proposal represents a change in DOE's decision in the TWRS ROD to retrievably dispose of low-activity wastes in concrete vaults.

The proposed low-activity waste form also is different from the Phased Implementation Alternative, under which tank waste would be immobilized in vitrified cullet, produced by quenching the molten glass in water following vitrification, resulting in gravel-sized pieces of glass. DOE proposes instead to immobilize low-activity waste in monoliths, produced by casting the molten glass into a canister, resulting in a single encased piece of glass.

In accordance with the TWRS ROD, DOE will continue to evaluate new information relative to the tank waste remediation program. As this information becomes available, DOE may consider new treatment technologies and would conduct further NEPA review as appropriate.

## Preliminary Alternatives

### Disposal of Immobilized Low-Activity Waste in Near-Surface Engineered Systems (i.e., Trenches) in the 200 East Area of the Hanford Site

This alternative reflects current DOE planning for disposal of immobilized low-activity waste generated from tank waste retrieval and chemical separation. The immobilized low-activity waste would be placed in sealed containers, and disposed of in lined trenches with leachate collection systems in the 200 East Area of the Hanford Site. DOE will evaluate the impacts associated with the disposal of immobilized low-activity waste in trenches and closing and capping the trenches with a range of barriers.

**Disposal of Immobilized Low-Activity Waste in Near-Surface Engineered Systems (i.e., Trenches) in the 200 West Area of the Hanford Site**

Under this alternative, the immobilized low-activity waste would be placed in sealed containters and disposed of in lined trenches with leachate collection systems at a representative site in the 200 West Area of the Hanford Site. DOE will evaluate the impacts associated with the disposal of the low-activity waste in trenches and closing and capping the trenches with a range of barriers.

**No Action Alternative**

In the Supplemental EIS, the No Action Alternative will be the Phased Implementation Alternative selected in the TWRS EIS ROD. Under this alternative, DOE would implement its previous decision concerning immobilized low-activity waste: retrievable disposal of the low-activity waste in concrete vaults located at the Hanford Site. The analysis of this alternative would be updated with information that has become available since the TWRS EIS was published to ensure an appropriate comparison among alternatives.

**Preliminary Issues Identified for Analysis**

The following issues have been preliminarily identified for analysis in the Supplemental EIS. This list is presented to facilitate public comment on the scope of the Supplemental EIS and is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

(1) Potential effects on the public and onsite workers from releases of radiological and nonradiological materials during normal operations and from reasonably forseeable accidents;

(2) Pollution prevention and waste minimization;

(3) Potential effects on air and water quality and other environmental consequences of normal operations and potential accidents;

(4) Potential cumulative effects of operations at the Hanford Site, including relevant impacts from past, present, and reasonably foreseeable activities at the Site;

(5) Potential effects on endangered species, floodplain/wetlands, archaeological/historical sites;

(6) Potential long-term effects on groundwater, surface water, and human health;

(7) Effects from normal transportation and postulated transportation accidents;

(8) Potential socioeconomic impacts on surrounding communities;

(9) Unavoidable adverse environmental effects;

(10) Short-term uses of the environment versus long-term productivity;

(11) Potential irretrievable and irreversible commitment of resources.

**Cooperating Agency**

The Hanford Communities, a Washington State intergovernmental group representing the local communities of Richland, West Richland, Kennewick, and Pasco, Benton County, and the Port of Benton, is a cooperating agency in the preparation of this Supplemental EIS.

**Public Scoping Meeting**

DOE invites the public to attend a scoping meeting at which comments may be presented on the scope of the Supplemental EIS. Oral and written comments will be considered equally in preparation of the Supplemental EIS. Oral and written comments will be received at the public scoping meeting as stated under **DATES** above.

DOE will begin the scoping meeting with a short presentation on the Supplemental EIS process, the proposed action, preliminary alternatives, and other related information. Individuals and organizations will then be invited to present comments. Requests to speak at the public meetings may be made by calling or writing to the DOE document manager (see **ADDRESSES** above). Registered speakers will be heard on a first-come, first-served basis. Requests to speak made at the meeting will be honored as time permits. Written comments will be accepted at the meeting. Speakers are encouraged to provide written versions of their oral comments for the record.

A moderator will conduct the meeting. DOE staff and the moderator may ask speakers clarifying questions. Individuals speaking on behalf of an organization must identify the organization. Each speaker will be allowed five minutes to present comments unless more time is available. Comments will be recorded by a court reporter and will become part of the scoping meeting record. A question and answer period will be held after speakers have had an opportunity to speak.

**Related NEPA Documentation**

Other NEPA documents that may be relevant to the Supplemental EIS include:

(1) Final Environmental Impact Statement for the Tank Waste Remediation System, Hanford Site, Richland, Washington, DOE/EIS–0189, U.S. Department of Energy, Washington, DC, 1996, Record of Decision issued February 1997, and Supplement Analyses 1 (June 1997), 2 (May 1998), and 3 (March 2001).

(2) Final Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS–0212, 1995, Record of Decision issued November 1995, U.S. Department of Energy, Richland, Washington.

(3) Final Environmental Impact Statement for Disposal of Hanford Defense High-Level Transuranic and Tank Wastes, Hanford Site, Richland, Washington, DOE/EIS–0113, 1987, Record of Decision issued April 1988, U.S. Department of Energy, Washington, DC.

(4) Final Environmental Statement for Waste Management Operations, Hanford Reservation, Richland, Washington, ERDA–1538, 1975. U.S. Energy Research and Development Administration, Washington, DC.

(5) Final Environmental Impact Statement for Hanford Comprehensive Land Use Plan, Hanford Site, Richland, Washington, DOE/EIS–0222, 1999, Record of Decision issued November 1999, U.S. Department of Energy, Washington, DC.

(6) Waste Management Programmatic Environmental Impact Statement, DOE/EIS–0200, U.S. Department of Energy, Washington, DC, May 1997. DOE published Records of Decision: TRU Treatment January 1998; Hazardous Waste Treatment August 1998; High-Level Waste Storage August 1999; Low-Level and Mixed Low-Level Waste, February 2000.

(7) Draft Environmental Impact Statement for Hanford Site Solid (Radioactive and Hazardous) Waste Program, DOE/EIS–0286, April 2002, U.S. Department of Energy, Richland, Washington.

(8) Draft Environmental Impact Statement for Idaho High-Level Waste and Facilities Disposition, DOE/EIS–0287, January 2001, U.S. Department of Energy, Washington, DC.

(9) Draft SEPA Environmental Impact Statement for Commercial Low-Level Radioactive Waste Disposal Site (US Ecology) on the Hanford Site, August 2000, Washington Department of Ecology, Olympia, Washington.

(10) Environmental Assessments.

- Trench 33 Widening in 218–W–5 Low-Level Burial Ground, DOE/EA–1203, FONSI July 1997;
- Widening Trench 36 of the 218–E–12B Low-Level Burial Ground, DOE/EA–1276, FONSI February 1999;

• Use of Existing Borrow Areas, Hanford Site, Richland, Washington, DOE/EA–1403, FONSI October 2001;

• Transuranic Waste Retrieval from the 218–W–4B and 218–W–4C Low-Level Burial Grounds, Hanford Site, Richland, Washington, DOE/EA–1405, FONSI March 2002.

Issued in Washington, DC on June 28, 2002.

**Beverly A. Cook,**

*Assistant Secretary, Office of Environment, Safety and Health.*

[FR Doc. 02–16946 Filed 7–5–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Notice of Availability of Solicitation

**AGENCY:** Albuquerque Operations Office, Department of Energy.

**ACTION:** Notice of availability of solicitation-research and development of the Nevada Solar Dish Power Project.

**SUMMARY:** The U.S. Department of Energy (DOE), Albuquerque Operations Office (AL), is seeking applications for research and development for a new project to deploy solar dish-engine systems at a site in southern Nevada. The Project, entitled The Nevada Solar Dish Power Project, is sponsored by the DOE's Concentrating Solar Power (CSP) Program to provide a ''bridge'' from R&D to commercialization of solar dish technology. Therefore, it is aimed at deploying systems that have established operational credentials not at performing R&D on system designs. The two project objectives are (1) to fabricate and field 1 megawatt or more of solar dish-engine systems in a power plant environment, and (2) to develop a project development, installation, and O&M database for dish-engine systems. We expect the installation and testing of the systems to start in late 2002 or early 2003 and to continue through 2004–2005. Since this is a pre-commercial deployment, we plan for dish-engine power plant to continue to operate in a sustainable manner following the completion of the project. We anticipate the authorization project funding in FY2002 and subsequent years, subject to Congressional appropriations. The financial assistance award(s) will be made on a competitive basis, utilizing an objective merit review process, and may consist of multiple cooperative agreements. A written proposal that includes technical and cost volumes will be solicited. A DOE technical panel will perform a scientific and engineering evaluation of each responsive application to determine the merit of the approach. DOE anticipates issuing one or more financial assistance instruments from this solicitation. Funding in the amount of $500,000 is anticipated to be available. Cost sharing by the applicant is desired.

**DATES:** Applications are to be received no later than 3 p.m. local prevailing time on August 1, 2002. Any application received after the due date will not be evaluated.

**FOR FURTHER INFORMATION CONTACT:** Martha L. Youngblood, Contracting Officer, DOE/AL, at (505) 845–4268 or by e-mail at *MYOUNGBLOOD@DOEAL.GOV*

**SUPPLEMENTARY INFORMATION:** The solicitation will be available on the Internet on or about July 1, 2002 at the following web site: http://e-center.doe.gov/. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. For profit and not-for-profit organizations, state and local governments, Indian tribes, and institutions of higher learning are eligible for awards under this solicitation. Collaboration between industry, industry organizations, and universities are encouraged.

Issued in Albuquerque, New Mexico June 21, 2002.

**Martha L. Youngblood,**

*Contracting Officer, Complex Support Branch, Contracts and Procurement Division.*

[FR Doc. 02–16945 Filed 7–5–02; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES02–36–001]**

### Consumers Energy Company; Notice of Application

July 1, 2002.

Take notice that on June 28, 2002, Consumers Energy Company submitted an amendment to its original application in this proceeding, under section 204 of the Federal Power Act. The amendment seeks a waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2 related to issuances used to refinance and replace its revolving credit facility.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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). All such motions and protests should be filed on or before the comment date. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

*Comment Date*: July 8, 2002.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–16969 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–392–000]**

### Ozark Gas Transmission, L.L.C.; Notice of Application

July 1, 2002.

Take notice that on June 21, 2002, Ozark Gas Transmission, L.L.C. (Ozark), 515 Central Park Drive, Oklahoma City, Oklahoma 73105, filed in Docket No. CP02–392–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing the construction of an upgrade to an existing delivery point in Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (call (202) 208–2222 for assistance).

Ozark proposes to upgrade its existing delivery point serving the Thomas B.Fitzhugh Generating Station (Fitzhugh) in Franklin County, Arkansas, in order to provide natural gas service to Arkansas Electric Cooperative Corporation (AECC). It is stated that AECC is re-powering the

generating station by replacing its current boiler with a dual fuel combustion turbine in order to increase its capacity and serve an expanding market. It is explained that Ozark's existing facilities would not provide sufficient capacity and pressure to supply gas to the electric generating station following the re-powering. It is asserted that Ozark will upgrade its measurement station by adding measurement devices to handle and accurately measure a minimum flow rate of 150 Mcf of gas per day (Mcfd) and a maximum flow rate of 45,000 Mcfd. Ozark estimates the cost of the proposed facilities at $475,212. Ozark requests that a certificate be issued by September 11, 2002, so that it can supply test gas to Fitzhugh by December 1, 2002.

It is explained that the proposed upgrade could have been authorized under the automatic provisions of Ozark's blanket certificate. However, the project is located in an area of Western Arkansas (Township 9N, Range 26W) that is the subject of a Stipulation and Consent Agreement entered into between Ozark's predecessor, Ozark Gas Transmission System and the Commission in 1982. This settlement agreement requires Ozark to obtain a certificate of public convenience and necessity from the Commission before constructing any pipeline or compression facility in Township 9N, Range 26W.

Any questions regarding this amendment should be directed to James F. Bowe, Jr., Attorney, Dewey Ballantine LLP, at (202) 429–1444.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before July 22, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–16968 Filed 7–5–02; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–980–006, et al.]**

## Bangor Hydro-Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. Bangor Hydro-Electric Company

[Docket No. ER00–980–006]

Take notice that on June 17, 2002, pursuant to Section 2.11 of the Settlement Agreement filed on November 1, 2000, in Docket No. ER00–980–000, and accepted and modified by the Federal Energy Regulatory Commission (Commission) on February 26, 2001, Bangor-Hydro Electric Company (Bangor Hydro) submits this informational filing showing the implementation of Bangor Hydro's open access transmission tariff formula rate for the charges that became effective on June 1, 2002.

Copies of this filing were sent to Bangor Hydro's open access transmission tariff customers that have requested to receive a copy (Indeck Maine Energy, L.L.C.), the Commission Trial Staff, the Maine Public Utilities Commission, and the Maine Public Advocate.

*Comment Date*: July 8, 2002.

### 2. Maine Public Service Company

[Docket No. ER00–1053–006]

Take notice that on June 17, 2002, pursuant to Section 2.4 of the Settlement Agreement filed on June 30, 2000, in Docket No. ER00–1053–000, and accepted by the Federal Energy Regulatory Commission on September 15, 2000, Maine Public Service Company (MPS) submits this

informational filing setting forth the changed open access transmission tariff charges effective June 1, 2002 together with back-up materials.

Copies of this filing were served on the parties to the Settlement Agreement in Docket No. ER00–1053–000, the Commission Trial Staff, the Maine Public Utilities Commission, the Maine Public Advocate, and current MPS open access transmission tariff customers.

*Comment Date*: July 8, 2002.

**3. Oncor Electric Delivery Company**

[Docket No. ER02–2019–000]

Take notice that on June 5, 2002, Oncor Electric Delivery Company (Oncor) tendered for filing its FERC Electric Tariff, Third Revised Volume No. 2 for transmission service to Tex-La Electric Cooperative of Texas (Tex-La) to supersede Oncor's current FERC Electric tariff, Second Revised Volume No. 2.

Oncor states that this filing has been served upon Tex-La and the Public Utility Commission of Texas.

*Comment Date*: July 15, 2002.

**4. Consolidated Edison Company of New York, Inc. (Complainant)**

[Docket No. ER02–2126–000]

Take notice that on June 20, 2002, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an unexecuted Interconnection Agreement (Agreement) between Con Edison and PSEG Power In-City I, LLC (PSEG Power). Con Edison requested that the Agreement be allowed to become effective September 1, 2002.

Con Edison states that copies of the filing were served upon PSEG Power, the New York Independent System Operator, and the New York Public Service Commission.

*Comment Date*: July 11, 2002.

**5. Boston Edison Company**

[Docket No. ER02–2127–000]

Take notice that Boston Edison Company (BECo), on June 20, 2002, tendered for filing pursuant to the provisions of Section 205 of the Federal Power Act unexecuted Service Agreements for the Town of Concord, Massachusetts, Municipal Light Department (Concord) and the Town of Wellesley, Massachusetts, Municipal Light Department (Wellesley), respectively, to take local network transmission service pursuant to the provisions of BECo's FERC Electric Tariff, Volume No. 8. BECo requests a June 1, 2002 effective date.

BECo states that copies of this filing have been served upon Concord and Wellesley and on the Massachusetts Department of Telecommunications and Energy.

*Comment Date*: July 11, 2002.

**5. Maine Electric Power Company and Central Maine Power Company**

[Docket No. ER02–2128–000]

Please take notice that on June 26, 2002 , Maine Electric Power Company (MEPCO) and Central Maine Power Company (CMP) tendered for filing a Support Services Agreement for support services provided by MEPCO to CMP, and designated as Rate Schedule FERC No. 18, Supplement No. 1.

*Comment Date*: July 11, 2002.

**6. American Electric Power Service Corporation**

[Docket No. ER02–2129–000]

Take notice that on June 20, 2002, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Network Integration Transmission Service Agreement for Central Virginia Electric Cooperative (CVEC). This agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Second Revised Volume No. 6.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service on and after May 21, 2002. A copy of the filing was served upon the CVEC and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

*Comment Date*: July 11, 2002.

**7. Lake Road Generating Company, L.P.**

[Docket No. ER02–2130–000]

Take notice that on June 20, 2002, Lake Road Generating Company, L.P. (Lake Road) tendered for filing an Electric Purchase/Sale Agreement for power sales (Agreement) with PG&E Energy Trading-Power, L.P. (PGET) pursuant to which Lake Road will sell electric wholesale services to PGET at market-based rates according to its FERC Electric Tariff, Original Volume No. 1.

*Comment Date*: July 11, 2002.

**8. Virginia Electric and Power Company**

[Docket No. ER02–2131–000]

Take notice that on June 20, 2002, Virginia Electric and Power Company (the Company) respectfully tendered for filing the following Service Agreement by Virginia Electric and Power Company to Sempra Energy Trading Corp. designated as Service Agreement No. 18 under the Company's Wholesale Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6, effective on June 15, 2000.

The Company respectfully requests an effective date of June 1, 2002, as requested by the customer. Copies of the filing were served upon Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date*: July 11, 2002.

**9. Dominion Energy Marketing, Inc.**

[Docket No. ER02–2133–000]

Take notice that on June 20, 2002, Dominion Energy Marketing, Inc. (the Company) respectfully tendered for filing the following Service Agreement by Dominion Energy Marketing, Inc. to Sempra Energy Trading Corp. designated as Service Agreement No 6 under the Company's Market-Based Sales Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 15, 2000. The Company requests an effective date of June 1, 2002, as requested by the customer.

Copies of the filing were served upon the Sempra Energy Trading Corp., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

*Comment Date*: July 11, 2002.

**10. Just Energy, LLC**

[Docket No. ER02–2134–000]

Take notice that on June 19, 2002, Just Energy, LLC (Just Energy) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Just Energy Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Just Energy intends to engage in wholesale electric power and energy purchases and sales as a marketer. Just Energy is not in the business of generating or transmitting electric power. Just Energy sells electricity to customers in various deregulated states.

*Comment Date*: July 11, 2002.

**11. Central Maine Power Company and Maine Electric Power Company**

[Docket No. ER02–2135–000]

Please take notice that on June 20, 2002 , Central Maine Power Company (CMP) and Maine Electric Power Company (MEPCO) tendered for filing a Support Services Agreement for support services provided by CMP to MEPCO, and designated as Rate Schedule FERC No. 115, First Revised

*Comment Date*: July 11, 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. 02–16971 Filed 7–5–02; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM01–8–000]**

### Revised Public Utility Filing Requirements; Notice

July 1, 2002.

In *Order Issuing Instruction Manual for Public Utilities to Use to File Their Electric Quarterly Reports*, issued on May 29, 2002, the Commission defined the specific filing instructions for complying with Order 2001, *Revised Public Utility Filing Requirements*, (67 FR 31043, FERC Stats. & Regs. ¶ 31,127, April 25, 2002). This notice is to provide a filing alternative to utilities with very large Electric Quarterly Report Filings.

Several utilities have expressed concern that their Electric Quarterly Report filings will be too large to conform to the current size constraints of FERC's electronic filing system. While the ultimate system will be able to accommodate these large filings, the interim method being used for the July 31, 2002 and October 31, 2002 reports is limited in the size of the files it can accept. The May 29, 2002 order did not fully address options for parties with filings larger than the current size limit of five megabytes (MB). To accommodate the larger filings, we will increase the file size limitation for the Electric Quarterly Report filings to ten MB.

All utilities filing Electric Quarterly Reports that are 10MB or less are required to file as instructed in the Commission's May 29, 2002 order issued in RM01–8–000.

Utilities filing Electric Quarterly Reports that are larger than ten MB shall break the Electric Quarterly Report into files that are each ten MB or less and electronically file each part via FERC's electronic filing system. The file name for each part filed must be identical except the last character(s) of the file name, before the file extension (i.e., .csv, .xls, or .xlb). That character shall identify each part sequentially. The first part to be filed shall end with the number ''1'' and be increased by one for each successive part filed. For example, if the first part filed is named myutilityeqr1.csv, the second part will be named myutilityeqr2.csv, and so on. By using this naming convention, staff and the public will be able to reconstruct the utility's Electric Quarterly Report by placing the parts filed in the correct order. The filings will be available in RIMS and/or FERRIS as multiple documents. The ten MB file size will reduce the adverse impact of network connection problems and PC configuration limitations when the public downloads the files.

If utilities experience difficulties filing their Electric Quarterly Reports, FERC staff will work with filers on a case by case basis to resolve technical issues. For assistance or to discuss problems with making electronic filings, contact the Helpline at 202–208–0258 during the Commission's business hours (8:30 a.m. to 5:00 p.m. Eastern time) or e-mail *efiling@ferc.gov*.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 02–16966 Filed 7–5–02; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP02–383–000]**

### National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed National Fuel Replacement/Abandonment Project and Request for Comments on Environmental Issues

July 1, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the National Fuel Replacement/Abandonment Project involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Allegany County, New York.[1] These facilities would consist of replacement of about 5.44 miles of 10-inch-diameter steel pipeline (Line PY–10) and abandonment of 27.35 miles of Line PY–10. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice National Fuel provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*http://www.ferc.gov*).

*Summary of the Proposed Project*

National Fuel seeks authority to:

• Replace 5.44 miles of 10-inch-diameter steel pipeline (Line PY–10)

[1] National Fuel's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

with 8-inch-diameter plastic pipeline extending from Station No. CV–RM–IT in the Town of Centerville, Allegany County, New York, to Station No. CE–RM–1T in the Town of Caneadea, Allegany County, New York; and

• Abandon 27.35 miles of Line PY–10 from Station CE–RM–2T in Caneadea, Allegany County, New York to Station AD–RM–11T in Andover, Allegany County, New York.

National Fuel proposes to abandon this section of pipeline because of its age, condition of pipeline, changing gas markets, and the cost to replace certain deteriorated sections of this pipeline. This abandonment would remove 12 points of delivery from National Fuel to National Fuel Gas Distribution Corporation (NFC). NFC has consented to the abandonment of the delivery points.

National Fuel states it would abandon Line PY–10 in place, except for those sections where the landowner specifically requests National Fuel to remove the pipeline.

The general location of the project facilities is shown in appendix 1.[2]

*Land Requirements for Construction*

Construction of the proposed facilities would require about 41.5 acres of land. Following construction, about 33.0 acres would be maintained as permanent right-of-way of which 0.60 acre would be new permanent right-of-way. The remaining 8.5 acres of land would be restored and allowed to revert to its former use.

*The EA Process*

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils
• Water resources, fisheries, and wetlands
• Vegetation and wildlife
• Endangered and threatened species
• Land use
• Cultural resources
• Hazardous waste
• Public safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

• Air quality and noise

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

*Currently Identified Environmental Issues*

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel. This preliminary list of issues may be changed based on your comments and our analysis.

• Two residences near mileposts 1.07 and 1.19 would be within 50 feet of the construction right-of-way for the replacement pipeline.
• The project has a potential to impact cultural resources.
• Five crossings of perennial streams are proposed for the replacement section of pipeline.
• Four wetlands would be crossed by the replacement section of the project: total impact 1.35 acres.

*Public Participation*

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes for the replacement), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
• Label one copy of the comments for the attention of (Gas Branch 2).
• Reference Docket No. CP02–383–000.
• Mail your comments so that they will be received in Washington, DC on or before July 31, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Login to File'' and then ''New User Account.''

*Becoming an Intervenor*

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

*Environmental Mailing List*

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

*Additional Information*

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 (direct line) or you can call the FERC operator at 1–800–847–8885 and ask for External Affairs. Information is also available on the FERC website (*http://www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–16967 Filed 7–5–02; 8:45 am]

**BILLING CODE 6717–01–P**

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 184–065 California]**

### El Dorado Irrigation District; Notice of Public Meetings

July 1, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador Counties, California. The project occupies lands of the El Dorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process.

On Monday, July 8, the aquatics-hydrology workgroup will meet from 9:00am until 4:00pm. On Tuesday, July 9, meetings will be held as follows:

Recreation Workgroup 9 am—12 noon
Terrestrial Workgroup 1 pm—4 pm

The workgroup meetings will focus on reviewing study results and the development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the Rancho Cordova Holiday Inn, located at 11131 Folsom Blvd, Rancho Cordova, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 02–16970 Filed 7–5–02; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7242–5]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Evaluation Studies of Water and Wastewater Laboratories

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Performance Evaluation Studies of Water and Wastewater Laboratories, EPA ICR No. 0234.08, OMB Control No. 2080–0021. This ICR currently expires on October 31, 2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be transmitted on or before September 6, 2002.

**ADDRESSES:** Please send comments, referencing EPA ICR No. 0234.08 and OMB Control No. 2080–0021, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR, contact Susan Auby at EPA by phone, at (202) 566–1672, by e-mail, at *Auby.Susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0234.08. For technical questions about the ICR contact Ed Glick, EPA, Technical Support Center, 26 West Martin Luther King Drive, (MS–140), Cincinnati, Ohio 45268, by fax number, (513) 569–7191, or e-mail, at *glick.ed@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those laboratories that participate in Performance Evaluation (PE) studies, the private sector companies who offer these studies, and those who use the data generated from their participation to determine the certification status of laboratories involved in producing environmental monitoring measurements in water. This includes EPA and state certifying authorities for the Drinking Water, Wastewater, and the National Pollution Discharge Elimination System (NPDES) programs.

*Title:* Performance Evaluation Studies of Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR No. 0234.08.). Expiring 10/31/2002.

*Abstract:* Performance Evaluation (PE) studies provide an objective demonstration that participating laboratories are capable of producing valid data for monitored pollutants. Participation in the Water Pollution (WP) studies that relate to wastewater analyses and Water Supply (WS) studies that relate to drinking water analyses are only mandated by the USEPA for those laboratories that receive federal funds to perform these analyses. However, states that certify laboratories for drinking water and wastewater analyses also often require successful participation in these studies for certification. Participation in the Discharge Monitoring Report-Quality Assurance (DMR–QA) studies is mandatory for those designated wastewater dischargers who are conducting self-monitoring analyses required under a National Pollutant Discharge Elimination System (NPDES) permit. EPA initiated these studies and originally administered them as part of the Agency's mandate to assure the quality of environmental monitoring data. Subsequently, all of these studies have been privatized. Private sector companies manufacture and distribute samples to the participating laboratories who then will submit their analytical results to these PE venders for evaluation. The PE venders then send evaluations of the submitted data to the laboratory and any other designated certifying/accrediting authority. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.6 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Estimated number of Respondents:* 17,168.

*Frequency of Response:* Annual.

*Estimated Total Annual Hour Burden:* 165,179 hours.

*Estimated Total Annualized Capital, Operating and Maintenance Cost Burden:* $9,938,880.

Dated: June 27, 2002.

**Gregory Carroll,**

*Center Chief, Technical Support Center, Office of Ground Water and Drinking Water, Office of Water.*

[FR Doc. 02–16993 Filed 7–5–02; 8:45 am]

BILLING CODE 6560–50–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Elementary-Secondary Staff Information Report

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final notice of information collection under review; Elementary-Secondary Staff Information Report EEO–5.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it has submitted the existing collection of information listed below to the Office of Management and Budget (OMB) for approval. No public comments were received in response to the EEOC's April 3, 2002 initial notice soliciting comments on the proposed collection.

**DATES:** Written comments on this final notice must be submitted on or before August 7, 2002.

**ADDRESSES:** Comments on this final notice must be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV.* Comments should also be sent to Frances M. Hart, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.)

**FOR FURTHER INFORMATION CONTACT:** Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street NW, Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

**SUPPLEMENTARY INFORMATION:** The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commissions estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

*Collection Title:* Elementary-Secondary Staff Information Report EEO–5.

*OMB-Number:* 0346–0003.

*Frequency of Report:* Biennial.

*Type of Respondent:* Public elementary and secondary school districts with 100 more employees.

*Description of Affected Public:* State and Local Government.

*Number of Responses:* 5,000.

*Reporting Hours:* 10,000 (revised).

*Federal Cost:* $80,000.

*Number of Forms:* 1.

The EEOC received no comment in response to that solicitation.

*Abstract:* Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirement for various kinds of employers. Public elementary and secondary schools systems and districts have been required to submit EEO–5 reports to EEOC since 1974 (biennially in even numbered years since 1982). Since 1996 each school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was discontinued in 1996, greatly reducing the respondent burden and cost.

EEO–5 data are used by the EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. The data are used to support EEOC decisions and conciliations, and for research. The data are shared with the Department of Education (Office for Civil Rights and the National Center for Education Statistics) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

*Burden Statement:* The estimated number of respondents included in the EEO–5 collection is 5,000 public elementary and secondary school districts. The number of responses per respondent is one report. The annual number of responses is approximately 5,000 and the total hours per response is between one (1) and five (5) hours. Based upon the large number of school districts responding via diskette, the total response burden has been re-estimated to equal 10,000 hours each time the survey is conducted (i.e. biennially). Respondents are continued to be encouraged to report data electronic media such as magnetic tapes and diskettes.

Dated: June 28, 2002.

For the Commission.

**Cari M. Dominguez,**

*Chair.*

[FR Doc. 02–16930 Filed 7–5–02; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 02–1440]**

## Freeze on the Filing of TV and DTV ''Maximization'' Applications in Channels 52–59

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces an immediate freeze on the filing of ''maximization'' applications, as defined further, by analog and digital television broadcast stations in the 698–746 MHz spectrum band, currently comprising television channels 52–59. This freeze will assist participants in Auction No. 44, consisting of spectrum licenses in the 698–746 MHz band (Lower 700 MHz band), to determine the areas potentially available in the band for the provision of service by auction winners before the channels are cleared of broadcast stations at the end of the DTV transition.

**DATES:** The Freeze became effective on June 18, 2002

**ADDRESSES:** 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Policy Division, Media Bureau, Federal Communications Commission, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** Beginning immediately, and until further notice, the Federal Communications Commission (''Commission'') will not accept for filing television modification applications that would increase a station's analog or DTV service area in channels 52–59 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) The DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Notice. We will continue to process applications on file as of June 18, 2002, the date this Notice was released. The Media Bureau may consider, on a case by case basis and consistent with the public interest, amendments to those applications to, for example, resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) Would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. In particular, we would be inclined to grant waivers of the freeze for broadcast stations that seek new tower sites due to the events of September 11, 2001.

As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

[FR Doc. 02–16903 Filed 7–5–02; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1423–DR]**

## Alaska; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1423–DR), dated June 26, 2002, and related determinations.

**EFFECTIVE DATE:** June 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated June 26, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from flooding beginning on April 27, 2002, through May 30, 2002, is of sufficient severity and magnitude to warrant a major

disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Lokey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

Fairbanks North Star Borough, McGrath and Lime Villages in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluck in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA for Individual Assistance.

Matanuska-Susitna Borough for Public Assistance.

All areas within the State of Alaska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–16932 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1423–DR]**

### Alaska; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Alaska, (FEMA–1423–DR), dated June 26, 2002, and related determinations.

**EFFECTIVE DATE:** June 27, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 26, 2002:

Fairbanks North Star Borough, McGrath and Lime Villages in the Iditarod Regional Education Attendance Areas (REAA), Aniak, Crooked Creek, Red Devil and Sleetmute in the Kuspuk REAA, Kwethluk in the Lower Kuskokwim REAA and Ekwok and New Stuyahok in the Southwest Region REAA for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–16935 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1418–DR]**

### Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Indiana, (FEMA–1418–DR), dated June 13, 2002, and related determinations.

**EFFECTIVE DATE:** June 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 2002:

Perry County for Individual and Public Assistance.

Clay County for Individual Assistance.

Greene, Jefferson, Johnson, Knox, Montgomery, Owen, Parke, Putnam, and Washington Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–16933 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1420–DR]**

### Iowa; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa (FEMA–1420–DR), dated June 19, 2002, and related determinations.

**EFFECTIVE DATE:** June 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective June 25, 2002.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–16934 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1412–DR]**

### Missouri; Amendment No. 8 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Missouri, (FEMA–1412–DR), dated May 6, 2002, and related determinations.

**EFFECTIVE DATE:** June 25, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rich Robuck, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Rich.Robuck@fema.gov.*

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 2002: Pemiscot County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Joe M. Allbaugh,**

*Director.*

[FR Doc. 02–16931 Filed 7–5–02; 8:45 am]

BILLING CODE 6718–02–P

## 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 July 23, 2002.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

*1. Delta National Bancorp*, Manteca, California; to directly engage *de novo* in lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 2, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc.02–17067 Filed 7–5–02; 8:45 am]

BILLING CODE 6210–01–S

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

### Meeting; Sunshine Act

**TIME AND DATE:** 10 a.m., Wednesday, July 10, 2002.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**FOR MORE INFORMATION PLEASE CONTACT:** Michelle A. Smith, Assistant to the Board; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 3, 2002.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 02–17183 Filed 7–3–02; 2:09 pm]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

### Office of Communications; Cancellation of an Optional Form by the Department of State

**AGENCY:** Office of Communications, GSA.

**ACTION:** Notice.

**SUMMARY:** The Department of State cancelled the following Optional Form: OF 230, Part 2, Application for Immigrant Visa and Alien Registration.

This form is now a State Department form. You can request copies of the new form from: Department of State, A/RPS/DIR, SA–22, 18th and G Streets NW; Suite 2400, Washington, DC 20522–2201, 202–312–9605.

**DATES:** Effective July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Cunningham, Department of State, 202–312–9605.

Dated: June 28, 2002.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer, General Services Administration.*

[FR Doc. 02–16980 Filed 7–5–02; 8:45 am]

**BILLING CODE 6820–34–M**

## GENERAL SERVICES ADMINISTRATION

### Office of Management Services; Printed Construction Cancellation of a Standard Form by the Department of Defense

**AGENCY:** Office of Management Services, GSA.

**ACTION:** Notice.

**SUMMARY:** Because of low usage only the padded, cutsheet version of the following Standard Form is cancelled by the Department of Defense: SF 153, COMSEC Material Report (NSN 7540–00–042–8528).

The 4-part marginally punched set form (NSN 7540–00–935–5860) is still current and available from the Federal Supply Service.

**DATES:** Effective July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: June 17, 2002.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer, General Services Administration.*

[FR Doc. 02–16978 Filed 7–5–02; 8:45 am]

**BILLING CODE 6820–34–M**

## GENERAL SERVICES ADMINISTRATION

### Notice of Availability (NOA) of the Final Environmental Impact Statement (FEIS) for the Future Master Plan Development for the Centers for Disease Control (CDC) in Chamblee, GA

Pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), as implemented by General Services Administration (GSA) Order PBS P 1095.4D, GSA announces its Notice of Availability (NOA) of the Final EIS for the proposed development and future build out for the CDC in Chamblee, Georgia. The proposed action includes the expansion of facilities and will include replacement buildings, additional buildings, parking structures, and infrastructure on Government-owned property located in Chamblee located south of Tucker Road between Peachtree Dekalb Airport and Buford Highway. The EIS has examined the impacts of this proposed development on the natural and human environment and included impacts to wetlands, floodplains, traffic, and other potential impacts identified by the community through the scoping process.

The EIS has addressed the potential impacts of two alternatives considered: the Proposed Action (Development Alternative), and No-Action Alternative (met facility requirements without full development on site). GSA solicited community input throughout this process, and incorporated comments into the decision process. Additional information is available from GSA at the following address: Mr. Phil Youngberg, Environmental Manager (4PT), General Services Administration (GSA), 77 Forsyth Street, Suite 450, Atlanta, GA 30303.

Dated: June 22, 2002.

**Phil Youngberg,**

*Environmental Manager (4PT).*

[FR Doc. 02–16979 Filed 7–5–02; 8:45 am]

**BILLING CODE 6820–23–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Health Services Research Small Research Grant on Quality of Care.

*Date:* July 8, 2002 (Open on July 8 from 4:00 p.m. to 4:10 p.m. and closed for remainder of the teleconference meeting).

*Place:* Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, Office of Director, Division of Scientific Review, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

''This notice is being published less than 15 days prior to the July 8 meeting due to the time constraints of reviews and funding cycles.''

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 28, 2002.

**Carolyn M. Clancy,**

*Acting Director.*

[FR Doc. 02–17061 Filed 7–5–02; 8:45 am]

**BILLING CODE 4160–90–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of

the Panel do not meet regularly and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). A grant application for a Small Research Grant Award is to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

*SEP Meeting on:* Health Services Research Small Research Grant on Guideline Adherence.

*Date:* July 16, 2002 (Open on July 16 from 1:30 p.m. to 1:40 p.m. and closed for remainder of the teleconference meeting).

*Place:* Agency for Healthcare Research and Quality, 2101 East Jefferson Street, 4th Floor, ORREP, Office of Director, Division of Scientific Review, Rockville, MD 20852.

*Contact Person:* Anyone wishing to obtain a roster of members or minutes of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 28, 2002.

**Carolyn M. Clancy,**

*Acting Director.*

[FR Doc. 02–17062 Filed 7–5–02; 8:45 am]

**BILLING CODE 4160–90–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 02152]**

### Dissertation Awards for Doctoral Candidates for Violence-Related Injury Prevention Research in Minority Communities; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2002 grant funds for Program Announcement Number 02152, entitled ''Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research was published in the **Federal Register** on May 9, Vol. 67, No. 90, pages 31344–31348. The notice is amended primarily to (1) open the program for all doctoral candidates for violence-related injury prevention research (2) change the application submission and deadline to August 7, 2002, (3) adjust the Evaluation Criteria section, and (4) emphasize the targeted minority population. The announcement is amended in most sections to identify the eligible dissertation candidates. Therefore, the entire amended announcement is submitted below.

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for Dissertation Awards to Doctoral Candidates for Violence-Related injury prevention research. This program addresses the ''Healthy People 2010'' focus areas of injury and violence prevention.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for The National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence in minority communities.
2. Reduce violence against women in minority communities.
3. Enhance the capacity of states to implement effective rape prevention and education programs for minority communities.
4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

The purposes of this program are to:

1. Stimulate and encourage doctoral candidates from a variety of academic disciplines and programs, including, but not limited to public health, health care, criminal justice, and behavioral and social sciences, to conduct violence-related injury prevention research.
2. Assist students in the completion of their dissertation research on a violence-related topic.
3. Encourage investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair of the dissertation committee or other academic advisor). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. This research initiative is aimed at providing students with assistance to complete their dissertation research on a violence-related topic and thereby increase their representation in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, more than 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are more than 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors, such as poverty, that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed that bring an understanding and sensitivity to the problems of violence as they affect

minority communities. The purpose of this extramural research grant program is to attract young scientists to the field of violence by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. This research program should also attract young minority scientists to the field of violence.

**B. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391 (a) (42 U.S.C. 280b(a)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

**C. Eligibility**

Eligible institutions include any United States public or private institution such as a university or college that supports an accredited doctoral level training program. The performance site must be domestic.

**Note:** Title 2 of the United States Code section 1611 states that an organization described in Section 501 (C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must be students in good standing enrolled in an accredited doctoral degree program. The applicant must have the authority and responsibility to carry out the proposed project. Applicants must be conducting or intending to conduct research in one of the areas described under the Research Objectives section. To receive this funding, applicants must have successfully defended their dissertation proposal, which must be verified in a letter of certification from the mentor (the chair of the dissertation committee or other academic advisor) and submitted with the grant application, if available, or before the negotiation and award of the grant.

**D. Availability of Funds**

Approximately $100,000 is expected to be available in FY 2002 for up to five dissertation awards for doctoral candidates. The availability of Federal funding may vary and is subject to change. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Applications that exceed the funding cap noted above will be excluded from the competition and returned to the applicant.

Grants to support dissertation research will provide no more than $20,000 in direct and indirect costs. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, dissertation printing costs, and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

Matching funds are not required for this program.

**E. Program Requirements**

*Research Objectives*

For the purpose of this program announcement the highest priority will be given to dissertation research that addresses the following areas of inquiry:

1. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence in minority communities.
2. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior in minority communities.
3. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior in minority communities.

*Other Special Conditions for Dissertation Research Grants*

1. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.
2. The responsible program official for CDC must be informed if there is a change of a mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.
3. A dissertation research grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).
4. Two copies of the dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.
5. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation grant.

**F. Content**

*Application*

Use the information in the Program Requirements and Evaluation Criteria sections described below to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, and economic losses in minority communities. This would include describing an understanding and sensitivity to the problems of violence as they affect minority communities.
2. Specific, and time-framed objectives.
3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.
4. A description of the principal investigator's role and responsibilities, along with that of the mentor.
5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. Letters of collaboration and a clear statement of their roles are required from all collaborating organizations.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries.

The narrative portion of the application that describes the Research Plan for the dissertation may not exceed fifteen pages.

*Additional Materials Required*

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which: (a) Fully identifies the members of the dissertation committee. (b) Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (Letters certifying approval of the dissertation proposal must be received before negotiation and award of the grant.) (c) Certifies that the institution's facilities and general environment are adequate to conduct the proposed research.

2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.

3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required course work for the degree with the exception of the dissertation.

4. A statement of the applicant's career goals and intended career trajectory.

5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

**G. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Forms may also be obtained by contacting the Grants Management Specialist in ''Where to Obtain Additional Information'' section of this announcement.

Applications must be received on or before 5:00 p.m. Eastern Time on August 7, 2002. Submit the application to: Technical Information Management-PA02152, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146.

*Deadline*

Applications shall be considered as meeting the deadline if they are received before 5:00 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline. Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

**Note:** Applicants who submitted their applications to meet the June 24, 2002, deadline have the opportunity to make changes to their original applications if they wish. Any revisions, however, must be submitted to meet the August 7, 2002, deadline.

**H. Evaluation Criteria**

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness and eligibility as outlined in Section ''C. Eligibility''. Applications that are incomplete, not responsive, from applicants that are not eligible, or request more than the dollar limit will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive will undergo a review by an objective review panel appointed by CDC. The objective review panel will use the current National Institutes of Health (NIH) criteria listed below to evaluate the methods and scientific quality of the applications.

1. *Significance:* Does this study address an important problem? There must be an overall match between the applicant's proposed topic and research objectives, and the research objectives described under ''Program Requirements'.

2. *Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the principal investigator demonstrate an understanding and sensitivity to the problems of violence as they affect minority communities?

3. *Innovation:* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies? Will it help expand and advance our understanding of violence, its causes, and prevention strategies?

4. *Investigator:* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor described?

5. *Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of agreements to collaborate or other institutional support?

6. *Ethical Issues:* What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. *Study Samples:* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

8. *Dissemination:* What plans have been articulated for disseminating findings?

**I. Other Requirements**

*Technical Reporting Requirements*

The grantee must provide CDC with an original plus two copies of:

1. The dissertation, including abstract that will constitute the final report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the dissertation abstract with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program:

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary application and associated forms can be found on the CDC homepage Internet *address—http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.'' If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Nancy Pillar, Grants Management Specialist, Procurement and Grants Office—PA02152, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone: (770) 488–2721, Email address: *nfp6@cdc.gov.*

For program technical assistance, contact:

Melinda Williams, Project Officer, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723, Telephone: (770) 488–4647, Email address: *mwilliams1@cdc.gov.*

Dated: June 27, 2002.

**Sandra R. Manning,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16939 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 02109]**

## War-Related Mental Health and Trauma Assessment Program; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to increase the understanding of war-related mental health and trauma morbidity in countries which have experienced complex emergencies.

The purpose of this program is to conduct innovative assessments of mental health and trauma related morbidity in complex emergency affected countries. This program will help to establish an improved understanding of the burden of war-related trauma and mental health morbidity in refugee populations, and how these effects may be mitigated.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmetal Health: Increase the understanding of the relationship between environmental exposures and health effects.

**B. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301, 307, and 317 of the Public Health Service Act, [42 U.S.C. 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**C. Eligible Applicants**

Assistance will be provided to university-based organizations or organizations with significant research capacity, including faith-based organizations. Eligible organizations will have:

1. Three years expertise in refugee health, landmine/war-related injuries, mental health and psycho-social trauma related to conflict, in at least four international settings.

2. Three years experience in conducting mental health and trauma related studies in populations affected by war and displacements in at least two less developed countries.

3. A history of publication in peer-reviewed literature in the fields of psycho-social trauma and mental health related to war in less developed countries.

**Note:** Title 2 of the United States Code, Section 1611, states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

**D. Availability of Funds**

Approximately $250,000 is available in FY 2002 to fund up to two awards. The average award will be $75,000 to $150,000. It is expected that awards will begin on or about October 1, 2002 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Matching funds are not required for this program.

Continuation awards within an approved project period will be made

on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**Use of Funds**

1. All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

2. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, the International Emergency Refugee Health Branch (IERHB) must be notified in advance of such purchases.

3. The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations.

4. The majority of funds are expected to directly support costs associated programs conducted under this announcement.

**E. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

*1. Recipient Activities*

a. Conduct an innovative assessment of:

(1) Psycho-social trauma related to war in a less developed country; and/or,

(2) Mental health morbidity related to war in a less developed country.

b. Present and disseminate findings from program activities so as to add to the body of knowledge and methods related to mental health and trauma related to war in less developed countries by publishing in peer-reviewed literature.

c. Make recommendations for future research needed to adequately describe the burden of psycho-social trauma related to war in less developed countries.

*2. CDC Activities*

a. Provide consultation and assistance, as needed, in planning and implementing psycho-social trauma and mental health related assessments.

b. Collaborate on the epidemiologic analysis and the preparation and presentation of findings from assessments.

**F. Content**

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double spaced, printed on one side, with one inch margins, and unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

In completing the application, the applicant should:

1. Concisely state the understanding of the objectives and program intent, problems, complexities, and interactions required of this cooperative agreement.

2. Present a plan and approach for carrying out the assessment of psycho-social trauma and/or mental health assessments in war-affected less developed countries.

3. Describe their experience in conducting similar work.

4. Identify the professional personnel to be assigned to this project and their commitment to this effort, and describe the support staff services to be provided.

5. Provide first year budget estimates for addressing each of the activities described.

**G. Submission and Deadline**

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *http:www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Narrative

The application must be received by 5 p.m. Eastern Time August 9, 2002. Submit the application to: Technical Information Management, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

*Deadline:* Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) ''carrier error'', when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) ''significant weather delays or natural disasters'', CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applicants will be notified of their failure to meet the submission requirements.

**H. Evaluation Criteria**

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Understanding of the problem (25 percent)

The extent to which the applicant demonstrates a clear, concise understanding of the nature of the problem to be addressed. This includes a description of the public health importance of the planned activities to be undertaken, and realistic presentation of proposed objectives.

2. Technical approach (25 percent)

The extent to which the applicant's proposed activities form a logical strategy, including a reasonable activity time line, and measurable management and effectiveness and data analysis steps.

3. Ability to carry out the project (25 percent)

The extent to which the applicant provides evidence of its technical ability to carry out the proposed project.

4. Personnel (25 percent)

The extent to which professional personnel involved in this project are

qualified, including evidence of experience similar to this project.

5. Budget (not scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

6. Human Subjects (not scored)

The applicant must state if there is a need of human subjects review and describe a plan for the review of their proposed project by an accredited review board. The CDC Institutional Review Board (IRB) will review and approve the protocol initially and on at least an annual basis until the research project is completed.

**I. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of

1. Semi-annual progress reports. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Awardee is required to obtain an annual audit of these CDC funds (program specific audit) by a U.S. based audit firm with international branches and current license/authority in-country, and in accordance with International Accounting Standards or equivalent.

A fiscal Recipient Capability Assessment may be required, pre-award or post-award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds. Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement in the application kit.

The following additional requirements are applicable to this program.

AR–1 Human Subjects
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting

**J. Where to Obtain Additional Information**

This and other CDC announcements, and the necessary application and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Vincent Falzone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2763, Email address: *vfalzone@cdc.gov.*

For program technical assistance, contact: Barbara Lopes Cardozo, International Emergency Refugee Health Branch, Division of Emergency and Environmental Health Services, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (F–48), Atlanta, GA 30341, Telephone number: (770) 488–4138, Email address: *BLopesCardozo@cdc.gov.*

Dated: June 29, 2002.

**Sandra R. Manning,**

*CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 02–16938 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Sleep Disorders Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Sleep Disorders Research.

*Times and Dates:* 2:00 p.m.–2:30 p.m., July 23, 2002 (Open); 2:40 p.m.–4:00 p.m., July 23, 2002 (Closed).

*Place:* Teleconference number (513) 841–4560.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to a FY02 Congressional appropriation.

*Contact Person for More Information:* Kathleen Goedel, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway Cincinnati, OH., telephone (513) 841–4560.

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: July 2, 2002.

**Joe Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–17101 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–19–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

*Name:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): New Investigator Awards for Unintentional, Violence, and Acute Case, Disability, and Rehabilitation Related Prevention Research, Program Announcement #02121.

*Times and Dates:* 6:00 p.m.–6:30 p.m., July 28, 2002 (Open); 6:30 p.m.–8:00 p.m., July 28, 2002 (Closed); 9:00 a.m.–5:00 p.m., July 29, 2002 (Closed).

*Place:* The Westin Hotel (Atlanta Airport) 4736 Best Road, Atlanta, GA 30337 Phone: (404) 762–7676.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to PA# 02121.

*Contact Person for More Information:* Dr. Lynda Doll, Associate Director for Science,

National Center for Injury Prevention and Control, CDC, 2939 Flowers Road, Atlanta, Georgia 30341; (770) 488–1430.

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: July 2, 2002.

**Joe Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 02–17105 Filed 7–5–02; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Regional Tribal Consultations

In 2001, a draft Tribal Consultation Policy was published with other Department of Health and Human Services tribal consultation policies. CDC is now seeking further tribal guidance on the proposed CDC policy and its implementation through regional tribal consultations and national meetings. We are inviting elected Tribal leaders, Executive Directors of American Indian/Alaska Native (AI/AN) organizations, Health Directors of AI/AN Programs, and AI/AN community members to attend scheduled Consultation meetings. The intent of this consultation process is to establish a mutually acceptable and more effective process of communication between CDC and AI/AN governments and communities. The goal is to establish protocol and to identify public health problems and priorities so that the needs of AI/AN populations are better incorporated into CDC plans and programs.

**SUMMARY:** CDC has scheduled a series of Regional Tribal Consultations to occur throughout the United States during the time frame of June through early October 2002. The CDC Regional Tribal Consultations will be geographically linked to the Indian Health Service areas as follows: Aberdeen Area (9/02), Alaska Area (8/23/02), Albuquerque Area (8/02), Bemidji Area (8/02–9/02), Billings Area (8/14/02), California Area (7/19/02), Nashville Area (6/12/02), Navajo Area (8/02), Oklahoma Area (7/9/02), Phoenix & Tucson Areas (7/17/02), and Portland Area (6/21/02). In addition, open forums & national tribal consultations will be scheduled at the following national meetings of AI/AN organizations during late summer and early fall of 2002: the Association of American Indian Physicians (AAIP), the National Alaska Native American Indian Nurses Association (NANAINA), the National Council on Urban Indian Health (NCUIH), the National Indian Health Board (NIHB), the Indian Health Leadership Council, the Self Government Advisory Committee, and the National Congress of American Indians.

*Background:* The CDC is committed to improving the public health of AI/AN communities, and recognizes both the unique relationship it has with its AI/AN constituents and the cultural diversity of that constituency. To formally guide its efforts to develop and implement a tribal consultation, CDC has established an agency-wide Tribal Consultation Working Group (TCWG), members of which are native and non-native representatives from each of the Centers, Institute, and Offices that compromise CDC and the Agency for Toxic Substances and Disease Registry (ATSDR). In addition to the TCWG, CDC has established two full-time professional staff positions within the Office of the Director to help plan and coordinate CDC programs for AI/AN communities: (1) The CDC Senior Tribal Liaison for Policy and Evaluation and (2) the CDC Senior Tribal Liaison for Science and Public health. Located in Atlanta, GA and Albuquerque, NM, respectively, these CDC staff members report directly to the Associate Director for Minority Health and serve as CDC points-of-contact for programs/issues relevant to issues of AI/AN public health.

The Agency's commitment to AI/AN public health is further demonstrated by the active engagement of more of its professional staff in broader, more systematic efforts to partner with AI/AN communities across the United States. Prominent among these efforts is the placement of CDC staff in situations that enhance tribal access to CDC personnel and resources (*e.g.,* at least 12 CDC professionals field-assigned to work exclusively on AIAN issues in Indian Country). CDC is also expanding its partnerships with the Indian Health Service (IHS) through multiple intra-agency agreements, collaborative projects, and the establishment of the IHS–CDC–ATSDR Senior Policy Group. A priority for IHS–CDC partnerships is the expansion of the Tribal Epidemiology Centers Program. Overall, CDC and its partners (tribal governments and communities, state health departments, academic institutions, and other federal organizations) are addressing multiple health issues that affect AI/AN communities including, but not limited to, diabetes, injuries, tobacco use, cardiovascular health, cancer, maternal-child health, and infectious diseases such as HIV/AIDS, other sexually transmitted diseases, hepatitis, antibiotic-resistant bacterial infections, and hantavirus.

**FOR FURTHER INFORMATION CONTACT:** To express interest in attending and/or participating in the regional or national consultations and to obtain additional information, contact:

Captain Pelagie ''Mike'' Snesrud, RN, Senior CDC Tribal Liaison for Policy and Evaluation, Office of the Director, Centers for Disease Control and Prevention, MS–D39, 1600 Clifton Rd, NE, Atlanta, Georgia 30329, Phone: 404–639–0432; Fax: 404–639–2195, Email: *pws8@cdc.gov.*

or

Captain Ralph T. Bryan, M.D., Senior CDC Tribal Liaison for Science and Public Health, Office of the Director, Centers for Disease Control and Prevention, c/o IHS National Epidemiology Program, 5300 Homestead Rd. NE., Albuquerque, NM 87110, Phone: 505–248–4226; Fax: 505–248–4393, e-mail: *rrb2@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The mission of the CDC is to promote health and quality of life by preventing and controlling disease, injury and disability. CDC accomplishes its mission by working with partners throughout the United States and the world to monitor health, detect and investigate health problems, conduct applied research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training. CDC's priorities are: Strengthen science for public health action, Collaborate with health care partners for prevention, Promote healthy living at all stages of life, and Work with partners to improve global health.

The CDC will honor the sovereignty of American Indian/Alaska Native Governments, respect the inherent rights of self-governance and commit to work on a government-to-government basis. The CDC will confer with Tribal Governments, Alaska Native Organizations and AIAN communities, before taking actions and/or making decisions that affect them. Consultation will include all AI/AN governments and organizations.

As does the Department of Health and Human Services, CDC considers consultation to be ''an enhanced form of communication which emphasizes trust, respect and shared responsibility. It is an open and free exchange of information and opinion among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process which results in effective collaboration and informed decision-making.''

Once all Regional Tribal Consultations National meetings are completed, a draft implementation document will be prepared and submitted to the National Indian Health Board, the National Congress of American Indians, and tribal governments for review and final comments. Thereafter, the finalized document will be published in the **Federal Register**, posted on appropriate federal and AI/AN websites, and made available to AI/AN governments and organizations.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the ATSDR.

Dated: July 1, 2002.

**John C. Burckhardt,**

*Acting Director, Management Analysis and Services Office, CDC.*

[FR Doc. 02–16936 Filed 7–5–02; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0458]**

### Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 27, 2002 (67 FR 14719), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0389. The approval expires on June 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–17073 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 01N–0459]**

### Agency Information Collection Activities; Announcement of OMB Approval; Food Labeling; Notification Procedures for Statements on Dietary Supplements

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Labeling; Notification Procedures for Statements on Dietary Supplements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 7, 2002 (67 FR 5828), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0331. The approval expires on December 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–17074 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0280]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

**DATES:** Submit written or electronic comments on the collection of information by September 6, 2002.

**ADDRESSES:** Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management

(HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12 (OMB Control No. 0910–0184)—Extension**

Section 12.22 (21 CFR 12.22), issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)(2)), sets forth the instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection, for which a hearing has been requested, must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 12.22 | 10 | 1 | 10 | 20 | 200 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on past filings. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order, estimate approximately 10 requests are received by the agency annually, with each requiring approximately 20 hours of preparation time.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–17075 Filed 7–5–02; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0268]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Cosmetic Product Voluntary Reporting Program

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Cosmetic Product Voluntary Reporting Program.

**DATES:** Submit written or electronic comments on the collection of information by September 6, 2002.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this

requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Cosmetic Product Voluntary Reporting Program—(21 CFR 720.4, 720.6, and 720.8)—(OMB Control Number 0910–0030)—Extension**

Under the Federal Food, Drug, and Cosmetic Act (the act), cosmetic products that are adulterated under section 601 of the act (21 U.S.C. 361) or misbranded under section 602 of the act (21 U.S.C. 362) cannot legally be distributed in interstate commerce. To assist FDA in carrying out its responsibility to regulate cosmetics, FDA requests under part 720 (21 CFR part 720), but does not require, that firms that manufacture, pack, or distribute cosmetics file with the agency an ingredient statement for each of their products (§ 720.4). Ingredient statements for new submissions (§ 720.4) are reported on Form FDA 2512, ''Cosmetic Product Ingredient Statement,'' and on Form FDA 2512a, a continuation form. Changes in product formulation (§ 720.6) are also reported on Forms FDA 2512 and FDA 2512a. When a firm discontinues the commercial distribution of a cosmetic, FDA requests that the firm file Form FDA 2514, ''Discontinuance of Commercial Distribution of Cosmetic Product Formulation'' (§ 720.6). If any of the information submitted on or with these forms is confidential, the firm may submit a request for confidentiality under § 720.8.

FDA uses the information received on these forms as input for a computer-based information storage and retrieval system. These voluntary formula filings provide FDA with the best information available about cosmetic product formulations, ingredients and their frequency of use, businesses engaged in the manufacture and distribution of cosmetics, and approximate rates of product discontinuance and formula modifications. FDA's database also lists cosmetic products containing ingredients suspected to be carcinogenic or otherwise deleterious to the public health. The information provided under the Cosmetic Product Voluntary Reporting Program assists FDA scientists in evaluating reports of alleged injuries and adverse reactions to the use of cosmetics. The information also is utilized in defining and planning analytical and toxicological studies pertaining to cosmetics.

FDA shares nonconfidential information from its files on cosmetics with consumers, medical professionals, and industry. For example, by submitting a Freedom of Information Act request, consumers can obtain information about which products do or do not contain a specified ingredient and about the levels at which certain ingredients are typically used. Dermatologists use FDA files to cross-reference allergens found in patch test kits with cosmetic ingredients. The Cosmetic, Toiletry, and Fragrance Association, which is conducting a review of ingredients used in cosmetics, has relied on data provided by FDA in selecting ingredients to be reviewed based on frequency of use.

The Cosmetic Product Voluntary Reporting Program was suspended during fiscal year (FY) 1998 due to a lack of budgetary funding and was reinstated at the beginning of FY 1999. The estimated hour burden is 60 percent of the previous level reported in 1999. In general, the larger cosmetic companies have resumed participating in the program, whereas the smaller companies are lagging.

FDA estimates the annual burden of this collection of information as follows:
H=≥1≥≤Form No.
Annual Frequency per Response
H=≥1≥≤Hours per Response

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | Number of Respondents | Total Annual Responses | Total Hours | | | |
|---|---|---|---|---|---|---|
| 720.1–720.4 (new submissions) | FDA 2512<br>FDA 2512a | 54 | 35.6 | 1,920 | 0.5 | 960 |
| 720.4 and 720.6 (amendments) | FDA 2512<br>FDA 2512a | 54 | 1.4 | 75 | 0.33 | 25 |
| 720.3 and 720.6 (notices of discontinuance) | FDA 2514 | 54 | 0.4 | 20 | 0.1 | 2 |
| 720.8 (requests for confidentiality) | | 0 | 0 | 0 | 1.5 | 0 |
| Total | | 54 | | 2,015 | | 987 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number and frequency of submissions received in the past and on discussions between FDA staff and respondents during routine communications. The actual time required for each submission will vary in relation to the size of the company and the breadth of its marketing activities.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–17076 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02N–0063]**

### Agency Information Collection Activities; Announcement of OMB Approval; Consumer Surveys on Food and Dietary Supplement Labeling Issues

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Consumer Surveys on Food and Dietary Supplement Labeling Issues'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 21, 2002 (67 FR 8030), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0492. The approval expires on December 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: June 27, 2002.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 02–17078 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on August 1, 2002, from 8:30 a.m. to 4:30 p.m., and on August 2, 2002, from 8:30 a.m. to 3 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On August 1, 2002, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an excimer laser system for use in wavefront guided laser in situ keratomileusis correction for the reduction or elimination of myopia up to -7 diopters (D) with less than -0.50D of astigmatism at the spectacle plane in subjects who are 21 years of age or older. On August 2, 2002, the committee will discuss issues related to the development of an FDA guidance, an American National Standards Institute standard, and an International Standards Organization standard for intraocular lenses for the treatment of myopia or hyperopia in phakic patients. The committee will address questions on clinical study design, specular microscopy (endothelial cell counts), lens opacity, and contrast sensitivity. Background information for each day's topic, including the attendee list, agenda, and questions for the committee, will be available to the public 1-business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the August 1, 2002, session will be posted on July 31, 2002; material for the August 2, 2002, session will be posted on August 1, 2002.

*Procedure*: On both days from 8:30 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 26, 2002. On August 1, 2002, formal oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. On August 2, 2002, oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of committee deliberations on the agenda topics, a 30-minute open public session will be conducted for interested persons to address issues specific to the topics before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 26, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*. On August 1, 2002, from 3 p.m. to 4:30 p.m., the meeting will be closed to permit FDA staff to present to the committee trade secret and/or confidential commercial information relevant to pending and future device submissions for vitreoretinal, surgical and diagnostic devices, intraocular and corneal implants, and contact lenses. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee

meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 26, 2002.

**William K. Hubbard,**

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

[FR Doc. 02–16904 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

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

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of the Committee*: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on July 22, 2002, from 8:30 a.m. to 5 p.m., and on July 23, 2002, from 8 a.m. to 11 a.m.

*Location*: DoubleTree Hotel, Plaza I and II, 1750 Rockville Pike, Rockville, MD.

*Contact Person*: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: On July 22, 2002, the committee will hear a presentation on post-market surveillance of vacuum assisted delivery devices. The committee will also discuss, make recommendations, and vote on a premarket approval application for a permanent contraceptive device. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the July 22, 2002, session will be posted on July 19, 2002.

*Procedure*: On July 22, 2002, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 11, 2002. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m., and 3:30 p.m. and 4 p.m. on July 22, 2002. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before July 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On July 23, 2002, from 8 a.m. to 11 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future device issues. In addition, the committee will discuss and review trade secret and/or confidential commercial information presented by a sponsor.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

FDA regrets that it was unable to publish this notice 15 days prior to the July 22, 2002, Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issue(s) to public discussion and qualified members of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 2, 2002.

**William K. Hubbard,**

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

[FR Doc. 02–17115 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 02D–0274]**

### Denture Cleaners, Adhesives, Cushions, and Repair Materials; Revocation of Compliance Policy Guide 7124.05

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is revoking the Compliance Policy Guide (CPG) entitled ''Sec. 315.200 Status of Dental Supplies such as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05).'' This CPG is no longer necessary because the agency has classified these products as devices.

**DATES:** The revocation is effective August 7, 2002.

**ADDRESSES:** Submit written requests for single copies of the CPG to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (301–827–0411) or fax your request to 301–827–0482.

A copy of the CPG may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey B. Governale, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0411.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA issued the CPG entitled ''Sec. 315.200 Status of Dental Supplies such

as Denture Cleaners, Adhesives, Cushions, and Repair Materials as a Device or Cosmetic (CPG 7124.05)'' on April 26, 1976. This CPG, as revised on August 9, 1988, considered these products to be devices within the meaning of section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)).

In accordance with section 513 of the act (21 U.S.C. 360c), the agency has classified dental products as devices by regulation, including but not limited to:

1. Karaya and sodium borate with or without acacia denture adhesive (21 CFR 872.3400)
2. Ethylene oxide homopolymer and/or carboxymethylcellulose sodium denture adhesive (21 CFR 872.3410)
3. Carboxymethylcellulose sodium and cationic polyacrylamide polymer denture adhesive (21 CFR 872.3420)
4. Ethylene oxide homopolymer and/or karaya denture adhesive (21 CFR 872.3450)
5. Polyacrylamide polymer (modified cationic) denture adhesive (21 CFR 872.3480)
6. Carboxymethylcellulose sodium and/or polyvinylmethylether maleic acid calcium-sodium double salt denture adhesive (21 CFR 872.3490)
7. Polyvinylmethylether maleic anhydride (PVM–MA), acid copolymer, and carboxymethylcellulose sodium (NACMC) denture adhesive (21 CFR 872.3500)
8. Over-the-counter (OTC) denture cleanser (21 CFR 872.3520)
9. Mechanical denture cleaner (21 CFR 872.3530)
10. OTC denture cushion or pad (21 CFR 872.3540)
11. OTC denture repair kit (21 CFR 872.3570)
12. Denture relining, repairing, or rebasing resin (21 CFR 872.3760)

Given these device classifications, FDA is revoking CPG 7124.05, in its entirety, to eliminate unnecessary compliance policy.

## II. Electronic Access

Prior to August 7, 2002, a copy of the CPG may also be downloaded to a personal computer with access to the Internet. The Office of Regulatory Affairs (ORA) home page includes the referenced document that may be accessed at http://www.fda.gov/ora/compliance_ref/cpg/cpgdev/cpg315–200.html.

Dated: June 28, 2002.

**Dennis E. Baker,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 02–17079 Filed 7–5–02; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September:

*Name:* Council on Graduate Medical Education (COGME).

*Date and Time:* September 11, 2002, 8:30 a.m.–4:30 p.m., September 12, 2002, 8 a.m.–11:15 a.m.

*Place:* Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

*Agenda:* The agenda for September 11 will include: Welcome and opening comments from the Associate Administrator for Health Professions, the Chair of COGME, and the Acting Executive Secretary of COGME. There will be a panel of speakers on the topic of ''Competencies in Graduate Medical Education'' and a panel of speakers on the topic of ''Financial Situation of Teaching Hospitals.''

In the afternoon the Council's three workgroups will convene. They are: Workgroup on Diversity, Workgroup on Graduate Medical Education Financing, and Workgroup on Workforce.

The agenda for September 12 will include a discussion of the June 17–18 Health Professions Education Summit co-sponsored by the Council on Graduate Medical Education (COGME), the National Advisory Council on Nurse Education and Practice, and the Institute of Medicine. The three workgroup chairs will give their reports. There will be a discussion of the status of COGME's 2002 Summary Report, plans for future work, and new business.

Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Agenda items are subject to change as priorities dictate.

Dated: July 2, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02–17047 Filed 7–5–02; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 2002.

*Name:* Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

*Date and Time:* August 19, 2002; 8:30 a.m.–4:45 p.m.

*Place:* The Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

The meeting is open to the public.

*Purpose:* The Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD) will discuss and consider criteria for performance measurement and outcome assessment of primary care medicine and dentistry grant programs that are funded through Title VII, section 747 of the Public Health Service Act, as amended. The Committee will review current performance measurement and outcome assessment methods, discuss potential alternative methods, and consider recommendations of potential performance measurement and outcome assessment methods that might be employed in the future.

*Agenda:* The meeting on Monday, August 19 will begin with welcoming and opening comments from the Chair and Executive Secretary. A plenary session will follow in which Division of Medicine and Dentistry staff will review criteria currently used to measure performance and assess the outcome of primary care medicine and dentistry grant programs funded through Title VII, section 747 of the Public Health Service Act, as amended. Following this presentation, Committee members will discuss the criteria currently used, consider potential alternative criteria for performance measurement and outcome assessment of the aforementioned grant programs, and formulate recommendations for alternative criteria.

Anyone interested in obtaining a roster of members or other relevant information should write or contact Stan Bastacky, D.M.D., M.H.S.A., Deputy Executive Secretary, Advisory Committee on Training in Primary Care Medicine and Dentistry, Parklawn Building, Room 9A–21, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326. The Web address for information on the Advisory Committee is *http://www.bhpr.hrsa.gov/dm/actpcmd.htm.*

Dated: July 2, 2002.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 02–17071 Filed 7–5–02; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Refugee Resettlement

### Final Notice of Allocations to States of FY 2002 Funds for Refugee Social Services

**AGENCY:** Office of Refugee Resettlement (ORR), ACF, HHS.

**ACTION:** Final notice of allocations to States of FY 2002 funds for refugee social services.

**SUMMARY:** This notice establishes the allocations to States of FY 2002 funds for social services under the Refugee Resettlement Program (RRP).

This notice includes $11.5 million in two set-aside allocations to: Support programs to promote healthy families through community-based organizations; and provide planned upgrading of employment, employment retraining, and subsidized employment tied to a labor market need leading to an offer of unsubsidized employment.

**DATES:** Effective date is July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** Barbara R. Chesnik, Division of Refugee Self-Sufficiency, telephone: (202) 401–4558, email: *bchesnik@acf.dhhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Amounts For Allocation

The Office of Refugee Resettlement (ORR) has available $158,600,000 in FY 2002 refugee social service funds as part of the FY 2002 appropriation for the Department of Health and Human Services (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002, Public Law 107–116).

The FY 2002 House Appropriations Committee Report (H.R. Rept. No. 107–229) reads as follows with respect to social services funds:

> The bill provides $158,621,000 for social services, $15,000,000 more than the fiscal year 2001 appropriation and the budget request. Funds are distributed by formula as well as through the discretionary grant making process for special projects. The bill includes $15,000,000 to increase educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentration of refugees.
>
> The Committee agrees that $19,000,000 is available for assistance to serve communities affected by the Cuban and Haitian entrants and refugees whose arrivals in recent years have increased. The Committee has set aside $26,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. Finally, the Committee has set aside $14,000,000 to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. The Committee urges ORR to assist refugees at risk of losing, or who have lost, benefits including SSI, TANF and Medicaid, in obtaining citizenship.

The FY 2002 Conference Report on Appropriations (H.R. Conf. 107–342) reads as follows concerning social services:

> The conference agreement appropriates $460,203,000, instead of $460,224,000 as proposed by the House and $445,224,000 proposed by the Senate. Within this amount, for Social Services, the agreement provides $158,600,000 instead of $156,621,000 as proposed by the House and $143,621,000 as proposed by the Senate.
>
> The conferees specify that funds for section 414 of the Immigration and Nationality Act shall be available for three fiscal years, as proposed by the House.
>
> The conference agreement includes $15,000,000 that is to be used under social services to increase educational support to schools with a significant proportion of refugee children, consistent with language contained in the House report.
>
> The agreement also includes $19,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance, consistent with language contained in the House report.

ORR will use the $158,600,000 appropriated for FY 2002 social services as follows:

- $71,910,000 will be allocated under the three-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,690,000 will be awarded as new and continuation social service discretionary grants under new and prior year competitive grant announcements issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded through continuation awards under a separate prior year announcement.
- $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance. A combination of new and continuation awards will be made through new and prior year separate announcements.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through a separate announcement.
- $15,000,000 will be awarded to increase educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees. New awards will be made through a separate announcement.

In addition, we are adding $11.5 million in prior year funds to the FY 2002 formula social services allocation as two set-aside allocations as follows: (1) $3 million for support for healthy families through community-based organizations, and (2) $8.5 million for planned upgrading of employment, employment retraining, and subsidized employment tied to a labor market need leading to unsubsidized employment, increasing the total amount available in FY 2002 through this announcement to $83,410,000.

Congress provided ORR with broad carry-over authority of FY 2000 refugee funds in a supplemental appropriations law (Emergency Supplemental Act, 2000, Pub.L. No. 106–246) as follows:

> Funds appropriated under this heading [Refugee and Entrant Assistance] in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(4) of Public Law 106–113) for fiscal year 2000, pursuant to section 414(a) of the Immigration and Nationality Act, shall be available for the costs of assistance provided and other activities through September 30, 2002.

*Refugee Social Service Funds*

The population figures for the formula social services allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees.)

The Director is allocating $71,910,000 to States on the basis of each State's proportion of the national population of refugees who had been in the United States three years or less as of October

1, 2001 (including a floor amount for States which have small refugee populations).

The use of the three-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that the ''funds available for a fiscal year for grants and contracts [for social services] . . . shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year.''

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, ''Allocation Amounts'' (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then —

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) a floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

As mentioned in the previous section, the Director is also allocating an additional total of $11.5 million from prior year carry-over funds as two set-aside allocations, increasing the total amount available in FY 2002 through this announcement to $83,410,000.

Regarding the $3 million set-aside allocation, ORR is interested in supporting programs to promote healthy families. The refugee experience—fleeing one's homeland, leaving family and friends, sometimes living for an extended period of time in a camp setting in a country of first asylum, and adapting to life in a new country—places considerable stress on the family. Most refugee families are unfamiliar with the culture, language, roles, and responsibilities of individuals and families in the United States. Both parents may now be required to work in order to sustain the family economically and may have to work different shifts so that one parent is at home to care for the children. Communication becomes more difficult. As a result, refugee families also may encounter severe inter-generational strains. Children are caught between the demand of their traditional culture (presented by their parents and grandparents) and American culture (represented by schools, peers, and the media).

In order to maintain the well-being of the family, guidance and support may be needed to assist these families to know how to better deal with the changing circumstances and choices they face.

Through this set-aside, ORR is looking to support orientation, education, and counseling to help maintain healthy marriages, promote responsible fatherhood, and maintain the well-being of families. States should use the set-aside funds to support programs which focus on a range of subjects to promote family well-being, such as: increasing the recognition of the critical contributions that fathers make to children's development; parental roles in U.S. schools—increasing both parents', particularly fathers', participation in the children's education and in school activities; family literacy programs; family conflict resolution; child-nurturing techniques including positive ways to discipline children; dealing with anger and depression in the family; and substance abuse and other problems facing young adults and the family in the United States.

The organizations funded by the set-aside amount are expected to have ties to the ethnic communities they serve and to conduct outreach into the community to identify refugee families in need of services. The opportune time frame for providing these services to families, we believe, is within the first three years after a refugee family's arrival. We strongly encourage States to fund, to the extent possible, Mutual Assistance Associations (MAAs), ethnic community-based organizations, and indigenous faith-based organizations with refugee experience, to the extent possible, to provide family support, outreach, education, orientation, and counseling. ORR defines an MAA as an organization with the following qualifications: (a) The organization is legally incorporated as a nonprofit organization; and (b) not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

Regarding the $8.5 million set-aside, there continues to be a need to focus funding on planned employment upgrading of refugees. While early employment for refugees is being achieved in many areas across the country, refugees who continue in language and employment training programs, or access additional training several months after placement in employment, do so on a random or ad hoc basis with varying amounts of formal assistance from refugee services providers. During their first few years in the country, refugees often appear to be revolving through a series of entry level placements. To be self-sufficient, refugees need to be in a position to market their experience and skills to employers. Funding provided through this set-aside is to assist States to implement programs which tie early employment to planned job up-grading services, including vocational training, professional and skills recertification, assistance with courses leading to certification (for example, courses leading to State certification to teach, to work as a nurse or medical aide, to become a draftsman, or become certified in the information technology field).

States and employment services providers are strongly encouraged to work in partnership with the MAAs, ethnic or community-based organizations, including faith-based organizations, funded through the $3 million set-aside, if possible, and to encourage MAA partnerships with other non-profit organizations and funded social service providers.

For activities funded with the two set-aside allocations, the Director is utilizing his authority, pursuant to 45 CFR 400.300, to waive the five-year (60) month limitation on social services (400.152(b)). Refugees who have been in the United States longer than 60 months (five years), but have not attained U.S. citizenship, may receive social services funded by the set-aside allocations. There are limited exceptions to this citizenship rule for certain U.S. born minor children in refugee families (45 CFR 400.208) and certain Amerasians from Vietnam who are U.S. citizens (Pub. L. 100.461).

*Population to be Served and Allowable Services*

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (See ORR State Letter No. 00–12, effective June 15, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR are eligible from the

date on the certification letter (See ORR State letter No. 01–13, May 3, 2001).

Services to refugees must be provided in accordance with the rules of 45 CFR Part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the three-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400.152(b)). On December 5, 2001, however, the Director of ORR, using the authority in 45 CFR 400.300, issued a blanket waiver of the time-in-country limit for services (ORR State Letter 01–31). This waiver, in effect until September 30, 2002, was issued to assist States in providing services to refugees following the events of September 11, 2001 and the subsequent cessation of refugee arrivals during most of the first quarter, FY 2002. In addition, as discussed in a section above, the five-year limitation on services has been waived for refugees served with the two set-aside allocations in this announcement.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections which the State may wish to provide must be submitted to and approved by the Director of ORR (§ 400.155(h)).

*Service Priorities*

Priorities for provision of services are specified in 45 CFR 400.147. In order for refugees to move quickly off Temporary Assistance for Needy Families (TANF), States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

We encourage States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the currently arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services which are provided to refugees who participate in Wilson/Fish projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (64 FR 19793 (April 22, 1999)).

## II. Discussion of Comments Received

Four comments were received in response to the proposed notice published on April 9, 2002 (67 FR 17079–17082).

*Comment:* Two comments were received from individuals representing the same agency, who opposed the cut in funds allocated for Social Services in the proposed notice of allocations.

*Response:* The difference between the final formula amount for social services in FY 2001 and the amount in the FY 2002 proposed formula allocation was a little more than $17,000, not a relatively significant amount. The commenters were most likely concerned that the total funding allocated to the State was less in the proposed notice of FY 2002 allocations because a set-aside amount was not included. For the final notice of FY 2002 allocations, the Director has included $11.5 million in set-aside funds. While the formula amount has been approximately the same during the last three years, set-aside funds have been possible as a result of authority to spend prior year surplus funds and the availability of surplus funds.

*Comment:* One comment was received from a State Refugee Coordinator who opposed ORR's methodology for making adjustments to population estimates for persons granted asylum and victims of a severe form of trafficking. This commenter suggested that a State should be given credit for all eligible asylees and certified victims of a severe form of trafficking in their State, not just the eligible asylees and trafficking victims who had received services in the State during the past year. Citing the burden placed upon the State to respond within a short notice, the Coordinator believed that ORR was in the best position to have data on these populations. The commenter also noted that the potential exists for the unserved populations to apply for services in the near future and therefore a State should be given credit for all persons granted asylum and certified as victims of a severe form of trafficking, not just those who received services.

*Response:* In the Final Notice of Allocations to States of FY 2001 Funds for Refugee Social Services, $10 million in set-aside funding was provided for States to set up systems to identify, bring into services, and provide services to those asylees in need of services.

ORR strongly believes that it is important to have data which show the extent to which States have now established outreach systems to bring asylees into services and are now serving them. Unlike refugees, individuals granted asylum and certified victims of a severe form of trafficking do not have voluntary agency caseworkers assigned to them upon arrival. These caseworkers, funded through the U.S. Department of State's Reception and Placement Cooperative Agreement, are required to refer refugees into the network of refugee program and benefits.

Over the past 20 years, through regulations, funding, and monitoring of the refugee program, ORR has sought to ensure that newly arrived refugees are served through a network of refugee specific, bilingual and bicultural services. We are confident that there is the strongest possible link between the number of refugees arriving in a state and the number of refugees receiving services in that State. This is not true, however, for persons granted asylum. We do not know the extent to which asylees need services, the extent to which they are able to access services and assistance, and the extent to which their needs mirror the needs of newly arriving refugees. Many asylees have been in the United States for more than one year before they receive a grant of asylum. It may be that they are already integrated into communities and are not in need of transitional assistance and services. Likewise, we do not have data supporting an assumption that the address provided on the asylum application directly corresponds to the location where asylees choose to reside after asylum is granted. For these reasons, it makes greater sense to adjust the allocations to States based upon the number of asylees who were granted asylum during the past three years and who have actually been served in the State refugee program.

While we concur that ORR knows the number of victims of a severe form of trafficking who have been certified, Section 107(b)(1)(D) (''Annual Report'')

of the Trafficking Victims Protection Act of 2000 (Pub.L. 106–386) requires that HHS report information annually on the number of victims who received benefits or other services.

*Comment:* One commenter noted that the proposed announcement did not extend the Director's waiver of the 60-month time-in-country limit for services that was issued by the Director on December 5, 2001. The State encouraged the Director to continue the waiver through 2003. This commenter noted the downturn in the service industry and other sectors in the State in which refugees and entrants tend to work. The commenter also expressed concern about the effect on newly enrolled social services clients (presumably those in the country for more than 60 months) when services were stopped at the expiration of the waiver (September 30, 2002).

*Response:* For the formula allocation, the Director has decided not to extend a blanket waiver at this time. However, pursuant to 45 CFR 400.300, States may submit individual waiver requests for requirements in part 400, and the Director may issue a waiver if it is determined that the waiver will advance the purposes of the regulations and is consistent with Federal refugee policy objectives.

States may allow clients who have been in the country for more than 60 months and who were enrolled in a social services funded component before October 1, 2002 and who have not yet completed that component to remain in that component until completion.

As noted in an earlier section of this announcement, the Director has waived the five-year limitation on services to clients served with the two set-aside allocations in this announcement.

## III. Allocation Formulas

Of the funds available for FY 2002 for social services, $71,910,000 is to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam, who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System; and

3. The total number of asylees and certified victims of a severe form of trafficking who were served by the State in the prior year, as identified by the State. Certified victims of a severe form of trafficking include minors who have been provided eligibility letters by ORR. These individuals must have been granted asylum or certified no more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as identified by States.

The resulting per capita amount is multiplied by—

4. The number of persons in items 2 and 3, above, in the State as of October 1, 2001, adjusted for secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

B. A State's allowable two set-aside allocations are calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, and Amerasians from Vietnam who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shows by the ORR Refugee Data System; and

3. The total number of asylees and certified victims of a severe form of trafficking served by the State in the prior year, as identified by the State. ''Certified'' victims of a severe form of trafficking include minors who have been provided eligibility letters by ORR. These individuals must have been granted asylum or certified no more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as identified by States.

The resulting per capita amount is multiplied by—

4. The number of persons in items 2 and 3 above, in the State as of October 1, 2001, adjusted for secondary migration.

The calculation above yields the basis for the set-aside allocations for each State. A minimum allocation of $5,000 was provided to States that would have received less than this amount based upon the formula.

## IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 2002 for the formula social service allocation are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 2001, for secondary migration. The data base includes refugees of all nationalities, Amerasians from Vietnam, Cuban and Haitian entrants.

For fiscal year 2002, ORR's formula social service allocations for the States are based on the numbers of refugees, Amerasians, and entrants in the ORR data base. The numbers are based upon the arrivals during the preceding three fiscal years: 1999, 2000, and 2001.

The estimates of secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the United States for 36 months or less, as of September 30, 2001. The total migration reported by each State is summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised population estimate.

Estimates are developed separately for refugees and entrants and then combined into a total estimated three-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1, below, shows the estimated three-year populations, as of October 1, 2001, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3); asylees and certified victims of a severe form of trafficking (col. 4); total population, (col.5); the final formula amounts which the population estimates yield, (col. 6); the final allocation amount (col 7); the first set-aside allocation amount (col. 8); the second set-aside allocation (col. 9); and the total allocation (col. 10).

## V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

The following amounts are for allocation for refugee social services in FY 2002:

FY 2002 SOCIAL SERVICES FORMULA NOTICE

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT/ASYLEE/PAROLEE POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND FINAL SOCIAL SERVICE FORMULA AMOUNT AND ALLOCATION FOR FY 2002

| State | Refugees [1] | Entrants | Havana parolees [2] | Asylees [3] | Total population | Final formula amount | Final allocation | $3 million Set-asides | $8.5 million Set-asides | Total final allocation |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Alabama | 381 | 5 | 35 | | 421 | $102,381 | $102,381 | $5,000 | $12,148 | $119,529 |
| Alaska [4] | 115 | 0 | 0 | 7 | 122 | 29,669 | 75,000 | 5,000 | 5,000 | 85,000 |
| Arizona | 7,092 | 405 | 2 | | 7,499 | 1,823,651 | 1,823,651 | 75,677 | 216,377 | 2,115,705 |
| Arkansas | 39 | 9 | 4 | | 52 | 12,646 | 75,000 | 5,000 | 5,000 | 85,000 |
| California [4] | 28,779 | 74 | 238 | 1,549 | 30,640 | 7,451,218 | 7,451,218 | 309,208 | 884,091 | 8,644,517 |
| Colorado [4] | 3,247 | 4 | 4 | 5 | 3,260 | 792,786 | 792,786 | 32,899 | 94,065 | 919,750 |
| Connecticut | 3,511 | 30 | 34 | | 3,575 | 869,390 | 869,390 | 36,078 | 103,154 | 1,008,622 |
| Delaware | 128 | 15 | 0 | | 143 | 34,776 | 75,000 | 5,000 | 5,000 | 85,000 |
| Dist. of Columbia | 348 | 4 | 8 | 317 | 677 | 164,637 | 164,637 | 6,832 | 19,534 | 191,003 |
| Florida | 13,293 | 15,253 | 32,735 | 4,447 | 65,728 | 15,984,126 | 15,984,126 | 663,303 | 1,896,525 | 8,543,954 |
| Georgia | 10,059 | 35 | 110 | 385 | 10,589 | 2,575,096 | 2,575,096 | 106,860 | 305,537 | 2,987,493 |
| Hawaii | (7) | 0 | 0 | 42 | 35 | 8,512 | 75,000 | 5,000 | 5,000 | 85,000 |
| Idaho [4] | 2,742 | 1 | 3 | | 2,746 | 667,789 | 667,789 | 27,712 | 79,233 | 774,734 |
| Illinois | 9,323 | 15 | 102 | | 9,440 | 2,295,675 | 2,295,675 | 95,265 | 272,383 | 2,663,323 |
| Indiana | 1,656 | 6 | 11 | | 1,673 | 406,850 | 406,850 | 16,883 | 48,273 | 472,006 |
| Iowa | 4,619 | 0 | 2 | | 4,621 | 1,123,762 | 1,123,762 | 46,633 | 133,335 | 1,303,730 |
| Kansas | 600 | 5 | 4 | 1 | 610 | 148,343 | 148,343 | 6,156 | 17,601 | 172,100 |
| Kentucky [4] | 3,358 | 1,088 | 8 | | 4,454 | 1,083,150 | 1,083,150 | 44,948 | 128,516 | 1,256,614 |
| Louisiana | 1,161 | 127 | 44 | | 1,332 | 323,924 | 323,924 | 13,442 | 38,434 | 375,800 |
| Maine | 1,108 | 0 | 0 | | 1,108 | 269,450 | 269,450 | 11,182 | 31,970 | 312,602 |
| Maryland | 3,670 | 12 | 20 | 489 | 4,191 | 1,019,192 | 1,019,192 | 42,294 | 120,928 | 1,182,414 |
| Massachusetts [4] | 5,814 | 160 | 38 | 629 | 6,641 | 1,614,998 | 1,614,998 | 67,019 | 191,620 | 1,873,637 |
| Michigan | 8,186 | 863 | 31 | 62 | 9,142 | 2,223,206 | 2,223,206 | 92,258 | 263,785 | 2,579,249 |
| Minnesota | 13,503 | 6 | 8 | 3 | 13,520 | 3,287,874 | 3,287,874 | 136,439 | 390,108 | 3,814,421 |
| Mississippi | 0 | 3 | 6 | 2 | 11 | 2,675 | 75,000 | 5,000 | 5,000 | 85,000 |
| Missouri | 7,729 | 12 | 24 | | 7,765 | 1,888,339 | 1,888,339 | 78,362 | 224,052 | 2,190,753 |
| Montana | 1 | 0 | 4 | | 5 | 1,216 | 75,000 | 5,000 | 5,000 | 85,000 |
| Nebraska | 1,736 | 2 | 5 | | 1,743 | 423,873 | 423,873 | 17,590 | 50,293 | 491,756 |
| Nevada [4] | 1,152 | 752 | 53 | 59 | 2,016 | 490,263 | 490,263 | 20,345 | 58,170 | 568,778 |
| New Hampshire | 1,710 | 0 | 0 | | 1,710 | 415,848 | 415,848 | 17,257 | 49,341 | 482,446 |
| New Jersey | 4,364 | 353 | 758 | 4 | 5,479 | 1,332,416 | 1,332,416 | 55,292 | 158,092 | 1,545,800 |
| New Mexico | 493 | 321 | 2 | | 816 | 198,440 | 198,440 | 8,235 | 23,545 | 230,220 |
| New York | 21,133 | 1,149 | 195 | 468 | 22,945 | 5,579,902 | 5,579,902 | 231,553 | 662,058 | 6,473,513 |
| North Carolina | 3,363 | 21 | 47 | 1 | 3,432 | 834,614 | 834,614 | 34,634 | 99,027 | 968,275 |
| North Dakota [4] | 1,237 | 0 | 0 | | 1,237 | 300,821 | 300,821 | 12,483 | 35,693 | 348,997 |
| Ohio | 6,336 | 6 | 8 | | 6,350 | 1,544,231 | 1,544,231 | 64,082 | 183,224 | 1,791,537 |
| Oklahoma | 393 | 0 | 5 | | 398 | 96,788 | 100,000 | 5,000 | 11,484 | 116,484 |
| Oregon | 3,753 | 489 | 4 | | 4,246 | 1,032,568 | 1,032,568 | 42,849 | 122,515 | 1,197,932 |
| Pennsylvania | 7,869 | 241 | 47 | 24 | 8,181 | 1,989,504 | 1,989,504 | 82,560 | 236,056 | 2,308,120 |
| Rhode Island | 774 | 2 | 7 | 10 | 793 | 192,846 | 192,846 | 8,003 | 22,881 | 223,730 |
| South Carolina | 211 | 1 | 20 | | 232 | 56,419 | 94,260 | 5,000 | 6,694 | 105,954 |
| South Dakota [4] | 1,277 | 0 | 0 | | 1,277 | 310,548 | 310,548 | 12,887 | 36,847 | 360,282 |
| Tennessee | 2,891 | 8 | 38 | | 2,937 | 714,237 | 714,237 | 29,639 | 84,745 | 828,621 |
| Texas | 11,928 | 854 | 115 | 245 | 13,142 | 3,195,950 | 3,195,950 | 132,624 | 379,201 | 3,707,775 |
| Utah | 2,943 | 2 | 2 | | 2,947 | 716,669 | 716,669 | 29,740 | 85,033 | 831,442 |
| Vermont | 876 | 0 | 0 | | 876 | 213,031 | 213,031 | 8,840 | 25,276 | 247,147 |
| Virginia | 5,179 | 92 | 29 | 305 | 5,605 | 1,363,057 | 1,363,057 | 56,564 | 161,728 | 1,581,349 |
| Washington | 15,318 | 0 | 14 | 7 | 15,339 | 3,730,229 | 3,730,229 | 154,796 | 442,594 | 4,327,619 |
| West Virginia | 17 | 0 | 0 | | 17 | 4,134 | 75,000 | 5,000 | 5,000 | 85,000 |
| Wisconsin | 2,030 | 5 | 4 | | 2,039 | 495,856 | 495,856 | 20,577 | 58,834 | 575,267 |
| Wyoming [5] | | | | | | | | | | |
| Total | 227,438 | 22,430 | 34,828 | 9,061 | 293,757 | 71,437,575 | 71,910,000 | 3,000,000 | 8,500,000 | 83,410,000 |

[1] Includes Amerasian immigrants. Adjusted for secondary migration.
[2] For all years, Havana Parolee arrivals for all States are based on actual data.
[3] Includes victims of a severe form of trafficking.
[4] The allocations for Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, South Dakota and for San Diego County, California are expected to be awarded to Wilson/Fish projects.
[5] Wyoming no longer participates in the Refugee Resettlement Program.

**VI. Paperwork Reduction Act**

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 1, 2002.

**Nguyen Van Hanh,**

*Director, Office of Refugee Resettlement.*

[FR Doc. 02–17027 Filed 7–5–02; 8:45 am]

**BILLING CODE 4184–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Susbstance Abuse and Mental Health Services Administration

### Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 63 FR 1112–1113, January 8, 1998 and 61 FR 39146–39151, July 26, 1996 is being amended. The changes are to update and realign SAMHSA organization structure as a result of it delayering efforts to streamline the administrative functions, which will strengthen SAMHSA's programs and allow SAMHSA to more effectively use its resources. For instance, this reorganization will consolidate all administrative, policy and budgeting functions within the Office of the Administrator. The changes are as follows:

I. Delete Part M, Substance Abuse and Mental Health Administration in its entirety and replace with the following:

**Substance Abuse and Mental Health Services Administration**

M.00 Mission
M.10 Organization
M.20 Functions
M.30 Order of succession
M.40 Delegation of Authority

*Section M.00 Mission.* The mission of the Substance Abuse and Mental Health Services Administration is to improve the quality and availability of treatment and prevention services for people with substance abuse and mental illness.

*Section M.10 Organization:* The Substance Abuse and Mental Health Services Administration is an Operating Division under the direction of an Administrator who reports directly to the Secretary, and include the following components:

- Office of the Administrator (MA)
- Office of Applied Studies (MC)
- Office of Program Services (MB)
- Center for Mental Health Services (MS)
- Center for Substance Abuse Prevention (MP)
- Center for Substance Abuse Treatment (MT)

**Section M.20 Functions**

A. *Office of the Administrator (MA).* The Administrator is responsible to the Secretary for managing and directing SAMHSA. The office functions are as follows: (1) Provides leadership in the development of agency policies and programs; (2) maintains liaison with the Office of the Secretary on matters related to program and other activities; (3) provides oversight for coordination between SAMHSA and the National Institutes of Health (NIH) on the conduct of research and the dissemination of research findings in the areas of alcohol, drug abuse, and mental health; (4) develops Agency strategic plans and conducts, analyzes, and supports future planning activities; (5) analyzes legislative issues, and maintains liaison with congressional committees; (6) provides leadership and guidance in developing and implementing Agency plans to meet women's substance abuse and mental health services needs; (7) coordinates Agency minority affairs activities; (8) coordinates service quality and financing activities; (9) coordinates Agency-wide AIDS activities; (10) coordinates Agency communications and conducts public affairs activities; and (11) provides agency-wide correspondence control services.

1. *Immediate Office of the Administrator (MA–1).* Provides leadership and direction to the program and activities of the Substance Abuse and Mental Health Services Administration as follows: (1) Responsible for program policy development; (2) provides liaison with other HHS components, other Federal organizations, the Office of the National Drug Control Policy, and outside groups; (3) provides oversight for coordination between SAMHSA and the National Institutes of Health; (4) provides correspondence control for the Agency and controls all Agency public correspondence; and (5) analyzes legislative issues, and maintains liaison with congressional committees.

2. *Office of Communications (MAB).* Provides leadership in the development of SAMHSA's priorities, strategies, and practices for effective communications to targeted public audiences, including relations with the media; and serves as a focal point for communications activities as follows: (1) Coordinates agency communications activities; (2) plans public events, including press conferences, speeches, and site visits for the Administrator, other SAMHSA officials, and DHHS representatives; (3) publishes SAMHSA brochures, fact sheets, and quarterly issues of SAMHSA News; (4) coordinates electronic dissemination of information, within the Agency and through the Internet and World-Wide Web; (5) develops communications channels and targets media placements; (6) develops and disseminates news releases and coordinates media contacts with Agency representatives; (7) provides editorial and policy review of all Agency publications; (8) fulfills public affairs requirements of DHHS; (9) provides agency contributions to the DHHS forecast report on significant activities; (10) manages the Agency conference exhibit program; and (11) responds to Freedom of Information Act requests.

3. *Office of Policy, Planning and Budget (MAC).* (1) Develops Agency policy for the Administrator and senior staff; (2) manages the Agency-wide planning process, including strategic planning, identification of policy priorities, and other Agency-wide and departmental planning activities; and, (3) manages the budget formulation process and provides policy guidance for the Guidance for Applicants (GFAs) development process.

a. *Division of Policy Coordination (MAC–1).* (1) Develops policy recommendations and issues for the Administrator and senior leadership and manages the coordination and implementation of the Agency's national program policies; (2) coordinates the Administrator's program priorities and principles as they relate to policy; (3) provides expertise for Agency leadership in issues and initiatives for alcohol, HIV/AIDS, minority health, and women's services; and, (4) manages the Agency's coordination of departmental and Presidential initiatives, nationally and internationally.

b. *Division of Planning and Budget (MAC–2).* (1) Manages the planning process for SAMHSA; (2) manages the budget formulation process by coordinating budget plans, formulating and presenting future budget activities, and preparing budget justification documents; (3) develops the Government Performance and Results Act (GPRA) process for SAMHSA, oversees progress in attaining goals, and reports accomplishments; (4) provides policy guidance for the GFA development process; (5) supports the Administrator in formulating and

carrying out the Agency's role as it relates to extramural policies and participation in HHS and other interagency initiatives; and, (6) manages the SAMHSA National Advisory Council and the SAMHSA Joint Advisory Council.

B. *Office of Applied Studies (MC).* (1) Collects information as required by statute on the incidence, prevalence, trends, correlates, and the economic, behavioral and medical consequences of substance abuse and mental health problems in the United States; (2) collects information as required by statute on the number, characteristics, conduct, and performance of facilities and organizations providing prevention and treatment services for substance abuse at the national, state and local level; (3) plans, directs,and conducts studies based on data collected by the Office of Applied Studies and other organizations of issues associated with substance abuse and mental health problems; (4) designs and carries out special data collection and analytic projects to examine topical issues for SAMHSA and other Federal agencies; (5) conducts epidemiological, statistical, and policy studies of existing or emerging issues; (6) provides information for program evaluation activities of the Agency; (7) manages Agency activities associated with the Paperwork Reduction Act and the Office of Management and Budget clearance of information collection activities; and (8) prepares reports and disseminates findings through Agency publications, the press, scientific journals, and electronic systems.

1. *Office of the Director (MC–1).* (1) Provides overall leadership for the Office of Applied Studies; (2) determines that data collection and analytic activities are consistent with the mission and priorities of the Department and the Agency; (3) advises the Administrator and other Agency officials and staff on policy and technical issues associated with collecting information on substance abuse and mental health problems; and (4) serves as Agency liaison to the Office of the Secretary, the Office of National Drug Control Policy, the Drug Enforcement Administration, and other Federal agencies; to State and local government agencies; and to non-governmental organizations and institutions on matters related to the collection and analysis of data on substance abuse and mental health problems.

2. *Division of Population Surveys (MCA).* (1) Plans, develops, and manages the National Survey on Drug Use and Health (the Household Survey) and other surveys of the population to obtain information on substance abuse and mental health problems; (2) develops, implements, and evaluates new statistical and data collection methods, questionnaires, and sampling strategies for surveys; (3) analyzes information obtained from surveys conducted by the Office of Applied Studies to determine the incidence, prevalence, correlates, and consequences of substance abuse; (4) analyzes data from the Household Survey and related sources of information to examine program and policy issues and evaluate the impact of various Federal initiatives related to substance abuse; (5) prepares statistical publications, special reports, and analyses based on information derived from the Household Survey and other surveys of the population; and (6) serves as a source of expertise on substance abuse survey methods, sampling design, statistics, and analytic techniques for SAMHSA and the Department.

3. *Division of Operations (MCB).* (1) Manages the operational activities of the Office of Applied Studies (OAS) including development of the budget, oversight of procurement, and personnel; (2) manages SAMHSA responsibilities under the Paperwork Reduction Act, including the process for obtaining Office of Management and Budget clearance for information collection activities; (3) develops methods for and collects information through the Drug Abuse Warning Network (DAWN), the Drug and Alcohol Services Information System (DASIS), and other data collection projects on admissions to and services provided by treatment programs in the United States; (4) prepares statistical publications and reports based on data obtained from DAWN, DASIS, and other sources; (5) manages the process for clearing, publishing, and disseminating studies and reports produced by OAS; (6) provides computer support for OAS; and (7) organizes and manages various meetings to obtain advice and assistance from States with respect to the structure and content of OAS surveys.

4. *Division of Analysis (MCC).* (1) Conducts epidemiologic, behavioral, demographic, and economic studies on topics of major and immediate concern in the area of substance abuse and mental health care; (2) conducts policy research on issues relevant to the demand for treatment for substance abuse and mental health problems and the supply of services; (3) determines the annual allotment of Block Grant funds to States and Territories for substance abuse prevention and treatment and mental health services, and provides information and expertise to SAMHSA, the Department, and the States on issues related to the formula in accordance with legislative authorities; (4) directs special studies to examine such questions as the validity of data collection strategies such as those employed by the Drug Abuse Warning Network and the Drug and Alcohol Services Information System, the costs and long term effects of substance abuse treatment, and the problems and access to care of special populations; (5) manages special contracts developed to analyze data from multiple sources; and (6) provides advice and expertise to other components of SAMHSA and the Department on research topics and the design of studies relevant to concerns in the areas of substance abuse and mental health.

C. *Office Of Program Services (MB).* The Office of Program Services works in partnership with other SAMHSA and HHS components in managing, providing leadership, and ensuring SAMHSA's needs are met in the following service areas: information resources management (IRM), financial management, human resources management, grants and contracts management, administrative services, grant and contract application review, equal employment opportunity, civil rights, and organizational development and analysis.

1. *Office of the Director (MB–1).* (1) Provides leadership and guidance, oversees and monitors the range of administrative and program services which are provided to all SAMHSA components; (2) provides general policy review and executive oversight of crosscutting management and administrative issues; (3) streamlines, improves, and integrates administrative services and systems; (4) coordinates crosscutting tasks and initiatives; (5) processes both informal and formal complaints of employment discrimination under three primary statutes; (6) plans and administers a coordinated Agency special emphasis/affirmative employment program, including the SAMHSA affirmative employment plan; (7) manages the reasonable accommodations process regarding employee disabilities; (8) develops internal civil rights compliance policy for the Agency and serves as the focal point for civil rights and related issues; and (9) tracks and measures administrative program performance.

2. *Division of Information Resources Management (MBA).* (1) Provides leadership, guidance, and technical expertise in the Agency's transition

from conventional information systems to a data base environment, including the continual improvement of Agency systems; (2) coordinates Agency-wide database administration and systems configuration management; (3) serves as the focal point for Agency-wide information resources management, office automation and information systems policy, strategic planning, budget preparation, coordination, and security; (4) maintains information resources management support through the local area network (LAN); (5) maintains, operates, and provides services, or coordinates with other service components, for the LAN and personal computers, databases, voice mail/faxes, and general machine repairs; (6) exercises clearance authority for Agency-wide information resources management and office automation projects and procurement; and (7) provides advice, assistance, and training to Agency staff in obtaining maximum utilization of and services from its information systems and databases; (8) trains Agency staff in the use of new products and applications as necessary; (9) develops and secures new programming software to meet individual program requirements, as well as broad Agency needs; (10) reviews and analyzes new information resources management developments and ensures necessary support services are provided; and (11) initiates and carries out studies to implement improvements in systems and services.

3. *Division of Extramural Program Management (MBB).* (1) Provides leadership and direction in the management of SAMHSA's extramural grant and contract programs; (2) conducts all aspects of the SAMHSA grants management process; (3) conducts all aspects of the SAMHSA contracts management process; (4) plans, administers, and coordinates review of all grant and contract proposals; (5) provides guidance to Agency staff, applicants, and awardees on the management and administrative aspects of extramural programs; (6) develops SAMHSA policies and procedures regarding the administrative management of extramural programs; (7) prepares reports and responds to information requests; and (8) measures and tracks extramural program performance.

4. *Division of Administrative Services (MBG).* (1) Provides centralized administrative services for the Agency, including processing and coordinating requests for and providing advice on procurement actions, travel, property, facilities, personnel and other activities; (2) coordinates actions as necessary with other HHS components such as the Program Support Center (PSC) accounting and procurement staffs, and the contract travel agency; (3) evaluates internal fiscal controls to assure compliance with laws, regulations, policies, and sound business practices; (4) manages overall Agency budget execution, including the apportionment and allotment processes, overhead and assessment changes, and monitoring of expenditures; (5) manages expenditure plans and their execution such as program reserve, block grant set-asides, and Agency operating costs; (6) manages and tracks FTE allocations and staffing levels; and (7) coordinates Agency responses to outside financial management initiatives, such as financial aspects of the Government Performance and Results Act, and audited financial statements.

5. *Division of Management Systems and Analysis (MBC).* (1) Provides leadership in the development of policies for and the analysis, performance measurement, and improvement of SAMHSA administrative and management systems; (2) coordinates the provision of central human resource management services, working with HHS service components and outside organizations as necessary and monitoring their performance; (3) manages the SAMHSA ethics program; (4) coordinates and serves as a focal point for SAMHSA intern and summer employment programs; (5) provides advisory services to managers and supervisors in such matters as organizational development, analysis, performance, and performance measurement; (6) coordinates General Accounting Office and Office of the Inspector General reviews and information requests, internal control reviews, and Federal Managers Financial Integrity Act responses; (7) plans and coordinates various management activities such as records management, forms management, Privacy Act, and OPS Freedom of Information Act requests; (8) develops, maintains, and manages administrative management systems regarding policies and procedures; and (9) measures and tracks program performance in all areas of administrative management.

D. *Center for Mental Health Services (MS).* The mission of the Center for Mental Health Services (CMHS) is to promote effective mental health services in every community. CMHS provides national leadership to ensure the application of scientifically established findings and practice-based knowledge in the prevention and treatment of mental disorders; to improve access, reduce barriers, and promote high quality effective programs and services for people with, or at risk for, these disorders, as well as for their families and communities; and to promote an improved state of mental health within the Nation, as well as the rehabilitation of people with mental disorders.

1. *Office of the Director (MS–1).* (1) Provides leadership in planning, implementing, and evaluating the Center's goals, priorities, policies, and programs, including equal employment opportunity, and is the focal point for the Department's efforts in mental health services; (2) plans, directs, and provides overall administration of the programs of CMHS; (3) conducts and coordinates Center interagency, interdepartmental, intergovernmental, and international activities; (4) provides information to the public and constituent organizations on CMHS programs; (5) maintains liaison with national organizations, other Federal departments and agencies, the National Institute of Mental Health and with other SAMHSA Centers; (6) administers committee management and reports clearance activities; (7) promotes the prevention of HIV infection in people at risk, the delivery of effective mental services for people with HIV infection, and the education of health care providers to address the neuropsychiatric and the psycho-social aspects of HIV infection and AIDS; (8) conducts services quality and financing activities and coordinates these activities with other components in SAMHSA; (9) conducts consumer affairs activities; and, (10) monitors the conduct of equal employment opportunity activities of CMHS.

2. *Office of Program Analysis and Coordination (MSA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other agency-wide and departmental planning exercises; and (3) performs Center-specific functions such as support for the Center Director, impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of Prevention, Traumatic Stress and Special Programs (MSC).* (1) Serves as the focal point in planning for alcohol, drug abuse, and mental health services during national disasters; (2) cooperates with the Office of Emergency Preparedness and the Federal Emergency Management Agency (FEMA) and other Federal agencies to coordinate disaster assistance, community response, and other mental health emergency services as a consequence of national disasters or mass criminal events, such as terrorism and school shootings; (3) serves as a focal point for refugee mental health programs, including liaison with other Federal agencies; (4) conducts program development activities and engages with the faith community, when appropriate, to promote effective programs and policies to special populations including women, minorities, youth in juvenile justice facilities, and elderly persons living in rural areas; and (5) administers violence and suicide prevention programs, trauma and terrorism/bio-terrorism initiatives, and programs that prevent mental and behavioral disorders and promote mental health and resilience across the life cycle.

4. *Division of State and Community Systems Development (MSE).* (1) Administers the Community Mental Health Services Block Grant, including monitoring State implementation of the Mental Health State Plan, compliance with the provisions of the Public Health Service Act, as amended, regarding use of the payments and maintenance of effort; (2) provides technical assistance to the States with respect to the planning, development, financing, and operation of programs or services carried out pursuant to the block grant program; (3) administers a program of State human resource development; (4) plans and supports programs of mental health education, with emphasis on targeted populations; (5) plans and supports programs to provide protection and advocacy services for persons with severe mental disorders; and (6) supports programs for: (a) obtaining, analyzing, and disseminating national statistics on mental health services, (b) developing methodologies for data collection in biometry and mental health economics, and (c) consulting with and providing technical assistance to State and local mental health agencies on statistical methodology, mental health information systems, and the use of statistical and demographic data.

5. *Division of Service and Systems Improvement (MSF).* (1) Develops, plans, implements, and monitors national activities designed to improve systems and service delivery for persons with, or at risk for, mental health problems; (2) directs a clearinghouse that serves as a one-stop information and referral service for the public, consumers and family members, educators, policy makers, and for those who design, finance, and deliver mental health services;(3) administers the Projects for Assistance in Transition from Homelessness (PATH) program; and (4) directs the Comprehensive Community Mental Health Services for Children with Serious Emotional Disturbances Program; (5) places priority on two target populations, adults with severe mental illness (including those who are homeless) and children and adolescents with serious mental disturbances; (6) emphasizes acquisition, exchange, and application of knowledge in all of its activities; (7) develops guidance for applications and requests for contracts to implement these activities; (8) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding; (9) identifies needs for and provides technical assistance to a variety of customers through both direct and indirect activities, including the development of standards and guidelines; (10) establishes and maintains collaborative relationships with other Federal, State, and local governmental agencies, national organizations, local communities, providers, consumers, and families; and (11) promotes adoption of practices in communities through the Nation by synthesizing knowledge, exchanging information, and providing opportunities for consensus building.

E. *Center for Substance Abuse Prevention (MP).* The mission of the Center for Substance Abuse Prevention (CSAP) is to bring effective prevention to every community. CSAP provides national leadership in the development of policies, programs and services to prevent the onset of illegal drug use, underage alcohol and tobacco use, and to reduce the negative consequences of using substances. CSAP disseminates effective substance abuse prevention practices and builds the capacity of States, communities and other groups to apply prevention knowledge effectively. An integrated systems approach is used to coordinate these activities and collaborate with other Federal, State, public and private organizations.

1. *Office of the Director (MP–1).* (1) Provides leadership, coordination, and direction in the development and implementation of CSAP goals and priorities, and serves as the focal point for the Department's efforts on substance abuse prevention; (2) plans, directs, and provides overall administration of the programs and activities of CSAP; (3) provides leadership and expert medical, clinical, and technical assistance in the identification of new and emerging issues and the integration of primary medical care and early intervention knowledge and information into major CSAP program efforts; (4) organizes and manages CSAP's special projects; and (5) monitors the conduct of the equal employment opportunity activities of CSAP.

2. *Office of Program Analysis and Coordination (MPA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the Agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other Agency-wide and departmental planning activities; and (3) performs Center-specific functions such as impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of State and Community Systems Development (MPB).* (1) Promotes and establishes comprehensive, long-term State and community alcohol, tobacco, and other drug abuse prevention/intervention strategies, programs, and support activities; (2) reviews, approves and administers the primary prevention set-aside of the Substance Abuse Prevention and Treatment (SAPT) Block Grant and reviews and analyzes the SAPT plans submitted by the States; (3) administers community and State Targeted Capacity Expansion grant programs and cooperative agreements to support and enhance comprehensive and effective State and community substance abuse prevention systems, drug prevention coalitions and related health promotion systems; (4) develops and updates regulations, core performance measures and/or guidelines for the use of the primary prevention and tobacco provisions of SAPT; (5) provides technical assistance and capacity-building to States and communities in the planning, development, and operation of prevention programs and

systems; (6) promotes interagency collaboration with both the public and private sectors at the Federal, State and local levels, including, among others, foundations, business, industry, labor, law enforcement, education, faith communities, health and social welfare entities, to optimize the use of fiscal and human resources and needed program development in new and existing prevention systems nationally; (7) develops guidelines for state-of-the-art prevention programs and systems while conducting quality assurance activities such as the Block Grant performance measures initiative and developing prevention guidance documents; (8) compiles State and local prevention outcome findings, national cross site evaluation findings and promising practices to support CSAP's on-going capacity-building role; (9) develops and integrates needs assessment and management information system data into State and community prevention systems for the improvement of planning efforts in substance abuse prevention nationally; (10) administers the Synar regulations governing youth access to tobacco products; and (11) provides overall support, training and technical assistance in integrating effective substance abuse prevention into managed health care systems.

4. *Division of Knowledge Application and System Improvement (MPC).* (1) Provides leadership in advancing CSAP's substance abuse, HIV/AIDS and emergent substance abuse issues agenda by employing a broad range of mechanisms; (2) conducts extramural evaluation studies at the individual, family, community and systems levels; (3) manages the grant program portfolios; (4) conducts national cross-site evaluation studies on the portfolio of knowledge application grant programs; (5) conducts secondary analysis of original prevention research studies; (6) synthesizes knowledge acquired through grants, cooperative agreements, contracts, and field input; (7) promotes the development of new methodologies and advocates use of rigorous methods for conducting prevention studies and evaluating service provision; (8) supports professional development in the science of prevention; (9) helps develop extramural policy; (10) provides information to CSAP and other SAMHSA components, other HHS components, the Congress, and other Federal entities concerning the most effective prevention approaches that focus on the prevention needs of individuals and families affected by co-occurring drug, alcohol, mental, and/or physical health problems; (11) collaborates with other Federal departments and agencies that are relevant to CSAP's mission, including the National Institutes of Health, the Agency for Health Care Research and Quality, the Administration for Children and Families, the Centers for Disease Control and Prevention, and the Office of Disease Prevention and Health Promotion; (12) identifies effective programs developed by government, foundations and private industry through its National Registry of Effective Prevention Programs; (13) ensures accountability by identifying, promoting and monitoring the national implementation of science-based prevention programs.

5. *Division of Workplace Programs (MPE).* (1) Establishes goals and objectives in the administration of a national program designed to promote substance abuse free workplaces; (2) provides leadership and oversight to assure that effective employee assistance programs are developed and evaluated to prevent substance abuse in the workplace; (3) develops, implements, and evaluates employee education/prevention programs, access to counseling, early intervention, and referral treatment/rehabilitation, and support services for employees following treatment/rehabilitation; (4) advises, coordinates, and certifies activities related to the implementation and administration of Federal drug free workplace programs, convenes the Drug Testing Advisory Board, and conducts surveys on Federal programs; (5) advises other SAMHSA components and HHS regarding workplace programmatic directions and actions and enters into collaborative arrangements with other Federal agencies; (6) collaborates in the development and implementation of substance abuse prevention and early intervention strategies for public/private sector use at the State and community levels, and operates the Workplace Hotline Contract as a means for dissemination, outreach and technical assistance to businesses, States and communities; (7) provides technical assistance to facilitate national training and certification programs for substance abuse professionals and practitioners, provides staff expertise in training and credentialing standards for Medical Review Officers (MROs) and the Department of Transportation mandated Substance Abuse professionals; (8) provides leadership within SAMHSA in the development, training and use of the geographic information system (GIS) to support policy development for Federal substance abuse prevention, initiatives; (9) provides leadership within SAMHSA and the field in developing and disseminating knowledge in workplace violence related to substance abuse, including risk factors in the workplace and community and the role of the workplace as a substance abuse and violence prevention agent within the community and family; and (10) evaluates managed care and other treatment provider practices as they are applied in the workplace.

6. *Division of Prevention Education and Dissemination (MPF).* (1) Provides national leadership in the development, coordination, and assessment of information for purposes of knowledge transfer and application; (2) develops and disseminates information and knowledge about alcohol, tobacco, and drugs; (3) assesses the need for, and promotes the development and widespread use of, prevention and intervention-related messages, materials and technologies by national, State and community organizations, especially directed towards traditionally under-served audiences and those at high risk; (4) develops and coordinates national media campaigns and stimulates media coverage of substance abuse issues with an emphasis on prevention; (5) prepares and acquires materials based on needs of target audiences; (6) manages the CSAP National Clearinghouse for Alcohol and Drug Information and the Regional Alcohol and Drug Awareness Resource Network; (7) demonstrates national leadership in electronic information technologies through PREVLine, the Internet, and other mechanisms; (8) develops, in collaboration with other CSAP offices, material and technologies which provide learning opportunities for CSAP staff; (9) promotes and provides training and technical assistance for increased capacity of State agencies and key constituent organizations to carry out knowledge transfer and application activities; (10) sponsors and conducts workshops, conferences, and related efforts to foster state-of-the-art knowledge transfer and application activities; (11) develops, implements, and evaluates a program to demonstrate effective communication, diffusion and knowledge exchange to help reduce substance abuse; (12) reviews and/or prepares clearance documents for all communication products developed by the Center; and (13) provides public affairs liaison with the Office of the Administrator, Office of Communications, and other HHS components.

F. *Center for Substance Abuse Treatment (MT).* The mission of the Center for Substance Abuse Treatment

(CSAT) is to bring effective alcohol and drug treatment to every community. CSAT provides national leadership to expand the availability of effective treatment and recovery services for alcohol and drug problems; to improve access, reduce barriers and promote high quality effective treatment and recovery services for people with alcohol and drug problems, abuse, or addiction as well as for their families and communities. To accomplish this, the Center works to close the gap between available treatment capacity and demand; support adaptation and adoption of evidence-based and best practices by community-based treatment programs and services; and improve and strengthen substance abuse treatment organizations and systems.

1. *Office of the Director (MT–1).* (1) Provides leadership in planning, implementing, and evaluating the Centers goals and is the focal point for SAMHSA's effort to improve and expand substance abuse treatment services; (2) plans, directs, and provides overall administration for the programs of CSAT; (3) coordinates Center consumer education functions and develops consumer education strategies and materials; and (4) monitors the conduct of equal employment opportunity activities of CSAT.

2. *Office of Program Analysis and Coordination (MTA).* (1) Supports the Center's implementation of programs and policy by providing guidance in the administration, analysis, planning, and coordination of the Center's programs, consistent with agency priorities; (2) manages the Center's participation in the agency's policy planning, budget formulation, program development and clearance, and internal and external requests, including strategic planning, identification of program priorities, and other agency-wide and departmental planning activities; and (3) performs Center-specific functions such as impact analysis of proposed legislation and rule making, council management, support and liaison for administrative functions, special studies, data analysis and coordination, liaison for special populations/initiatives, GPRA reporting, performance partnerships, and regulatory activities.

3. *Division of Services Improvement (MTB).* (1) Develops, plans, implements, and monitors national treatment capacity expansion and knowledge adoption program designed to improve treatment services throughout the United States, including services in other systems of care; (2) provides leadership and guidance to CSAT on the organization and financing of services for substance abuse treatment, HIPAA, and adoption of evidence-based practices; (3) collaborates on the development of Guidance for Applications (GFAs) and Requests for Contracts for the national treatment capacity expansion and services improvement agenda; (4) monitors grants, cooperative agreements, contracts, interagency agreements, and memoranda of understanding for treatment capacity expansion, knowledge adoption, and services improvement; (5) supports the development and testing of performance measures for public and private managed care plans and other systems of care; (6) collects, analyzes, and disseminates data and information pertaining to public and private financing and expenditures for treatment services; (7) identifies the need for, develops, and provides technical assistance to grantees, other service providers and systems of care, and others on adoption of evidence-based practices, capacity expansion, and organization and financing of services; (8) establishes and maintains collaborative relationships with other Federal, State, and local governmental agencies, national organizations, and constituency groups; (9) maintains internal expertise and collaborates with national experts on the science-to-services agenda; (10) develops funding levels for Division programs and activities.

4. *Office of Evaluation Scientific Analysis and Synthesis (MTC).* (1) Oversees the design and plan for evaluation of CSAT programs; (2) serves as the focus for State and local data infrastructure development issues; (3) provides guidance and oversight of training services for treatment of professionals, such as the ATTC program; (4) provides leadership for the provision of technical assistance and consultative services on evaluation of the grant process, on data infrastructure development, and on training in the substance abuse treatment field; (5) provides leadership on workforce development activities; (6) collaborates with other Federal, State, and local agencies in workforce development, training, and data infrastructure activities; (7) maintains current expertise in the alcohol and drug treatment services and systems literatures as well as in related fields; (8) collaborates with all Branches in the Division of Services Improvement and the Division of State and Community Assistance in the implementation of monitoring and evaluation activities for grants and cooperative agreements, as well as on HIPAA implementation; (8) provides leadership for human research and participant protection programs; and (9) collaborates with other Federal, State, and local agencies, especially Institutes within NIH on science-to-service issues.

5. *Division of State and Community Assistance (MTE).* (1) Administers the Substance Abuse Block Grant Program, including oversight and approval of Block Grant applications and maintenance of effort (MOE) issues; (2) administers the Substance Abuse Performance Partnership Grant (PPG), negotiating PPG agreements with States; (2) monitors and ensures State compliance with legislative and regulatory provisions which apply to PPG funds at State and provider levels; (3) provides guidance and technical assistance to States in preparation of State substance abuse plans; (4) conducts performance reviews of State agencies and treatment programs; (5) works closely with data and evaluation to assure proper reporting and data integrity; (6) administers the State Incentive Grant program for co-occurring disorders and the TCE grant program for co-occurring disorders; (7) works collaboratively with the Division of Services Improvement on performance measurement, GPRA, and HIPAA issues.

6. *Division of Pharmacologic Therapies (MTG).* (1) Administers the day-to-day regulatory and oversight activities necessary to implement and enforce SAMHSA's opioid treatment program (methadone and LAAM) rules under 42 CFR part 8; (2) develops, plans, implements and monitors national technical assistance and training projects to improve OTP compliance with accreditation standards and requirements; (3) develops, plans, implements and monitors national projects designed to improve medication assisted substance abuse treatment throughout the United States and internationally; (4) develops, plans, implements and monitors Guidance for Applications (GFAs), grants, cooperative agreements, interagency agreements, memoranda of understanding, Requests for Contracts (RFCs), purchase orders and task orders for activities related to OTP certification and accreditation standards and processes; (5) administers the day-to-day regulatory and oversight activities of the Drug Addiction Treatment Act of 2000, including the development and implementation of regulatory actions, guidance on the use of medication assisted treatments, and OMB required information collection activities; (6) identifies needs, develops, and provides technical assistance to support the

improvement of medication assisted addiction treatment; (7) establishes and maintains collaborative relationships with other Federal, State, and local government agencies, national organizations, and constituency groups involved in activities associated with medication assisted treatment; (8) maintains internal expertise and collaborates with national experts in the development of CSAT, SAMHSA and DHHS treatment standards and guidelines concerning medication assisted treatment; (9) provides national leadership and advice on medication assisted treatments and on related policy issues; (10) supports the Federal Interagency Narcotic Treatment Policy Review Board; and (11) develops funding levels for division programs and activities.

II. *Section M.30, Order of Succession:* During the absence or disability of the Administrator, SAMHSA, or in the event of a vacancy in that office, the first official listed below would perform the duties of the Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession: (1) Deputy Administrator; and (2) Executive Officer, SAMHSA.

III. *Section M.40, Delegations of Authority:* All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this restructuring and delayering shall continue in effect pending further redelegation, providing they are consistent with the reorganization.

These organizational changes are effective July 1, 2002.

Dated: June 25, 2002.

**Charles Curie,**

*Administrator.*

[FR Doc. 02–16940 Filed 7–5–02; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Residential Home Site on the Lefever Property, Black Forest, CO

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and receipt of application.

**SUMMARY:** This notice advises the public that Thomas Lefever (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally-listed as threatened, through loss and modification of its habitat associated with construction and occupation of a residential home site at the Lefever Property, Black Forest, Colorado. The duration of the permit would be 5 years from the date of issuance.

We announce the receipt of the Applicant's incidental take permit application that includes a combined Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the Preble's meadow jumping mouse (Preble's) for the Lefever Property. The proposed EA/HCP is available for public review and comment. It fully describes the proposed project and the measures the Applicant would undertake to minimize and mitigate project impacts to the Preble's.

The Service requests comments on the EA/HCP for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the EA and permit application will become part of the administrative record and will be available to the public.

**DATES:** Written comments on the permit application and EA/HCP should be received on or before September 6, 2002.

**ADDRESSES:** Comments regarding the permit application and EA/HCP should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

**SUPPLEMENTARY INFORMATION:**

#### Document Availability

Individuals wishing copies of the HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

#### Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Lefever Property is located at 12715 Kaibab Court, Abert Estates Lot 4, along Black Squirrel Creek, in the Town of Black Forest, El Paso County, State of Colorado. The project site is 5.4 acres, but the proposed project will directly impact a maximum of 0.56 acre that may result in incidental take of the Preble's. Of the total amount of impacted acreage, 0.215 acre will be temporarily disturbed and will be revegetated. An HCP has been developed as part of the preferred alternative. The proposed HCP will allow for the incidental take of the Preble's by permitting a single family residence to be constructed in an area that may be periodically used as foraging or hibernation habitat.

Alternatives considered in addition to the Proposed Action, included waiting for the approval of the El Paso County Regional Habitat Conservation Plan, and no action. The draft EA analyzes the onsite, offsite, and cumulative impacts of the proposed project and all associated development and construction activities and mitigation activities on the Preble's, other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. None of the proposed impacts occur within the riparian corridor. All of the proposed impacts are in upland areas outside of the 100-year floodplain. The Applicant, using the Service's definition of Preble's habitat, has determined that the proposed project would impact approximately 0.56 acre of potential Preble's habitat. The mitigation will likely provide a net benefit to the Preble's mouse and other wildlife by improving or creating new riparian areas, planting of native shrubs, and protecting existing habitat along Black Squirrel Creek from any future development.

Only one federally listed species, the threatened Preble's, occurs on site and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation for the residential site by protection of the

Black Squirrel Creek corridor onsite and its associated riparian areas from all future development through the replanting of 0.215 acre of temporarily disturbed grassland and the protection of an additional 4.3 acres on an existing conservation easement with enhancement of 0.89 acre through native shrub planting. Measures will be taken during construction to minimize impact to the habitat, including the use of silt fencing to reduce the amount of sediment from construction activities that reaches the creek. All of the proposed mitigation area is within the boundaries of the Lefever property, all of which is included in the drainage basin of Black Squirrel Creek.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the EA/HCP, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's in conjunction with the construction and occupation of a single-family residential lot on the Lefever Property. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: June 19, 2002.

**John A. Blankenship,**

*Acting Regional Director.*

[FR Doc. 02–17072 Filed 7–5–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2003

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The purpose of this notice is to advise the public that we, the U.S. Fish and Wildlife Service (Service) and the North American Wetlands Conservation Council (Council), are currently entertaining proposals that request match funding for wetland and wetland-associated upland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. We will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding and can compete successfully on the basis of strong project resource values.

**DATES:** Proposals must be postmarked no later than Friday, November 29, 2002.

**ADDRESSES:** Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith A. Morehouse, Small Grants Coordinator, or Office Secretary, Division of Bird Habitat Conservation, 703.358.1784; facsimile 703.358.2282.

**SUPPLEMENTARY INFORMATION:** The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended (16 U.S.C. 4401 *et seq.*) is, through partnerships, to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitats. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated uplands habitat.

Initiated in 1996, the underlying objective of the NAWCA-based Small Grants program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the Standard Grants program. We also hope that successful participants in the Small Grants program will be encouraged to participate as a grantee or partner in the Standard Grants program. Over the first seven years of the Small Grants program, 553 proposals requesting a total of approximately $19.8 million competed for funding. Ultimately, 164 projects were funded over this period for about $6.7 million. For 2003, with the approval of the Migratory Bird Conservation Commission, we have made the Small Grants program operational at a base level of $1.0 million. Between $1.0 and $2.0 million in Small Grants projects may be funded. However, ultimately, the level of Small Grant funding depends upon the quality of the pool of grant proposals.

To be considered for funding in the 2003 cycle, proposals must have a grant request no greater than $50,000. We will accept all wetland conservation proposals that meet the requirements of the Act. However, considering appropriate proposal resource values, we will give funding priority to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. This priority system does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Also, projects are likely to receive a greater level of attention if they are part of a broader related or unrelated effort to bring or restore wetland or wetland-associated upland conservation values to a particular area or region.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands. Mitigation-related projects may be precluded from consideration, depending upon the nature of the mitigation.

Please keep in mind that NAWCA and matching funds may be applied only to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, acceptable project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though we require less total application information for Small Grants than we do for the Standard Grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council-established guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, ''Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds.'' Applicants must submit a completed Standard Form 424, Application For

Federal Assistance. Hard copies of Small Grant instructions (booklets) are no longer provided, except under special circumstances. However, the NAWCA Program website, *http://birdhabitat.fws.gov,* contains instructions for completing and submitting a Small Grant application, as well as forms and instructions for the Standard Form 424.

Small Grant proposals may be submitted prior to the due date but must be postmarked no later than Friday, November 29, 2002. Address submitted proposals as follows: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

Applicants must submit *complete* grant request packages to the Division of Bird Habitat Conservation (DBHC), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, we are not usually able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, call the DBHC office secretary at 703.358.1784, facsimile 703.358.2282, or send e-mail to *R9ARW_DBHC@FWS.GOV.* Small Grant application instructions may be available by E-mail as a WordPerfect© file, upon special request.

In conclusion, we require that, upon arrival in the DBHC, proposal packages must be: complete with regard to the information requested, presented in the format requested, and be presented according to the established deadline.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. On May 26, 1999, OMB gave its approval for this information collection and confirmed the approval number as 1018–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2003.

Dated: June 17, 2002.

**Steve A. Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 02–16982 Filed 7–5–02; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[ID–070–1020–PG]**

## Upper Snake River District Resource Advisory Council Meeting; Correction, Location and Times

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Upper Snake River District Resource Advisory Council Meeting: Correction, Location and Times.

**SUMMARY:** On May 20, 2002, we published the date of the next Upper Snake River District Resource Advisory Council (RAC) Meeting as May 29, 2002 (67 FR 35572). The notice would not have allowed enough time for public participation. The meeting has been re-scheduled for July 24, 2002, beginning at 1 p.m.; and July 25, 2002, beginning at 8 a.m. The meeting will be held at the Sun Valley Elkhorn Lodge, 1 Elkhorn Road, in Sun Valley, Idaho.

**SUPPLEMENTARY INFORMATION:** The RAC meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. All meetings are open to the public. Each formal council meeting has time allocated for hearing public comments, and the public may present written or oral comments. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact the address below.

**FOR FURTHER INFORMATION:** David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

Dated: June 5, 2002.

**Russ McFarling,**

*Acting District Manager.*

[FR Doc. 02–17133 Filed 7–3–02; 2:00 pm]

BILLING CODE 4310–GG–P

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## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

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

**ACTION:** Notice of extension of information collection (1010–0017).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of form MMS–128, Semiannual Well Test Report. This notice also provides the public a second opportunity to comment on the paperwork burden of this reporting requirement.

**DATES:** Submit written comments by August 7, 2002.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0017), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments to MMS, the e-mail address is: *rules.comments@MMS.gov.* Reference Information Collection 1010–0017 in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, at (703) 787–1600. You may also contact Alexis London to obtain a copy of the form at no cost.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form MMS–128, Semiannual Well Test Report.

*OMB Control Number:* 1010–0017.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the

OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to a form used to collect information required under 30 CFR 250, subpart K, on production rates. Section 250.1102(b) requires respondents to submit form MMS–128. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). Regional Supervisors use information submitted on form MMS–128 to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves. We are proposing no changes to the data elements on form MMS–128. However, we are reducing the number of copies respondents must submit to only an original and ''one'' copy.

*Frequency:* Semiannual.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Reporting and Recordkeeping ''Hour'' Burden:* The burden for submitting semiannual well test reports does not include the time to test the well or the pre-stabilization period. Respondents generally conduct tests even more frequently than required by our regulations. We only consider the burden to be the time to submit the information to MMS. We estimate respondents submit the results of approximately 13,000 well tests each year in the GOMR and about 600 in the POCSR, with an estimated annual hour burden of 1,336 hours. Based on $50 per hour, the hour burden cost to respondents is $66,800. The burden varies only slightly for electronic versus paper form submission, and is calculated as follows:

In the Gulf of Mexico OCS Region:

25% of 13,000 well tests via electronic submission = 3,250 reports x 5 minutes/60 = 271 hours.

75% of 13,000 via paper form/average 5 wells/form = 1,950 forms x 30 minutes/60 = 975 hours.

In the Pacific OCS Region:

100% of 600 well tests via paper form/average 20 wells/form = 30 forms x 3 hours = 90 hours.

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have identified no ''non-hour cost'' burdens associated with the subject form.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on April 1, 2002, we published a **Federal Register** notice (67 FR 15408) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, 30 CFR 250.199 and the PRA statement on the form explain that the MMS will accept comments at any time on the information collection burden of our regulations and associated forms. We display the OMB control number and provide the address for sending comments to MMS. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 7, 2002.

*Public Comment Policy:* Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744.

Dated: June 5, 2002.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*

[FR Doc. 02–16925 Filed 7–5–02; 8:45 am]

**BILLING CODE 4310–MR–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items in the Possession of the Connecticut State Museum of Natural History, University of Connecticut, Storrs, CT

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Connecticut State Museum of Natural History, University of Connecticut that meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items.

The National Park Service is not responsible for the determinations within this notice.

The 10 cultural items are a string of clamshell wampum beads, a brass arrow point, three stone pestles, an iron trade hatchet, an iron spike, a brass trade cooking pan, a brass trade kettle, and a brass button.

In 1942, these cultural items were removed during excavations related to a home lot development project from in Mystic, CT, and were sold by the property owner, Mr. Al Kowsz, to Mr. Norris L. Bull sometime thereafter. In 1963, the family of Norris L. Bull donated the cultural items to the University of Connecticut; the items were held by the Department of Anthropology at the University of Connecticut until 1994, when they were accessioned by the Connecticut State Museum of Natural History. Museum records indicate that the cultural items were found with the human remains of five Native American individuals. The Connecticut State Museum of Natural History is not in possession of the human remains from these burials.

Based on geographic and historical evidence, the area in which the burials were located coincides with the aboriginal territory of the Pequot Indians, and lies in close proximity to the site of the Pequot Fort attacked by John Mason in 1637. The stylistic attributes of the burial goods are consistent with a 17th century date for the burials. Members of the Mashantucket Pequot Tribe of Connecticut are the direct descendants of the Pequot Indians.

Based on the above-mentioned information, officials of the Connecticut State Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), the 10 cultural items listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Connecticut State Museum of Natural History also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these unassociated funerary objects and the Mashantucket Pequot Tribe of Connecticut.

This notice has been sent to officials of the Mashantucket Pequot Tribe of Connecticut and the Mohegan Indian Tribe of Connecticut. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these unassociated funerary objects should contact Nicholas F. Bellantoni, Connecticut State Archaeologist, Office of State Archaeology, University of Connecticut, Storrs, CT 06269-4214, telephone (860) 486-5248 before August 7, 2002. Repatriation of these unassociated funerary objects to the Mashantucket Pequot Tribe of Connecticut may begin after that date if no additional claimants come forward.

Dated: March 20, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–17091 Filed 7–5–02 8:45 am]

**BILLING CODE 4310–70–S**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Intent to Repatriate Cultural Items in the Possession of the Kennedy Museum of Art, Ohio University, Athens, OH

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Kennedy Museum of Art, Ohio University, Athens, OH, that meet the definitions of ''sacred object'' and ''object of cultural patrimony'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items are ceremonial bundles of faunal materials, minerals, leather, feathers, and cloth, including one offering kit, one paint kit, one feather wand, three gourd rattles, one hide rattle, two buckskin saddlebags, one abalone shell, two silver stamps, one watching stone, and other assorted shells, stones, and arrowheads. Collectively these items are referred to as jish, representing universal objects used in four Navajo chantways: Windway, Mountainway, Shootingway, and Evilway.

The jish was donated to the Kennedy Museum of Art in January 1993 by Tobe A. Turpen, Jr. In correspondence with the museum in 1993, Mr. Turpen stated that the jish had been given to his father, Tobe Turpen, Sr., sometime before 1950 by Hosteen Left Hand, a Navajo Hataalii.

Representatives of the Navajo Nation, Arizona, New Mexico & Utah state that the Windway, Mountainway, Shootingway, and Evilway are four chants still performed by the Navajo Nation, Arizona, New Mexico & Utah. Bundles for these chants should only be in the possession of a qualified Hataalii (chanter, singer, or medicine person) capable of understanding the jish. In Navajo tradition, jish can only be cared for by an individual; it is not ''property'' and cannot be ''owned.'' Documentation associated with the jish and information provided by representatives of the Navajo Nation, Arizona, New Mexico & Utah confirm that a relationship exists between the original makers of the ceremonial bundles and the Navajo Nation, Arizona, New Mexico & Utah.

Based on the above information, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 43 CFR 10.2 (d)(3), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Kennedy Museum of Art, Ohio University, have also determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and may not be alienated, appropriated, or conveyed by any individual tribal or organizational member. Lastly, officials of the Kennedy Museum of Art, Ohio University have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these cultural items and the Navajo Nation, Arizona, New Mexico & Utah.

This notice has been sent to officials of the Navajo Nation, Arizona, New Mexico & Utah. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Jennifer McLerran, Curator, Kennedy Museum of Art, Ohio University, Lin Hall, Athens, OH 45701, telephone (740) 593-0952 or (749) 593-1304 before August 7, 2002. Repatriation of these cultural items to the Navajo Nation, Arizona, New Mexico & Utah may begin after that date if no additional claimants come forward.

Dated: April 11, 2002.

**Robert Stearns,**

*Manager, National NAGPRA Program.*

[FR Doc. 02–17089 Filed 7–5–02; 8:45 am]

**BILLING CODE 4310–70–S**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1012 (Preliminary)]**

## Certain Frozen Fish Fillets From Vietnam

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1012 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Vietnam of certain frozen fish fillets, provided for in subheading 0304.20.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by August 12, 2002. The Commission's views are due at Commerce within five business days thereafter, or by August 19, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

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

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted in response to a petition filed on June 28, 2002, by the Catfish Farmers of America, a trade association of U.S. catfish farmers and processors, and by individual U.S. catfish processors.

### Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

### Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on July 19, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than July 17, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

### Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 24, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: July 1, 2002.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 02–16953 Filed 7–5–02; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–376, 377, and 379 and 731–TA–788–793 (Final) (Remand)]**

## Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Notice and Scheduling of Remand Proceedings

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping and countervailing duty investigations, *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* Nos. 701–TA–376, 377 and 379 (Final) and 731–TA–788–793 (Final).

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

**FOR FURTHER INFORMATION CONTACT:** Woodley Timberlake, Office of Investigations, telephone 202–205–3188 or Neal J. Reynolds, Office of General Counsel, telephone 202–205–3093, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:**

## Background

In May 1998, the Commission determined, by a four-to-two vote, that an industry in the United States was not being materially injured or threatened with material injury by reason of imports of cold-rolled stainless steel plate in coils from Belgium and Canada. On August 28, 2000, the Court of International Trade affirmed this determination as being in accordance with law and supported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, 116 F.Supp. 2d 1276 (CIT 2000). On April 19, 2002, the U.S. Court of Appeals for the Federal Circuit vacated lower court's ruling, finding that the Commission's volume and impact findings with respect to cold-rolled stainless steel plate were not in accordance with law and that its pricing finding for cold-rolled plate was unsupported by substantial evidence. *Allegheny Ludlum Corp.* v. *United States*, Appeal No. 01–1223 (April 19, 2002). On June 18, 2002, in accordance with the Federal Circuit's decision, the Court of International Trade vacated its earlier decision and remanded to the Commission its final negative determination with respect to cold-rolled stainless steel plate. In its order, the Court of International Trade remands the determination to the Commission ''for proceedings not inconsistent with the Federal Circuit's decision in Appeal No. 01–1223.'' It also directs the Commission to issue a remand determination within sixty days of the date of the order, *i.e.*, by August 19, 2002.

## Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, August 12, 2002. The meeting is tentatively scheduled for 2 p.m.

## Reopening Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation to seek additional data with respect to the impact of the subject imports from Belgium and Canada on the domestic industry producing cold-rolled stainless steel plate in coils.

## Participation in the Proceedings

Only those persons who were interested parties to the original administrative proceedings (*i.e.*, persons listed on the Commission Secretary's service list) may participate in this remand proceeding.

## Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order (''APO'') in effect in the original investigation. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice of reopening the record on remand in the **Federal Register**. Applications must be filed for persons who are on the Judicial Protective Order in the related CIT case, but are not currently covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

## Written Submissions

Each party who is an interested party in this remand proceeding may submit a written brief to the Commission. The brief must be concise and be limited to comments on how the data obtained in this remand proceeding affect the Commission's original determination with respect to cold-rolled stainless steel plate products. Any material in the comments not addressing this limited issue will be stricken from the record. The brief must be double-spaced, single-sided, and on stationary measuring 8½ inches. The comments will be limited to thirty (30) pages, and must be filed no later than the close of business on August 7, 2002.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: July 1, 2002.

By order of the Commission.

**Marilyn Abbott,**

*Secretary.*

[FR Doc. 02–16902 Filed 7–5–02; 8:45 am]

BILLING CODE 7020–02–P

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# DEPARTMENT OF JUSTICE

## Executive Office of Immigration for Review; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: revision of a currently approved collection, 33/BIA Board of Immigration Appeals, 33/IC Immigration Court.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 71, page 18036 on April 12, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this

notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *Title of the form:* Alien's change of address form: 33/BIA Board of Immigration Appeals and 33/IC Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR 33/BIA, EOIR 33/IC, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract: Primary:* An alien whose immigration proceedings is statutorily required to report any change of address. *Other:* None. *Abstract:* The information on the change of address form is used by the Immigration Courts and the Board of Immigration Appeals to ascertain where to send the notice of the next administrative action or notice of any decisions which have been rendered in an alien's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses are estimated annually with an average of 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,750 hours annually.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Office, United States Department of Justice.*

[FR Doc. 02–16988 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–30–M

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## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: extension of a current approved collection, COPS Making Officer Redeployment Effective (MORE) Grant Program.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 36, page 8318 on February 22, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* COPS Making Officer Redeployment Effective (MORE) Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: none. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal government. Other: None. The information collection will be used by the COPS Office to determine whether law enforcement agencies are eligible for one year grants specifically targeted to provide funding for technology and equipment. The grants are meant to enhance law enforcement infrastructures and community policing efforts in these communities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 2,300 respondents will complete the

application. The amount of estimated time required for the average respondent to respond is 27 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total burden hours to conduct this survey is 62,100 hours.

*If additional information is required contact:* Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: June 28, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer.*

[FR Doc. 02–16989 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–AT–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. CBS Corporation, Infinity Broadcasting Corporation, and Outdoor Systems, Inc., No. 1:99–CV3212 (D.D.C. June 6, 1999); United States' Notice of Proposed Termination of Final Judgment

Notice is hereby given that the United States and CBS Corporation, Infinity Broadcasting Corporation, and Outdoor Systems, Inc. (collectively ''CBS''), have entered a Stipulation to modify the Final Judgment entered by the United States Court for the District of Columbia on June 6, 2000. In this Stipulation filed with the Court, the United States has provisionally consented to modification of the Final Judgment, but has reserved the right to withdraw its consent pending receipt of the public comments.

On December 6, 1999, the United States filed the Complaint in this case alleging that the acquisition by Infinity Broadcasting Corporation and CBS Corporation (collectively ''CBS'') of Outdoor Systems, Inc. (''OSI'') violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The Complaint alleged that CBS and OSI were two of the largest out-of-home advertising companies in the United States; that the sale of out-of-home advertising constituted a relevant antitrust product market; and that the acquisition was likely to substantially reduce competition in three metropolitan areas: New York, New Orleans, and Phoenix.

The Final Judgment, which was entered by consent of the parties on June 6, 2000, ordered the divestiture of four separate groups of assets. To date, three of these divestitures have already been successfully accomplished; the fourth divestiture—the divestiture, at the Defendant's option, of either the New York City subway or bus advertising business—has not been completed, despite the efforts of the Defendants and a Court-appointed Trustee. The parties propose that the current Final Judgment be modified by substituting the Defendants' New York City telephone kiosk advertising business for the assets previously required to be divested.

The United States has filed a memorandum with the Court setting forth the reasons it believes modification of the Final Judgment would serve the public interests. Copies of the joint motion of the United States and CBS to establish procedures to modify the Final Judgment, the stipulation containing the United States' provisional consent to modification of the Final Judgment, the supporting memorandum, and all additional papers filed with the Court in connection with this motion are available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, 325 7th Street, NW., Room 215 North, Liberty Place Building, Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 2001. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested person may submit comments regarding the proposed modification of the Final Judgment to the United States. Such comments must be received by the Antitrust Division within sixty (60) days of the last publication of notices appearing in *The Wall Street Journal* and *Advertising Age* and will be filed with the Court by the United States. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 3000, Washington, DC 20530 (telephone: 202–307–0924). Comments may also be sent via electronic mail to *Allen.Grunes@usdoj.gov* or faxed to the attention of Allen Grunes at 202–514–7308.

**Dorothy B. Fountain,**

*Deputy Director of Operations.*

[FR Doc. 02–16923 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on May 15, 2002, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Center for Manufacturing Sciences, Inc. (''NCMS''), the National Center for Manufacturing Sciences, Inc. (''NCMS''), has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aereous, L.L.C., Ann Arbor, MI; EER Systems, Inc., Chantilly, VA; and University of Tennessee, Knoxville, TN have been added as parties to the venture. Also, Erie Press Systems (an EFCO Company), Erie, PA; Auto-trol Technology Corporation, McLean, VA; Forging Industry Association, Cleveland, OH; Michigan BIDCO, Ann Arbor, MI; Michigan State University, East Lansing, MI; S.E. Huffman Corporation, Clover, SC; and VE Technologies, Blacksburg, VA have resigned as members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on December 18, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 23, 2002 (67 FR 3236).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–16922 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SWRI''): Clean Diesel III

**Correction**

In Notice Document 01–7769 appearing on pages 17204–17205 in the issue of Thursday, March 29, 2001, in the third column, heading of Notice, fifth line, ''Clear Diesel'' should read ''Clean Diesel''.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 02–16921 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities; Proposed Collection; Comment Request

**ACTION:** 30-day notice of information collection under review: Application for Nonimmigrant Status; Form I–914.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on January 31, 2002 at 67 FR 4784. Notification in the preamble of the interim rule allowed for a 60-day public comment period. Public comments were received by the INS and have been addressed and reconciled in the accompanying Supporting Statement.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of he proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status; Application for Immediate Family Member of T–1 Recipient; and Declaration of Law Enforcement Officer for Victim of Trafficking in Persons.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–914, I–914 Supplement S, and I–914 Supplement B. Service Center Operations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, a well as a brief abstract:* Primary: Individuals or households. This application incorporates information pertinent to eligibility under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–386) and a request for employment. The information on all three parts of the form will be used for by the Service to determine whether applicants meet the eligibility requirements for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,750 Form I–914 responses at 2.25 hours per response; 18,750 Form I–914 Supplement A responses at 1 hour per response; and 7,000 Form I–914 Supplement B responses at .50 hours per response.

(6) *An estimate of the total public (in hours) associated with the collection:* 41,938 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Service Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: June 27, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–16943 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** 30-day notice of information collection under review: Freedom of Information/Privacy Act request.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2002 at 67 FR 12585, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, 725—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Type of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street NW., Suite 1600, Washington, DC 20530.

Dated: June 28, 2002.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 02–16944 Filed 7–5–02; 8:45 am]

**BILLING CODE 4410–10–M**

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## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 30-day notice of information collection under review: New; domestic preparedness training evaluation and follow-up.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume XX, Number 67, page 11517 on March 14, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Domestic Preparedness Training Evaluation and Follow-up.

(3) *The agency form number if any, and the applicable component of the Department sponsoring the collection:* The Office for Domestic Preparedness, Office of Justice Programs, U.S. Department of Justice is sponsoring the collections. A form number has not been assigned.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who participate in office for Domestic Preparedness-sponsored training other: None. The data collection effort is designed to obtain feedback from participants, who attend Office for Domestic Preparedness-sponsored training, on enhanced knowledge and/or skills, course improvements, and actions to use the information to improve personal, agency, or

jurisdictional preparedness to respond to a terrorism incident. Approximately 4 months after the training, a sample of participants will be asked to complete a follow-up survey on how useful the training has been to them in performing their job actions they have taken to enhance response capacities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average to respond/reply. It is estimated that approximately 21,390 respondents will be asked to complete the training evaluation forms and that will take approximately 15 minutes to complete.

(6) *An estimate of the total public burden (in hours associated with the collection:* The total hour burden to complete evaluation forms is approximately 5,347 hours.

*If additional information is required contact:* Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 2, 2002.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 02–16990 Filed 7–5–02; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF LABOR

### Office of The Secretary

### Solicitation for Grant Applications (SGA) 02–04; Combating Child Labor Through Education in Bolivia and Peru; Correction

**AGENCY:** Bureau of International Labor Affairs, Labor.

**ACTION:** Notice of correction.

**SUMMARY:** In the **Federal Register**, Vol. 67, No. 100, Wednesday, May 23, 2002 the competition was announced and the SGA printed in its entirety. Two of the background materials listed, the *Bolivia Country Report* and the *Peru Country Report*, were not available on-line as described in the SGA at the time of publication. These two country reports are now available on-line for review by the public at the following website address: *http://www.dol.gov/ilab/programs/iclp/bkgrdsga0204.htm*.

Due to this delay, the due date for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, July 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov*.

Signed at Washington, DC this 2nd day of July, 2002.

**Lawrence J. Kuss,**

*Director, Procurement Services Center.*

[FR Doc. 02–16974 Filed 7–5–02; 8:45 am]

BILLING CODE 4510–28–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 06/17/2002]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 45,645 | Clements Manufacturing (Comp) | Harbor Beach, MI | 05/15/2002 | Wire Harnesses. |
| 45,646 | Trinity Industries (Wrks) | Beaumont, TX | 05/23/2002 | Freight. |
| 45,647 | DuPont Co. (Wrks) | Niagara Falls, NY | 05/20/2002 | Polyethene Glycol. |
| 45,648 | Breeze Industrial Product (Comp) | Saltsburg, PA | 05/13/2002 | Hose Clamps. |
| 45,649 | Calument Steel Co (Wrks) | Chicago Heights, IL | 05/24/2002 | Bars. |
| 45,650 | Gerber Childrenswear (Wrks) | Ballinger, TX | 06/03/2002 | Blanket Sleepers. |
| 45,651 | Tyco Electronics Corp (Wrks) | Carlisle, PA | 01/24/2002 | Electroplated Components. |
| 45,652 | Sagem, Inc. (Comp) | Greenville, SC | 05/27/2002 | Gas Injectors. |
| 45,653 | La-Z-Boy East (IUE) | Florence, SC | 05/23/2002 | Recliner Chairs. |
| 45,654 | Harry J. Price Textiles (Comp) | Lowell, NC | 05/15/2002 | Various Fabrics. |
| 45,655 | BTA-Perfex (Wrks) | Butler, WI | 05/22/2002 | Industrial Heat and Pressure Vessels. |
| 45,656 | Hancock Manufacturing Co (Wrks) | Toronto, OH | 05/29/2002 | Steel Stampings. |
| 45,657 | Chevron Phillips Chemical (Wrks) | Orange, TX | 05/20/2002 | Polyethylene. |
| 45,658 | TNS Mills/Gaffney Weaving (Wrks) | Gaffney, SC | 05/10/2002 | Cloth for Men's Apparel. |
| 45,659 | Louisiana Uniform Ind. (Comp) | Delhi, LA | 05/17/2002 | Aprons, Vest, Doublets. |
| 45,660 | Amspec Chemical Corp (Wrks) | Gloucester City, NJ | 03/06/2002 | Antmony Flame Retardants. |

APPENDIX—Continued

[Petitions instituted on 06/17/2002]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 45,661 | Soilmec Branham, Inc. (Wrks) | Conroe, TX | 05/23/2002 | Oil Field Equipment. |
| 45,662 | Cerro Copper Products (USWA) | St. Louis, MO | 05/07/2002 | Copper Tubes. |
| 45,663 | Gold Toe Brands, Inc. (Comp) | Burlington, NC | 05/20/2002 | Socks. |
| 45,664 | Alyeska Pipeling Service (Comp) | Anchorage, AK | 04/16/2002 | Crude Oils. |
| 45,665 | Scotty's Fashions (UNITE) | Lewistown, PA | 05/30/2002 | Ladies Sportswear. |
| 45,666 | P.S.M. Fastener Corp. (Wrks) | St. Louis, MO | 05/24/2002 | Metal Inserts. |
| 45,667 | Mechanical Products (IAMAW) | Jackson, MI | 05/28/2002 | Circuit Breakers. |
| 45,668 | Visiontek, LLC (Wrks) | Gurnee, IL | 05/08/2002 | Computer Graphic Accelerator Cards. |
| 45,669 | Hankison International (USWA) | Washington, PA | 05/24/2002 | Compressed Air Dryers. |
| 45,670 | Burlington Industries (Comp) | Graham, NC | 05/22/2002 | Furniture Upholstery. |
| 45,671 | West Penn Hat and Cap (UNITE) | Creighton, PA | 05/14/2002 | Baseball Caps and Visors. |
| 45,672 | VMV Enterprises, Inc. (IAMAW) | Paducah, KY | 05/29/2002 | Repairs & Locomotives, Traction Motors. |
| 45,673 | Nichirin Coupler (Wrks) | El Paso, TX | 05/28/2002 | Transfering Machines. |
| 45,674 | Kennametal Greenfield (Wrks) | Greenfield, MA | 05/14/2002 | Taps. |
| 45,675 | Great Lakes Chemicals (Wrks) | Newport, TN | 05/10/2002 | Brominated Flame Retardant. |
| 45,676 | Thomson Multimedia, Inc., (IAMAW) | Lancaster, PA | 05/24/2002 | Televisions. |
| 45,677 | Ames True Temper (USWA) | Parkersburg, WV | 05/17/2002 | Lawn and Garden Tools. |
| 45,678 | Pepperell Paper Co (PACE) | Pepperell, MA | 05/28/2002 | Colored Paper. |
| 45,679 | NewSouth Apparel, LLC (Comp) | Brewton, AL | 06/07/2002 | Apparel. |
| 45,680 | Goodyear Tire and Rubber (USWA) | Green, OH | 06/04/2002 | Rubber Air Springs. |
| 45,681 | Farley's and Sathers (Wrks) | Pittston, PA | 05/14/2002 | Candy. |
| 45,682 | Canon Business Machines (Comp) | Costa Mesa, CA | 05/14/2002 | Ink Jet Printers and Peripheral Products. |
| 45,683 | International Comfort (IAMAW) | Lewisburg, TN | 05/20/2002 | Commercial Heating Ventilation. |
| 45,684 | Supreme Tool and Die Co (Comp) | Fenton, MO | 05/22/2002 | Tooling. |
| 45,685 | Dana Corporation (Comp) | Columbia City, IN | 06/10/2002 | Power Steering Assembly. |
| 45,686 | Buehler Motor, Inc. (Comp) | Kinston, NC | 05/29/2002 | Sub-fractional HP Permanent Motors. |
| 45,687 | Oxford of South Carolina (Comp) | Walhalla, SC | 05/31/2002 | Women's Apparel. |
| 45,688 | Stork H and E Turbo (Wrks) | Ithaca, NY | 06/03/2002 | Gas and Steam Turbine Blades. |

[FR Doc. 02–16975 Filed 7–5–02; 8:45 am]

**BILLING CODE 4510–30–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2002.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of June, 2002.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 06/10/2002]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 41,616 | Greenfield Industries (USWA) | Lyndonville, VT | 05/14/2002 | Taps. |
| 41,617 | American Papermills (PACE) | Gilman, VT | 05/28/2002 | Printing Paper. |
| 41,618 | Ethan Allen, Inc. (Comp) | Randolph, VT | 05/29/2002 | Furniture. |
| 41,619 | Ube Automotive (UAW) | Mason, OH | 05/29/2002 | Aluminum Wheels. |
| 41,620 | Atofina Chemicals, Inc. (Wrks) | Wichita, KS | 05/13/2002 | RZZ Refrigerant. |
| 41,621 | Gorham Manufacturing Comp) | Smithfield, RI | 05/30/2002 | Sterling Silver/Stainless Steel. |
| 41,622 | Permagraphics, Inc. (Comp) | Eugene, OR | 05/28/2002 | Window Stickers. |
| 41,623 | DeCrane Aircraft Seating (Wrks) | Marinette, WI | 05/24/2002 | Medical Equipment. |
| 41,624 | ADC Telecommunications Wrks) | Shakopee, MN | 05/30/2002 | Fiber Optic Cables. |

APPENDIX—Continued

[Petitions instituted on 06/10/2002]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 41,625 | InSystem Technologies (Wrks) | Roanoke, VA | 05/02/2002 | Software Sales Support. |
| 41,626 | Sitel Corp. (Wrks) | Longview, TX | 05/09/2002 | Customer Care Center. |
| 41,627 | Moltrup Steel Co (Wrks) | Beaver Falls, PA | 05/17/2002 | Steel Bars. |
| 41,628 | Darco Kentucky (Comp) | Louisville, KY | 05/20/2002 | Orthopedic Softgoods. |
| 41,629 | Standard Steel (Wrks) | Burnham, PA | 05/22/2002 | Forged Railway Wheels. |
| 41,630 | Metokote Corp. (Wrks) | Loudon, TN | 05/07/2002 | Upper and Lower Links, Buckets. |
| 41,631 | Smiths-Aerospace (Comp) | Malvern, PA | 05/13/2002 | Facility Products. |
| 41,632 | Tecknit, Inc. (Comp) | Cranford, NJ | 05/01/2002 | O-Rings, Fingerstock, Wire Mesh. |
| 41,633 | Specialty Machine Co (Comp) | Gastonia, NC | 05/17/2002 | Tool and Die Parts. |
| 41,634 | Ansell Protective Product (Wrks) | Coshocton, OH | 05/17/2002 | Industrial Gloves. |
| 41,635 | T and J Personal Services (Comp) | Clearfield, PA | 05/14/2002 | Janitorial Services. |
| 41,636 | Invensys, Inc-Foxboro Co. (Comp) | Foxboro, MA | 05/03/2002 | Cable Assemblies. |
| 41,637 | Jones Apparel Group (Wrks) | Rural Hall, NC | 04/30/2002 | Clothes. |
| 41,638 | Glenn Enterprises, Inc (Wrks) | Sulligent, AL | 05/14/2002 | Ladies/Men's Casual Pants. |
| 41,639 | Sony Electronics (Wrks) | San Diego, CA | 05/10/2002 | Television and Computer Monitors. |
| 41,640 | Halmode Apparel, Inc. (Comp) | Roanoke, VA | 05/15/2002 | Ladies Apparel. |
| 41,641 | Southwest Cupid (Comp) | Bristow, OK | 05/29/2002 | Ladies Undergarments. |
| 41,642 | Parksley Apparel (Comp) | Parksley, VA | 05/24/2002 | Ladies' Blouses. |
| 41,643 | JD Holding Co., Inc. (Wrks) | Springport, MI | 05/29/2002 | Automatic Brake Systems. |
| 41,644 | Lear Corp Marlette (UAW) | Marlette, MI | 05/31/2002 | Headliners & Sunvisors. |

[FR Doc. 02–16976 Filed 7–05–02; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division, is soliciting comments concerning the proposed collection ''Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations 29 CFR part 529 (WH–201).'' A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before September 6, 2002.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, e-mail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 14(b)(3) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to provide certificates authorizing the employment of full-time students at subminimum wages in institutions of higher education to the extent necessary to prevent curtailment of opportunities for employment. This section also sets limits on such employment and protects the full-time employment opportunities of other workers. Th WH–201 is used by employers seeking such authorization. This information collection is currently approved by the Office of Management and Budget (OMB) for use through January 2003.

### II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

### III. Current Actions

The Department of Labor seeks an approval of the revision of the information collection instrument to simplify the application process for employers. The instructions have been clarified and employers are no longer requested to provide the information regarding the number of students they expect to employ at subminimum wages. The revised form will allow the Wage and Hour Division (WHD) to take advantage of new report writing capabilities available to the WHD through its automated Certificate Processing System (CPS). By standardizing the information requested about the number of full-time students being employed by employers who request certification, the CPS will generate accurate reports concerning the

employment of all full-time students at subminimum wages. The reformatting of the WH–201 provides sufficient space to allow the CPS to generate preprinted renewal applications for employers prior to the expiration of each certificate. These renewal applications will be sent to employers sixty days before the expiration date of their current certificates.

*Type of Review:* Revision.

*Agency:* Employment Standards Administration.

*Title:* Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulations Part 519.

*OMB Number:* 1215–0080.

*Agency Number:* WH–201.

*Affected Public:* Businesses or other for-profit; Individuals or households; Not-for-profit institutions.

*Total Respondents:* 15.

*Total Responses:* 15.

*Burden Hours per Response (Reporting):* 15 to 30 minutes.

*Burden Hours Per Response:* (Recordkeeping): 1 minute.

*Total Burden Hours:* (Reporting and Recordkeeping): 5.

*Total Burden Cost:* (capital/startup): $0.

*Total Burden Cost:* (operation/maintenance): $5.55.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 2, 2002.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 02–16977 Filed 7–5–02; 8:45 am]

BILLING CODE 4510–27–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 02–082]**

### NASA Advisory Council, Space Science Advisory Committee Solar System Exploration Subcommittee Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee (SSES).

**DATES:** Wednesday, July 17, 2002, 8:30 a.m. to 5 p.m., Thursday, July 18, 2002, 8:30 a.m. to 5 p.m., and Friday, July 19, 2002, 9–11:30 a.m.

**ADDRESSES:** NASA Headquarters, 300 E Street SW, Washington, DC 20546, Room 6H46 on July 17 and room 9H40 on July 18 and 19.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Briefing on NRC Decadal Survey of Solar System Exploration
- Status reports on the Solar System Exploration Program, Mars Exploration Program, Deep Space Network (DSN), and Planetary Data System (PDS)
- Reports from Mars science working groups
- Discussion and working session for preparation of next Solar System Exploration Roadmap
- Evaluation of Solar System Exploration Program performance for Government Performance and Results Act (GPRA)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 1, 2002.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–16962 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 02–084]**

### NASA Advisory Council, Space Science Advisory Committee; Sun-Earth Connection Advisory Subcommittee Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee (SECAS).

**DATES:** Tuesday, July 16, 2002, 8:30 a.m. to 5:30 p.m., Wednesday, July 17, 2002, 8:30 a.m. to 5:30 p.m., and Thursday, July 18, 2002, 8:30 a.m. to Noon.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW, Washington, DC 20546, room 7H46 on July 16 and July 17, and room 6H46 on July 18.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Division Director's Report
- Sun-Earth Connection Theme Roadmaps
- Discipline Scientists' Reports
- Status of Living with a Star Program
- FY 02 Outcomes for Government Performance and Results Act Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 2, 2002.

**Sylvia K. Kraemer,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 02–16963 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 02–080]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Detcon Inc. of the Woodlands, TX, has applied for an exclusive patent license to practice the invention described and claimed in U.S. Patent No. 5,625,342, entitled ''Plural-Wavelength Flame Detector that Discriminates between Direct and Reflected Radiation,'' which is assigned to the United States of America as represented by the Administrator of the

National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

**DATES:** Responses to this Notice must be received by July 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 1, 2002.

**Paul G. Pastorek,**

*General Counsel.*

[FR Doc. 02–16960 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 02–081]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Radio Sound, Inc. of Louisville, Kentucky, has applied for a partially exclusive patent license to practice the invention described and claimed in U.S. Patent Application Serial Number 09/163,794, entitled ''Communication System with Adaptive Noise Suppression,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

**DATES:** Responses to this Notice must be received by August 22, 2002.

**FOR FURTHER INFORMATION CONTACT:** Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 1, 2002.

**Paul G. Pastorek,**

*General Counsel.*

[FR Doc. 02–16961 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 02–083]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that TAO Systems of Integration, Inc., of Williamsburg, Virginia, has applied for an exclusive license to practice the invention described and claimed in U.S. Patent No. 4,936,146 (NASA Case Number 13952–2–SB), entitled ''Method and Apparatus for Detecting Laminar Flow Separation and Reattachment,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** Responses to this notice must be received by July 23, 2002.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199; Telephone 757–864–3227; Fax (757) 864–9190.

Dated: July 1, 2002.

**Robert M. Stephens,**

*Deputy General Counsel.*

[FR Doc. 02–16964 Filed 7–5–02; 8:45 am]

BILLING CODE 7510–01–P

## THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Additional notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 22, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in American History, submitted to the Division of Research Programs at the May 1, 2002 deadline.

2. *Date:* July 23, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in Studies of Science and Medicine, submitted to the Division of Research Programs at the May 1, 2002 deadline.

3. *Date:* July 24, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in Music, submitted to the Division of Research Programs at the May 1, 2002 deadline.

4. *Date:* July 25, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in Religious Studies, submitted to the Division of Research Programs at the May 1, 2002 deadline.

5. *Date:* July 25, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* M07.
*Program:* This meeting will review applications for Fellowships Program in

American Literature, submitted to the Division of Research Programs at the May 1, 2002 deadline.

6. *Date:* July 26, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in Philosophy, submitted to the Division of Research Programs at the May 1, 2002 deadline.

7. *Date:* July 29, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in European History I, submitted to the Division of Research Programs at the May 1, 2002 deadline.

8. *Date:* July 31, 2002.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowships Program in American History II, submitted to the Division of Research Programs at the May 1, 2002 deadline.

**Heather Gottry,**
*Acting Advisory Committee Management Officer.*

[FR Doc. 02–16912 Filed 7–5–02; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### SES Performance Review Board

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

**DATES:** Upon publication.

**FOR FURTHER INFORMATION CONTACT:** Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.

**SUPPLEMENTARY INFORMATION:** Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts: Eileen B. Mason, Senior Deputy Chairman, Laurence M. Baden, Deputy Chairman for Management and Budget, Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations, Ann G. Hingston, Congressional and White House Liaison, Michael R. Burke, Chief Information Officer.

**Murray R. Walsh,**
*Director of Administrative Services, National Endowment for the Arts.*

[FR Doc. 02–16927 Filed 7–5–02; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 10 years.

5. *Who will be required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

6. *An estimate of the number of responses:* 3,502.

7. *The estimated number of annual respondents:* 194 NRC licensees and 491 Agreement State licensees.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 151,644 (53,012 hours for NRC licensees [4,507 reporting + 48,505 hours recordkeeping]) or an average of 273 hours per licensee and (98,632 hours for Agreement State licensees [3,210 hours reporting + 95,422 hours recordkeeping]) or 201 hours per Agreement State licensee.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are for information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 7, 2002. Comments received after this date will be considered if it is practical to do so, but

assurance of consideration cannot be given to comments received after this date: Bryon Allen, Office of Information and Regulatory Affairs (3150–0001), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this first day of July, 2002.

For the Nuclear Regulatory Commission.

**Beth C. St. Mary,**

*Acting NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 02–16955 Filed 7–5–02; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a New Information Collection System

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), 5 CFR 1320.5(a)(1)(iv), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a new information collection. 5 CFR part 317 provides regulations for the administration of a Senior Executive Service. As a part of that Service, a Senior Executive Service Senior Opportunity and Resume System (SOARS) is to be established for the purpose of facilitating the mobility of executives across the Federal government. This System will be collecting resume data from SES members for the purpose of matching this data with available position vacancies for executives.

It is estimated, based upon the pilot that is being used, that 300 short resumes will be completed in the first year of the program. Each resume will take about 30 minutes to complete for an annual estimated burden of 150 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who respond through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey at 202–606–2150, FAX 202–418–3251 or e-mail *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal must be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to: Joyce Edwards, Chief, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6484, Washington, DC 20415.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16948 Filed 7–5–02; 8:45 am]

BILLING CODE 6325–42–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 34–1 and RI 34–3

**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 reclearance of a revised information collection. RI 34–1, Financial Resources Questionnaire, collects detailed financial information for use by OPM to determine whether to agree to a waiver, compromise, or adjustment of the collection of erroneous payments from the Civil Service Retirement and Disability Fund. RI 34–3, Notice of Amount Due Because of Annuity Overpayment, informs the annuitant about the overpayment and collects information.

Approximately 520 RI 34–1 and 1,561 RI 34–3 forms are completed annually. Each form takes approximately 60 minutes to complete. The annual estimated burden is 520 hours and 1,561 hours respectively.

For copies of this proposal, please contact Mary Beth Smith-Toomey at (202) 606–8358, FAX (202) 418–3251 or via e-mail at *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**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 and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Desktop Publishing & Printing Team, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16949 Filed 7–5–02; 8:45 am]

BILLING CODE 6325–50–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2809

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2809, Employee Health Benefits Election Form, is used by Federal employees to enroll for health insurance coverage under the Federal Employees Health Benefits (FEHB) Program. Certain former spouses of Federal employees, who are eligible for enrollment under the Spouse Equity Act of 1984 (P.L. 98–615), and former employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes

approximately 30 minutes to complete. The annual estimated burden is 4,500 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 be sure to include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415–3600, and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Budget and Administrative Services Division, Desktop Publishing and Printing Team, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16950 Filed 7–5–02; 8:45 am]

**BILLING CODE 6325–50–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2809–1

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, is used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP) and certain former dependents of these individuals. These include former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615) and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of Federal Employees Health Benefits (FEHB) law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 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 be sure to include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Abby L. Block, Assistant Director, Office of Insurance Programs, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3400, Washington, DC 20415–3600 and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Budget and Administrative Services Division, Desktop Publishing and Printing Team, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16952 Filed 7–5–02; 8:45 am]

**BILLING CODE 6325–50–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–7

**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) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–7, Marital Status Certification Survey, is used to determine whether widows, widowers, and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

*Comments are particularly invited on:* Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1000 forms are completed annually. Each form takes approximately 15 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 via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 60 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to William C. Jackson, Chief, Eligibility Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415–3560.

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 02–16947 Filed 7–5–02; 8:45 am]

**BILLING CODE 6325–50–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46149; File No. SR–CBOE–2002–34]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for a Three-Month Period the Pilot Program for the Exchange's 100 Spoke RAES Wheel

June 28, 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 June 12, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE as a ''non-controversial'' rule change under Rule 19b–4(f)(6) of the Act.[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

CBOE proposes to extend, for an additional three-month period, the pilot program that permits the appropriate Floor Procedure Committee (''FPC'') to allocate orders on the Exchange's Retail Automatic Execution System (''RAES'') under the allocation system known as the 100 Spoke RAES Wheel.

The text of the proposed rule change is available at the Office of the Secretary, CBOE 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, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On May 25, 2000, the Commission approved on a nine-month pilot basis the Exchange's proposal to amend Rule 6.8, which governs the operation of RAES,[4] to provide the appropriate FPC with a third choice for apportioning RAES trades among participating market makers, the 100 Spoke RAES Wheel.[5] In those classes where the 100 Spoke RAES Wheel is employed, the distribution of RAES trades to participating market-makers is essentially identical to the distribution of in-person agency market-maker trades for non-RAES trades in that class. The 100 Spoke RAES Wheel pilot program is used as anticipated.

The pilot program was extended three times and currently ends on June 28, 2002.[6] The Exchange now proposes to extend the pilot program for an additional three-month period ending September 28, 2002[7] for additional study of the pilot program.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular. Section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, 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 public interest.

[4] RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[5] Securities Exchange Act Release No. 42824 (May 25, 2000), 65 FR 37442 (June 14, 2000) (SR–CBOE–99–40).

[6] Securities Exchange Act Release No. 44020 (February 28, 2001), 66 FR 13985 (March 8, 2001) (six-month extension, SR–CBOE–2001–07); Securities Exchange Act Release No. 44749 (August 28, 2001), 66 FR 46487 (September 5, 2001) (four-month extension, SR–CBOE–2001–47); and Securities Exchange Act Release No. 45230 (January 3, 2002), 67 FR 1380 (January 10, 2002) (six-month extension, SR–CBOE–2001–68).

[7] In the narrative portion of the filing, CBOE inadvertently identified the expiration date of the three-month extension that is the subject of the filing as June 28, 2002. According to CBOE, the intended expiration date is September 28, 2002. Telephone conversation among Madge Hamilton, Legal Division, CBOE, Gordon Fuller, Counsel to the Assistant Director, and Geoffrey Pemble, Attorney, Division of Market Regulation, Commission.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE 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*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) Does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay, to permit the Exchange to implement the proposal immediately. Under Rule 19b–4(f)(6)(iii), a proposed ''non-controversial'' rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

because it will allow for the continued operation of the pilot without interruption.[14] According to CBOE, with the continuation of the pilot program, market makers will continue to have greater incentive to compete effectively for orders in the crowd, which benefits investors and promotes the public interest. In addition, CBOE maintains that given the widespread use of the 100 Spoke RAES Wheel in equity options trading stations, requiring the Exchange to discontinue the use of the 100 Spoke RAES Wheel as of June 29, 2002 would cause disruption to those trading stations and thus, be disruptive to investors and the public interest. For these reasons, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission. The Commission also waives the five-business-day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CBOE–2002–34 and should be submitted by July 29, 2002.

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010–01–P**

[15] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46140; File No. SR–NASD–2002–81]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness by the National Association of Securities Dealers, Inc. Relating to the Time In Force and Cancellation Parameters for Directed Orders and the Summary Scan Functionality of Nasdaq's SuperMontage System

June 28, 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 June 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to add NASD Rule 4701(hh), and amend paragraphs (b)(2) of NASD Rule 4706 (''Order Entry Parameters''), and (d) of NASD Rule 4707 (''Entry and Display of Quotes/Orders''), which govern the time in force parameters for Directed Orders, and the summary scan functionality of Nasdaq's future Order Display and Collector Facility (''NNMS'' or ''SuperMontage''), respectively. Nasdaq proposes to implement this proposed rule change within 30 days after successful completion of SuperMontage user acceptance testing. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4701. Definitions

(a) through (gg) No Change.

*(hh) The term ''Day'' shall mean, for orders so designated, that if after entry into the NNMS, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close (4:00 p.m. Eastern Time), after which it shall be returned to the entering party.*

4706. Order Entry Parameters

(a) No Change.

(b) Directed Orders A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage, subject to the following conditions and requirements:

(1) Unless the Quoting Market Participant to which a Directed Order is being sent has indicated that it wishes to receive Directed Orders that are Liability Orders, a Directed Order must be a Non-Liability Order, and as such, at the time of entry must be designated as:

(A) an ''All-or-None'' order (''AON'') that is at least one normal unit of trading (e.g. 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or

(B) a ''Minimum Acceptable Quantity'' order (''MAQ''), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. Nasdaq will append an indicator to the quote of a Quoting Market Participant that has indicated to Nasdaq that it wishes to receive Directed Orders that are Liability Orders.

(2) A Directed Order may have a time in force of [1] *3* to 99 minutes[.]*, or may be designated as a ''Day'' order.*

(3) Directed Orders shall be processed pursuant to Rule 4710(c).

(c) through (f) No Change.

4707. Entry and Display of Quotes/Orders

(a) through (c) No Change.

(d) Summary Scan—The ''Summary Scan'' functionality, which is a query only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) [below] *including* the number of price levels authorized for aggregation and display pursuant to Rule 4701 (ee).

(e) No Change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality, and rules thereof, with a view towards constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq proposes to modify certain SuperMontage parameters, functionality, and rules as they relate to time in force of Directed Orders and SuperMontage's summary scan feature.

a. Directed Orders

Nasdaq proposes to provide additional flexibility for SuperMontage participants in determining the life of Directed Orders sent to the system. Directed Orders are orders that are sent to a specific market maker or electronic communications network. In SuperMontage, a firm that receives a Directed Order has the ability to choose whether it will consider those Directed Orders as a liability order or a non-liability order.

Currently, a Directed Order in SuperMontage may have a time in force from 1 to 99 minutes. Nasdaq proposes to amend the time in force provision to a 3 to 99 minute standard, and also provide the capability for SuperMontage users to designate Directed Orders as a ''Day'' order. As defined in proposed NASD Rule 4701 (hh), a Day order designation would indicate that the order is to remain in force until the Nasdaq market closes (currently 4:00 p.m. Eastern Time) on the day the order was submitted. Under the proposal, unexecuted Day orders would be cancelled and returned by Nasdaq to the sender at market close.

Like other Directed Orders, a Directed Order with a Day designation may be entered starting at 8:00 a.m. Eastern Time. According to Nasdaq, since quotes are not open or considered firm at this time, a Directed Order with a Day designation entered prior to the 9:30 a.m. market open will not obligate the receiving party to execute that order. However, such orders may be accepted, countered, or otherwise may commence negotiations leading to a transaction between the parties. Directed Orders with a Day designation may not be entered or executed during Nasdaq's after-hours session (4:00 p.m. to 6:30 p.m. Eastern Time),[3] nor will they participate in the pre-open unlocking and uncrossing process recently proposed by Nasdaq in File No. SR–NASD–2002–56.[4]

Nasdaq believes that the proposed amendments to the time in force parameters for Directed Orders will provide an additional degree of flexibility to market participants to manage their Directed Order flow. Nasdaq believes that the ability to set a specific time period that an order will remain in effect, including the ability to have an order remain in effect for the entire day, are long-standing industry functionalities used by many market participants that accept and retain orders. In addition, Nasdaq believes that these new SuperMontage standards are consistent with current time in force practices in Nasdaq's SelectNet service, and can be expected to reduce technological burdens on firms converting to SuperMontage and thereby assist and simplify the transition to the system.

b. Summary Scan

Nasdaq also proposes to improve the SuperMontage summary scan feature. Currently, the summary scan feature allows SuperMontage participants to query the system and see the aggregate attributed and unattributed size of quotes/orders for all price levels in a particular security, below the best five price levels in SuperMontage.[5] In response to input from market participants, Nasdaq proposes to modify the summary scan feature to combine all aggregate quote/order information, including the aggregate of the five best price levels displayed in SuperMontage. Nasdaq's proposal seeks to alleviate concerns that the separation of aggregated price level information from the remainder of aggregate interest could lead to potential confusion among users of the summary scan feature as to what constitutes the best price in Nasdaq at a particular time. According to Nasdaq, the proposed changes to the summary scan combines information, already available separately through SuperMontage, into a single integrated information source.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general, and Section 15A(b)(6) of the Act,[7] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with person 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, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b-4(f)(6) thereunder[9] because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, provided

[3] Nasdaq anticipates submitting a proposed rule change to extend the operation of the After Hours Pilot program to SuperMontage. *See* Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (Approval of After Hours Pilot program for the Nasdaq SelectNet Service).

[4] *See* Securities Exchange Act Release No. 45965 (May 20, 2002), 67 FR 36659 (May 24, 2002).

[5] Nasdaq recently expanded the aggregated price levels available through the Nasdaq Order Display Facility from three to five. *See* Securities Exchange Act Release No. 45790 (April 19, 2002), 67 FR 21007 (April 29, 2002).

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

that Nasdaq has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[10] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## 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 NASD.

All submissions should refer to File No. SR–NASD–2002–81 and should be submitted by July 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Jill M. Peterson,**

*Assistant Secretary.*

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[10] As required under Rule 19b–4(f)(6)(iii), Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46153; File No. SR–NASD–2002–68]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Modify Execution Fees for Nasdaq's Intermarket Trading System and Computer Assisted Execution System, and to Extend the Transaction Credit Pilot Program for InterMarket Trades

July 1, 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 June 13, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 Nasdaq. On June 21, 2002, Nasdaq amended the proposal.[3] Nasdaq filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder[5] as one establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes (i) to modify the execution fees for Nasdaq InterMarket trades executed through the Intermarket Trading System (''ITS'') and Nasdaq's Computer Assisted Execution System (''CAES''); and (ii) to modify and extend the transaction credit pilot program for InterMarket trades (''Program''). Nasdaq will implement the rule change on July 1, 2002. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7010. System Services

(a)–(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit[.]

For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from the pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with July 1, 2000 for Tape A reports (April 1, 2000 for Tape B reports) and ending with the calendar quarter starting on [April] *October* 1, 2002. *Effective as of July 1, 2002, for purposes of calculating the credit for trades executed through ITS or CAES, trade reports will be credited to the member that sells in response to a buy order or that buys in response to a sell order.*

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges.

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges.

(A) As of [January 1, 1998, $0.50 per execution] *July 1, 2002, $0.003 per share executed* shall be paid by an order entry firm or CAES market maker that enters

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See June 21, 2002 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, Nasdaq made technical, non-substantive changes to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

an order into CAES that is executed in whole or in part, *and $0.002 per share executed shall be credited to the CAES market maker that executes such an order.*[*]

(B) As of [November 1, 1997, $1.00 per commitment] *July 1, 2002, $0.002 per share executed* shall be paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, *and $0.001 per share executed shall be credited to a member that executes such an order.*[**]

[*As of September 1, 2000, a CAES market maker that receives and executes a CAES order or any part of a CAES order will not be required to pay a CAES transaction charge.]

[**As of September 1, 2000, a member that receives a commitment through the ITS/CAES linkage to buy or sell a security that is executed in whole or in part will not be required to pay a CAES transaction charge.]

(e)—(r) No change.

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## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''Amex'').[6] The InterMarket competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and the Amex. The InterMarket comprises CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in the InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[7]

Nasdaq proposes to modify the InterMarket fee structure to encourage market participants to provide additional liquidity to support executions through the InterMarket and thereby enhance its competitiveness. Specifically, Nasdaq will replace the current CAES execution fee of $0.50 with a per share execution fee of $0.003, and will credit $0.002 per share to a member whenever it provides the liquidity to support an execution through CAES (*i.e.* sells in response to a buy order or buys in response to a sell order). Similarly, the current ITS execution fee of $1.00 will be replaced with a per share execution fee of $0.002, and a member that provides liquidity to support an ITS execution will receive a credit of $0.001 per share. This fee structure is similar to the structure that has been in place for Nasdaq's SuperSOES system since November 2001 and that will be used for Nasdaq's SuperMontage system which Nasdaq hopes to launch in the third quarter of 2002.[8]

Nasdaq also proposes to modify the Program that began in 1999.[9] Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association (''CTA''), by providing a transaction credit to members who exceed certain levels of OTC trading activity in NYSE and Amex listed securities. The Program helps InterMarket market makers and investors lower costs associated with trading listed securities. The Program is also an important tool for Nasdaq to compete against other exchanges (particularly CSE and CHX) that offer similar programs[10] and thereby maintain market share in listed securities.

Under the Program, Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 40% of the gross revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA (''Tape A''), the other representing 40% of the gross revenue received from the CTA for reporting Amex trades (''Tape B''). Eligibility for transaction credits is based on concurrent quarterly trading activity. Hitherto, trade reports of ITS and CAES transactions, which are reported to Nasdaq automatically, have been attributed to the sell side of the trade.[11] As an added encouragement for members to provide liquidity for executions through ITS and CAES, however, Nasdaq is modifying the Program to attribute ITS and CAES trades to a member that provides liquidity (*i.e.,* that sells in response to an order to buy or that buys in response to an order to sell). As is currently the case, members will be required to maintain an average daily level of attributable trades during a quarter to be eligible for a credit.

Nasdaq is also extending the Program, which is scheduled to expire on June 30, 2002. Because the Program has helped Nasdaq maintain market share in listed securities, Nasdaq proposes to extend the Program through December 31, 2002.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the Act, including Section 15A(b)(5) of the Act,[12] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section 15A(b)(6) of the Act,[13] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

[6] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32).

[7] *See* CAES/ITS User Guide, p.5, at www.intermarket.nasdaqtrader.com.

[8] *See* Securities Exchange Act Release Nos. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67); and 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44).

[9] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The Commission issued notice of subsequent extensions of the Program. *See* Securities Exchange Act Release Nos. 42095 (November 3, 1999), 64 FR 61680 (November 12, 1999) (SR–NASD–99–59); 42672 (April 12, 2000), 65 FR 21225 (April 20, 2000) (SR–NASD–2000–10); 42907 (June 7, 2000), 65 FR 37445 (June 14, 2000) (SR–NASD–2000–32); 43831 (January 10, 2001), 66 FR 4882 (January 18, 2001) (SR–NASD–2000–72); 44098 (March 23, 2000), 66 FR 17462 (March 30, 2001) (SR–NASD–2001–15); 44734 (August 22, 2001), 66 FR 4537 (August 26, 2001) (SR–NASD–2001–42); and 45273 (January 14, 2002); 67 FR 2716 (January 18, 2002) (SR–NASD–2001–92).

[10] *See* Securities Exchange Act Release Nos 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997)(SR–CHX–97–01) and 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997)(SR–CSE–97–12).

[11] Non-Nasdaq system trades that are reported to Nasdaq are attributed to the member identified in the trade report as the executing party, which is either the reporting party or a ''give-up'' on whose behalf the trade is reported. The crediting of non-Nasdaq system trades remains unchanged.

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78o–3(b)(6).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 thereunder,[15] because the proposal establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2002–68 and should be submitted by July 29, 2002.

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16986 Filed 7–5–02; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–46152; File No. SR–OCC–2001–09]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Regarding Access to The Option Clearing Corporation's Information and Data Systems Via Electronic Means

July 1, 2002.

On August 1, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] a proposed rule change (File No. OCC–2001–09). On April 23, 2002, OCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on June 7, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

**I. Description**

The proposed rule change amends OCC's rules regarding access to its information and data systems via electronic means. OCC rules currently support on-line data entry and data retrieval, but these provisions are limited solely to direct access via on-line terminals. OCC is in the process of developing a new clearance and settlement system to replace its existing system.[3] The new system will support internet access at a clearing member's election. The proposed rule change adds the definition of ''electronic data entry,'' which is broken down into ''electronic data entry'' and ''electronic data retrieval,'' to Rule 101 to provide a more flexible and broader description of the electronic means by which OCC and its clearing members can communicate.[4]

The proposed rule change also eliminates outdated provisions that require clearing members to send representatives to access lock boxes to obtain papers and documents distributed by OCC and clarifies the manner by which clearing members exchange information with OCC. Under the proposed rule change, Rules 205 (''Submission of Items to Corporation [OCC]'') and 206 (''Retrieval of Items from Corporation [OCC]'') require that a clearing member submit and retrieve instructions, notices, reports, data, and other items via electronic data entry or electronic data retrieval unless otherwise prescribed by OCC. Rules 205 and 206 also provide that such electronic transmissions constitute valid ''writings'' for purposes of applicable law. In the event unusual or unforeseen conditions prevent a clearing member from submitting or retrieving such items electronically, OCC has the discretion to designate alternative means or to extend any applicable cutoff times as may be deemed reasonable, practicable, and equitable under the circumstances. The proposed rule change amends Rule 208 (''Reports by the Corporation [OCC]'') to provide clearing members with the ability to notify OCC via facsimile or e-mail of any errors contained in reports made available by OCC.

Under the proposed rule change, a new Rule 212 (''Security Measures'') sets forth the obligations of clearing members to comply with security measures implemented by OCC, including access codes and authorization stamps. Under Rule 212, a clearing member would be bound by submissions made using a current access code or authorization stamp.

Finally, the proposed rule change makes conforming changes to Interpretations and Policies under Rules 801 (''Exercise of Options'') and 1606A (''Alternative Settlement Procedures'') to delete references to ''on-line data entry'' and to replace those references with the newly defined term ''electronic data entry.'' Interpretations and Policies .01 under Rule 801 also is amended to

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 46005 (May 30, 2002), 67 FR 39460.

[3] As previously reported to the Commission, OCC is developing a new clearance and settlement system known as ENCORE to replace its existing system, INTRACS. OCC's implementation strategy is to replace INTRACS on a modular basis with new development code modules replacing targeted pieces of INTRACS, which pieces will then be ''decommissioned.'' Newly developed and installed code will interface with remaining portions of INTRACS until the old system is completely replaced.

[4] Under the proposal, ''electronic data entry'' is defined as the transmission by a clearing member to OCC via electronic means of reports, notices, instructions, data, or other items. ''Electronic data retrieval'' is defined as the retrieval by a clearing member via electronic means of reports, notices, instructions, data, and other items made available by OCC.

accurately reference Rule 205 instead of Rule 206.

OCC also submitted as a part of the proposed rule change the ''Supplement to the Agreement for OCC Services for Internet Access'' that will be entered into between OCC and its clearing members. OCC is developing a front-end portal called MyOCC that will provide a unified access point from which clearing members will be able to obtain information from various applications contained within MyOCC for which the clearing member is authorized to have access. Access to MyOCC will be available to clearing members through the internet, existing enhanced clearing member interface terminals, or dedicated leased lines. To the extent clearing members elect to access OCC's information and data systems through internet connections, the Supplement specifies requirements relating to access codes, registration, authorization, and security.

The Supplement is structured to fit within OCC's existing framework of the ''Agreement for OCC Services.'' [5] Provisions of the Supplement, which are generally self-explanatory, describe the respective responsibilities of the clearing member and OCC. Section 1 describes the scope of information and data systems that will be made available through the internet. Section 2 creates a requirement on the part of the clearing member to maintain a backup communication channel as a means to obtain access to OCC's information and data systems. Sections 3 and 4 set forth criteria relating to the right to use internet access. Section 5 allocates responsibility relating to the confidentiality and security of access codes. That section also requires the clearing member to provide information as may be necessary to register its authorized users for internet access and to maintain its own equipment. Section 5 also requires the clearing member if it is acting as a ''managing clearing member'' to represent and warrant that it is authorized to obtain internet access on behalf of the ''managed clearing member.'' Sections 6 through 9 set forth further rights and responsibilities of the parties including limitations on liability, indemnification, and termination provisions. Section 10 discloses that OCC may monitor the use of internet access to ensure compliance with the Supplement. Section 11 contains general terms including interpretation, severability, waiver, survival, and governing law.

## II. Conclusion

In Section 17A(a)(1)(A) of the Act, Congress set forth its finding that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. Section 17A(b)(3)(A) and (b)(3)(F) require that a clearing agency be organized, have the capacity, and have rules designed to promote the prompt and accurate clearance and settlement of securities transactions. By amending its rules so that OCC and its clearing members can use a wider range of electronic means by which to communicate with each other, OCC is fulfilling this statutory obligation of providing for the prompt and accurate clearance and settlement of securities transactions. Therefore, the Commission finds that the proposal is consistent with the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. Internet access to clearing reports is a key feature of OCC's new clearing system, and OCC wants to implement this feature as soon as possible. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow OCC to implement internet access to reports consistent with its systems implementation schedule.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2001–09) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 02–16984 Filed 7–5–02; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Securities Exchange Act Release No. 21015, 49 FR 23971 (June 4, 1984) [File No. SR–OCC–84–7] for the text of the Agreement for OCC Services.

[6] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3422]**

### State of Indiana; Amendment # 1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 26, 2002, the above numbered declaration is hereby amended to include Clay, Greene, Jefferson, Johnson, Knox, Montgomery, Owen, Parke, Perry, Putnam and Washington Counties in the State of Indiana as disaster areas due to damages caused by severe storms, tornadoes and flooding occurring April 28, 2002 through June 7, 2002.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Bartholomew, Brown, Clark, Floyd, Fountain, Harrison, Jackson, Jennings, Monroe, Ripley, Scott, Switzerland and Tippecanoe Counties in Indiana; Breckinridge, Carroll, Hancock, Meade and Timble Counties in Kentucky; and Crawford and Lawrence Counties in Illinois. All other contiguous counties have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is August 12, 2002, and for economic injury the deadline is March 13, 2003.

Dated: June 28, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–17106 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3425]**

### State of Iowa; Amendment #1

In accordance with a notice received from the Federal Emergency Management Agency, dated June 25, 2002, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 3, 2002 and continuing through June 25, 2002.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 18, 2002, and for economic injury the deadline is March 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: June 28, 2002.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 02–17107 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.375 (5 ⅜) percent for the July—September quarter of FY 2002.

**LeAnn M. Oliver,**

*Deputy Associate Administrator for Financial Assistance.*

[FR Doc. 02–16928 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Office of the National Ombudsman—Region V Regulatory Fairness Board

### Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration, Office of the National Ombudsman and Region V Regulatory Fairness Board, will hold a Public Hearing on Monday, July 8, 2002 at 8:30 a.m. at the Italian Community Center, 631 East Chicago Street, Milwaukee, WI 53202, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Janice Wipijewski in writing at U.S. Small Business Administration, Wisconsin District Office, 310 West Wisconsin Avenue, Milwaukee, WI 53203, phone (414) 297–1096, fax (414) 297–1377, e-mail *janice.wipkjewski@sba.gov.*

For more information about this event and assistance with excessive federal regulatory enforcement actions, such as repetitive audits or investigations, punitive fines, penalties, threats, retaliation or other unfair enforcement action taken by a federal agency, visit the National Ombudsman's Web site at *www.sba.gov/ombudsman.*

**Steve Tupper,**

*Committee Management Officer.*

[FR Doc. 02–16929 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Region 5 Wisconsin District Advisory Council; Public Meeting

The Small Business Administrations Region 5 Wisconsin District Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting at 12:00 noon on Wednesday, July 17, 2002, at the Metro Milwaukee Area Chamber Building 756 North Milwaukee Street, 4th Floor, Milwaukee, WI 53202, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Yolonda Staples Lassiter, EDA, in writing by letter or by fax no later than July 11, 2002, in order to be put on the agenda. For further information, write or call Yolanda Staples Lassiter, EDA U.S. Small Business Administration 310 West Wisconsin Ave., Suite 400 Milwaukee, Wisconsin 53203 (414) 297–1090.

**Steve Tupper,**

*Committee Management Officer.*

[FR Doc. 02–17100 Filed 7–5–02; 8:45 am]

BILLING CODE 8025–01–P

## UNITED STATES OFFICE OF SPECIAL COUNSEL

### Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

**AGENCY:** United States Office of Special Counsel

**ACTION:** Notice

**SUMMARY:** On April 30, 2002, the Office of Special Counsel (OSC) published a Draft Report and Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel. Public comments were invited and were due on or before June 1, 2002. This notice announces an extension of the June 1st deadline for comments to July 10, 2002.

**DATES:** Comments on the OSC draft report and guidelines must be postmarked or sent by electronic mail on July 8, 2002, or before July 10, 2002, to the addresses provided below.

**ADDRESSES:** Comments should be sent by regular mail or electronic mail to OSC's Planning and Advice Division. Comments sent by regular mail should be addressed to: Sharyn Danch, Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505; comments sent by electronic mail should be addressed to info__quality@osc.gov. All comments received will be included in the official record of this action

**FOR FURTHER INFORMATION CONTACT:** Sharyn Danch, by mail (Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W. (Suite 201), Washington, DC 20036–4505), or electronic mail (info__quality@osc.gov). The draft report and guidelines referred to in this notice are available on the OSC Web site, at www.osc.gov (at the ''Reading Room'' link on the home page).

**SUPPLEMENTARY INFORMATION:** On April 30, 2002, OSC published its draft report and information quality guidelines in the *Federal Register* and announced that it was seeking comments by June 1, 2002. 67 FR 21316. The draft guidelines describe OSC procedures for pre-dissemination information quality control, and an administrative mechanism for the receipt of requests to correct covered information.

OSC is now extending the comment period to July 10, 2002, to provide the public with additional time to comment. This extension is provided at the suggestion of the Office of Management and Budget (OMB) in its notice providing agencies with an extension of time in which to submit their draft report and guidelines to OMB. 67 FR 40755 (June 6, 2002).

Dated: July 01, 2002.

**Elaine D. Kaplan,**

*Special Counsel.*

[FR Doc. 02–17017 Filed 7–5–02; 8:45 am]

BILLING CODE 7405–01–S

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket OST–2002–11590]**

### In the Matter of the Small Community Air Service Development Pilot Program, Under 49 U.S.C. 41743 *et seq.*; Order Setting Final Deadline for Applications

Issued by the Department of Transportation on the 1st day of July, 2002.

**SUMMARY:** By this order, the Department sets a final deadline of July 19, 2002, for the filing of all applications and supplements thereto under the Small Community Air Service Development Program.

**Background**

On April 5, 2000, the President signed the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21), Pub. L. 106–181. Among other things, the statute established a new pilot program designed to help smaller communities enhance their air service. To fund the program, the statute authorized a funding level of $20.0 million for fiscal year 2001 and $27.5 million for each of fiscal years 2002 and 2003; no funds were appropriated in fiscal year 2001 and only $20 million in fiscal year 2002. We established April 22, 2002 as the deadline for the filing of applications seeking priority consideration. On June 26, 2002 (Order 2002–6–14), we announced the award of 40 grants totaling almost $20 million, subject to each applicant's executing a formal grant agreement with the Department. We also noted that it is possible that not all of the funds awarded in that Order may be expended, since we intend to include in each grant agreement success milestones that each grantee must meet to ensure continuation of funding. All applications received by April 22, 2002, and any received thereafter will be considered equally for any such unexpended funds.

To provide administrative finality to the filing of applications, we will not accept any application, nor any supplement thereto, received after July 19, 2002. The only exception will be if Departmental staff requests additional information from an applicant to facilitate consideration of its application.

*Accordingly,* the deadline for submitting applications in this Docket, or supplements to applications, is July 19, 2002.

This order will be published in the **Federal Register**.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

[FR Doc. 02–17001 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Fitness Determination of Florida Coastal Airlines, Inc.

**AGENCY:** Department of Transportation.

**ACTION:** Notice of Order to Show Cause (Order 2002–6–17), Docket OST–01–10874.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Florida Coastal Airlines, Inc., fit, willing, and able to provide scheduled passenger operations as a commuter air carrier under 49 U.S.C. 41738.

*Responses:* Objections and answers to objections should be filed in Docket OST–01–10874 and addressed to the Department of Transportation Dockets, PL–401, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than July 11, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: July 1, 2002.

**Read C. Van De Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 02–16907 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Request for Comments on Advisory Circular (AC) 183–35H, Airworthiness Designee Function Codes and Consolidated Directory for DMIR/DAR/ODAR/DAS/DOA and SFAR No. 36

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

**ACTION:** Request for comments.

**SUMMARY:** This document announces a proposed change to AC 183–35H. The change will add a new authorized Function Code to the AC. This Code will be identified as Data Management Function Code 50 (pending). It will allow a Designated Airworthiness Representatives (DAR) and Organizational Designated Airworthiness Representatives (ODAR) responsible for managing alterations programs leading to the issuance of a FAA Field Approval and/or approval for return to service to alter U.S.-registered aircraft. It also provides a certification of completeness (FAA Form 337 or equivalent) when all requirements are met.

Qualification criteria and experience required are as follows:

*Qualifications.* DAR/ODAR applicants must meet the general and specialized experience (as appropriate) listed below:

1. *General.* Current and thorough working knowledge of pertinent Code of Federal Regulations (CFR), directives, and related material.

a. Current technical knowledge and experience commensurate with that required for the particular function (e.g., Boeing Airplane Model 707–100, Bell Model 47B), and/or related parts/components, appliance, etc.).

b. Unquestionable integrity, cooperative attitude, and ability to exercise sound judgement.

c. Ability to maintain the highest degree of objectivity while performing authorized functions on behalf of the FAA.

d. Two years of satisfactory experience working directly in the type of work to be covered in the authorized function.

e. Good command of the English language, both oral and written.

f. Persons applying for Data Management Function Code 50 must hold a current DAR/ODAR certificate for a period of at least one year with Function Code 08 and/or Function Code 23. The person must have used current publications and demonstrated sound judgement when issuing standard airworthiness certificates on behalf of the FAA. The person must also have attended the FAA Part 21 Seminar #27903, the Flight Standards Alteration Course #21811 and, if applying for an Avionics function code, the person must also have attended the Avionics Certification Procedures Course #21846.

2. *Specialized Experience.* A DAR or ODAR applicant for Data Management Function Code 50 must meet the specialized experience listed below. Individuals who are to perform authorized functions under an ODAR need only *meet* the specialized experience required for the specific function to be performed.

a. *A DAR applicant.*

(1) A DAR applicant must have five years of experience as an FAA Airworthiness Inspector involved in the actual issuance of an FAA Field Approval, or as an airworthiness inspector responsible for managing programs leading to the issuance of an FAA Field Approval, for aircraft or avionics components and systems. The aircraft or avionics components and systems must be of the *same type and complexity* as those for which authorization is sought.

(2) A DAR applicant must be responsible for managing alteration

programs leading to the issuance of an FAA Field Approval and/or approval for return-to-service (e.g. Chief Inspector or Director of Maintenance at an FAA-approved repair station or at the facility of the holder of an air carrier or commercial operator's certificate). He must hold a current mechanic certificate with Airframe and Power plant (A&P) ratings or an Avionics Certificate (Associate Degree in Electronics) with the proper qualifications, skills and the ability to perform maintenance, repairs, alterations, and operational checks on aircraft or avionics components and systems in accordance with FAA regulations. He must also demonstrate the ability to determine that the aircraft or avionics components and systems (of *the same type and complexity* as those for which authorization is sought) submitted for FAA Field Approval have remained in or have been returned to their FAA-approved type design configuration and meet pertinent CFR requirements; or

(3) The specialized experience outlined in FAA Order 8100.8A, Table II (give location of order) may be used when an applicant has a minimum of two additional years experience leading to the issuance of a Supplemental Type Certificate (STC) for aircraft or avionics components and systems of the same type and complexity as those for which authorization is sought. The applicant's experience must demonstrate his direct involvement in determining that an aircraft or avionics components and systems conform to the FAA-approved type design configuration and meet pertinent CFR requirements.

b. *An ODAR applicant.* an ODAR applicant must be the holder of a domestic Aircraft or Avionics maintenance repair station certificate under 14 CFR part 145 with the appropriate ratings and have a person(s) certificated under part 65 in its employ with five years experience in and a history of the qualifications specified in paragraphs 1a, b, and c.

**DATES:** Comments must be received on or before September 6, 2002.

**ADDRESSES:** All comments should be addressed to the attention of George Torres, Federal Aviation Administration, Designee Standardization Branch, AFS–640, P.O. Box 25082, Oklahoma City, OK 73125. Comments also may be submitted electronically at the following e-mail address: *georgetorres@mmac.iccbi.gov* or Fax: (405) 954–4104. All comment letters should refer to proposed Function Code 50.

**FOR FURTHER INFORMATION CONTACT:** George Torres, AFS–640, at the above address or telephone (405) 954–6923 (7:00 a.m. to 3:30 p.m.)

**SUPPLEMENTARY INFORMATION:** As explained in Amendment 183–6 of 14 CFR part 183, it is not possible to specify by regulation all areas in which a DAR/ODAR may serve. As written in the amendment, the FAA will seek public comment each time that it is proposed to add or delete an authorized function. Additional areas of delegation will be selected and authorized by the Director of Flight Standards based on recommendations from other FAA elements and the aviation community.

Issued in Washington, DC, on June 26, 2002.

**Louis C. Cusimano,**

*Deputy Director, Flight Standards Service.*

[FR Doc. 02–16905 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2001–9852]**

### High Density Airports; Notice of Extension of the Lottery Allocation and Request for Comments

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

**ACTION:** Notice of extension of the lottery allocation for takeoff and landing times at LaGuardia Airport and request for comments.

**SUMMARY:** This notice announces a two-year extension of the current exemption slot allocation at LaGuardia Airport (La Guardia) through October 30, 2004. This action maintains the current operating environment at LaGuardia pending a long-term solution. Additionally, the FAA seeks comment on proposed modifications to the procedures used to reallocate exemption slots that may become available during this interim period.

**DATES:** Comments must be received on or before August 7, 2002.

**ADDRESSES:** Comments on this notice should be mailed or delivered in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA 2001–9852, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: *http://DMS.dot.gov.* Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number 202–267–3073.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to comment on this process by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions. Communications should identify the docket number and be submitted in duplicate to the above-specified address. All communications and a report summarizing any substantive public contact with FAA personnel on this notice will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before the closing date for comments and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. FAA 2001–9852.'' When the FAA receives the comment, the postcard will be dated, time stamped, and returned to the commenter.

#### Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or ''High Density Rule,'' 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald

Reagan Washington National Airport (Reagan National) and Newark International Airport (Newark) (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a ''slot'' for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s.

''**AIR–21**''

On April 5, 2000, the ''Wendell H. Ford Aviation Investment and Reform Act for the 21st Century'' (''AIR–21'') was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. 41714 to phase out slots at LaGuardia, JFK, and O'Hare. Section 41715 terminates slots at O'Hare as of July 1, 2002, and at LaGuardia and JFK on January 1, 2007. Section 231 also included new provisions codified at 49 U.S.C. 41716, 41717, and 41718 that enable air carriers meeting specified criteria to obtain exemptions (referred to as ''exemption slots'') from the requirements of subparts K and S of part 93 of Title 14 of the Code of Federal Regulations at LaGuardia, JFK, O'Hare, and Reagan National. As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemption slots authorized by the statute.

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides that an exemption slot must be granted to any airline using State 3 aircraft with fewer than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia during the week of November 1, 1999; (2) the proposed service between the small hub or nonhub airports and LaGuardia exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

Under AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for exemption slots, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of exemption slots and the times needed to provide the service.,

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states that exemption slots must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes ''to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of exemption slots granted under this subsection to such air carrier with respect to such airport when added to the slots and exemption slots held by such air carrier with respect to such airport does not exceed 20.'' Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 41715(b)(1), expressly provides that the provisions for exemption slots are not to affect the FAA's authority over safety and the movement of air traffic. The reallocation of exemption slot times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of exemption slot times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia, especially during peak hours, even if those operations would otherwise quality for exemptions under AIR–21.

Lastly, § 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described here and allows for special conditions to be included when circumstances warrant special consideration.

**Extension of Lottery Allocation**

On June 12, 2001, a Notice of Alternative Policy Options for Managing Capacity at LaGuardia and Proposed Extension of the Lottery Allocation was published in the **Federal Register**, in which the FAA sought comment on both long-term policy options and a short-term extension of the cap on exemption slots at LaGuardia (66 FR 31731). The number of AIR–21 exemption slots that may be operated at the airport was limited by the FAA to 159 operations effective January 31, 2001, and allocated in accordance with the lottery held on December 4, 2000. This allocation capped scheduled operations at 75 per hour between the hours of 7:00 a.m. and 9:59 p.m., which limited daily and hourly demand on airport facilities and the air traffic control system. The FAA has found that this number of flights can be accommodated in good weather conditions and at the same time, provides access for AIR–21 flights. (This number does not include extra sections of scheduled air carrier flights or the six reservations per hour for ''Other'' nonscheduled operations, including general aviation, charters and military flights. Therefore, this allocation maintains total operations of approximately 81 per hour.)

On August 2, 2001, the FAA extended the lottery allocation through October 26, 2002, set the date of August 15, 2001 for a second lottery, and established procedures for subsequent allocation of exemption slots in the event that any exemption slots were returned or withdrawn by the FAA for non-use (66 FR 41294; August 7, 2001).

Following the terrorist attacks on September 11, 2001, and the resulting impacts on the aviation industry, the FAA suspended the closing date for the comment period regarding the Notice of Policy Alternatives for Managing Capacity at LaGuardia Airport (66 FR 52170; October 12, 2001). On March 22, the FAA announced that the comment period on demand management options would close on June 20, 2002 (67 FR 13401). Developing a long-term solution for demand management at LaGuardia remains an agency priority; a solution cannot be finalized and implemented, however, prior to the expiration of the current lottery restrictions on October 27, 2002. While traffic at LaGuardia is currently below pre-September 11 levels, operations have been increasing steadily and are expected to increase throughout the summer. Today, there are approximately 1,120 operations per day, which is seven percent below the level of operations last summer. We

note that operations during the winter months were approximately 14 percent below the level of operations in winter 2000–2001.

Maintaining the cap on total operations at LaGuardia is imperative until the long-term solution is finalized and implemented. If the cap on AIR–21 exemption slots were lifted, carriers could begin adding an unlimited number of qualified operations at the airport, which could lead to a situation similar to that in the fall of 2000 where the airport, airlines, and public experienced an unacceptable level of delay. Significant delays and operational disruptions at LaGuardia have a negative effect on the national air traffic control system and result in a ripple effect on delays and operations at many other airports. The airport cannot accommodate, nor can the FAA permit, unrestrained growth in operations at this time.

The FAA is accordingly adopting a two-year extension of the current allocation and hourly limits through October 30, 2004. A two-year extension of the exemption slot allocation is appropriate due to the complex issues associated with the proposed long-term solutions and the competing interests that must be addressed. The comment period for potential long-term concepts closed on June 20, 2002. The FAA and the Office of the Secretary will review and analyze all submitted comments. Identifying a preferred access management process for LaGuardia will require much consideration of complex statutory, regulatory, and policy issues raised by the suggested demand management options as well as variations and additional options received in the comments. Consequently, a two-year extension of the current allocation is necessary to accomplish the development and implementation of a long-term solution while continuing a framework that allows airlines to make operational plans. Therefore, the current allocation and hourly limits are extended through October 30, 2004.

**Proposed Changes to Post-Lottery Allocation Procedures**

The FAA is proposing certain changes to the procedures used for reallocation of exemption slots that are returned or withdrawn for non-use. In the **Federal Register** notice published on August 7, 2001, the FAA adopted certain procedures for returned or withdrawn exemption slots, which included a continued preference for carriers that currently do not conduct any operations at LaGuardia. Therefore, any returned or withdrawn exemption slots would be offered first (on a first-come, first-serve basis) to any carrier that does not operate at the airport, has certified accordingly with the Department, and has a written request on file with the Slot Office. Also, under these procedures, if a carrier that does not operate at the airport does not select the available exemption slots, the exemption slots will be made available to all carriers for selection in accordance with the appropriate established rank order, i.e., the December 4 rank order for carriers providing small community service and the August 15 rank order for all carriers that hold or operate fewer than 20 slots and exemption slots. The exemption slots are to be selected by alternating between the two rank orders. The FAA believes that alternating selections between the two established rank orders would provide equitable treatment and opportunity to both categories of operations to obtain any available capacity throughout this allocation period.

After the initial December 5, 2000, lottery, the number of available exemption slots was split almost evenly between the two categories of carriers (new entrants carriers with 79 exemption slots and small hub/non-hub service carriers with 80 exemption slots). This split achieved the balance originally sought by the agency in devising procedures that would result in an allocation that was as fair as possible among the competing entities and consistent with the purposes of AIR–21. As a result of the August 15 lottery, the new entrant carriers hold a total of 75 exemption slots and the carriers providing small hub/non hub service hold 84 exemption slots. Both the FAA and the Office of the Secretary recognize that during the next two years, new entrant carriers' ability to increase service is significantly disadvantaged in comparison to the flexibility of the large, incumbent carriers that have major slot holdings at LaGuardia. While the large carriers did in fact have to reduce service to some markets after the December 2000 lottery, these carriers still hold approximately 92 percent of the slots at LaGuardia and have the ability to use existing slot holdings for service to small hub/non-hub communities without additional exemption slots. New entrant carriers do not enjoy this flexibility as the majority of access to LaGuardia for new entrants is due to exemption slots.

Recognizing the importance of both categories of service at LaGuardia, we find it necessary to provide the opportunity to maintain parity between the categories of operations to the extent practicable. Therefore, as stated in the August 7 notice, the first four exemption slots (returned or withdrawn) that are available for reallocation will be made available to any carrier that is not conducting operations at the airport and that meets the specified criteria. If there is no eligible carrier, we propose that the exemption slots would be made available to any carrier operating at the airport that holds or operates less than 20 slots and exemption slots in accordance with the August 25 rank order. This process would be termed Phase I. After Phase I is completed, the new entrant category would be comprised of 79 exemption slots and the small hub/non-hub category would be comprised of 80 exemption slots. The division of exemption slots between the two categories would place both categories on comparable footing.

The FAA and the Office of the Secretary continue to believe that the goals of AIR–21 should be the guiding principles in allocating the limited exemption slots during this interim period. AIR–21 did not purport a preference of any one category of operations over another. As stated above, however, new entrant carriers do experience limitation on access at LaGuardia that are not experienced by the large incumbent carriers. Consequently, as Phase II, we propose that when subsequent exemption slots become available and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. This would allow specific opportunity for access to a carrier that currently is not operating at LaGuardia without tipping the balance too far to one category.

If no new carrier is interested or eligible, we propose that available exemption slots would be offered first to the category of carriers that is below parity up to the level of reestablishing parity, using the respective rank order. Remaining exemption slots would then be offered to carriers in the category from which the exemption slots came from using the respective rank order. Lastly, if there are exemption slots available, they would be offered to the carriers in the other category using its respective rank order.

Adopting this process would achieve several desirable goals. First, it would allow for access to the airport by new carriers, but by incorporating a threshold of four exemption slots, it does not allow new carriers to gain unconstrained access to the detriment of

carriers providing small hub/non-hub service. Second, it would ensure that there would be a continued finite number of exemption slots available for new entrant service and small hub/non-hub service and represent an opportunity for equitable allocation of exemptions slots between competing categories. Lastly, it puts in place a process to provide opportunity to maintain parity.

Finally, the FAA proposes that a carrier will have three business days from the date of the FAA offer of an available exemption slot to accept or reject offered exemption slots. This procedure would provide a definitive timeframe for decisionmaking and assist in ensuring that exemption slots do not go unused for an extended period of time. From the date of acceptance of an offered exemption slot, a carrier has 120 days to begin using that exemption slot. (See adopted lottery procedures for the August 15, 2001 lottery.)

The reallocation procedures adopted in the August 7, 2001, notice will be followed for the reallocation of returned or withdrawn exemption slots pending a decision on these proposed procedures after the close of the comment period. The proposed, applicable conditions are restated as follows:

1. The cap on AIR–21 exemption slots (7:00 a.m. through 9:59 p.m.) will remain in effect through October 30, 2004.

2. The FAA may approve the transfer of exemption slot times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

3. Phase I: If any exemption slots are returned to the FAA or are withdrawn for non-use, the FAA would make the first four exemption slots available on a first-come, first serve basis to a carrier that was not operating at LaGuardia as of August 15, 2001, certified to the Department in accordance with the procedures articulated in OST Order 2000–4–10, and has a written request on file with the Slot Office. Any of the first four returned or withdrawn exemption slots that are not selected by such a carrier would be available to the carriers that have less than 20 slots and exemption slots at LaGuardia for selection in accordance with the August 15 established rank order, with each carrier able to select two exemption slots. Any exemption slots not selected during this process then would be made available to the carriers providing small hub/non-hub service using the December 4 rank order. This concludes Phase I.

4. Phase II: If any subsequent exemption slots become available for reallocation and there is an eligible carrier not conducting service at the airport seeking exemption slots, then the available exemption slots would be offered to that carrier first, provided that the total number of exemption slots allocated to carriers providing small hub/non-hub service is not below 76. If a new, eligible carrier does not select the exemption slots, then they would be offered to the category of carriers that is below parity, up to the level of re-establishing parity (using respective rank order). If the exemption slots are not selected or there are available exemption slots remaining, then they would be offered to carriers in the same category from which the exemption slots came. Any remaining exemption slots not selected would be offered to the other category of carriers, using its respective rank order.

5. A carrier would have three business days after an offer from the Slot Office to accept the offered exemption slot time. Acceptance must be in writing to the Slot Office. If the Slot Office does not receive an acceptance to an offer within three business days, the carrier would be recorded as rejecting the offer and the next carrier on the list would be offered the available exemption slot times.

6. Carriers that are offered exemption slot times by the Slot Office must re-certify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11 prior to operations, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation, before the exemption slot times will be allocated by the FAA to the carrier.

7. All operations allocated under the post-lottery procedures must commence within 120 days of a carrier's acceptance of an available exemption slot.

8. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the allocation process.

Issued on July 1, 2002, in Washington, DC.

**David G. Leitch,**

*Chief Counsel.*

[FR Doc. 02–17004 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Federal Highway Administration

### Designation of Transportation Management Areas

**AGENCIES:** Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of designation.

**SUMMARY:** The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) are announcing that all urbanized areas (UZAs) with populations greater than 200,000 as determined by the 2000 Census, are hereby designated as Transportation Management Areas (TMAs). The FTA and the FHWA are taking this action in compliance with the agencies' authorizing statutes, 23 U.S.C. 134, and 49 U.S.C. 5305. This action supersedes the agencies' designations of TMAs made in the **Federal Register** on May 18, 1992, at 57 FR 21160.

**DATES:** This notice is effective July 8, 2002.

**FOR FURTHER INFORMATION CONTACT:** For FTA related questions, Paul L. Verchinski, Office of Planning Operations (TPL–11), (202) 366–1626, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *Paul.verchinski@fta.dot.gov.* Scott Biehl, Office of Chief Counsel (TCC), (202) 366–4063, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *scott.biehl@fta.dot.gov.* Office hours for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

For FHWA related questions, Sheldon Edner, Office of Metropolitan Planning (HEPM), (202) 366–4066, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *sheldon.edner@fhwa.dot.gov.* Reid Alsop, Office of Chief Counsel (HCC), (202) 366–1371, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. e-mail: *reid.alsop@fhwa.dot.gov.* Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Titles 23 and 49 of the United States Code (23 U.S.C. 134 (i), and 49 U.S.C. 5305, respectively) require the Secretary of Transportation to designate urbanized areas over 200,000 population as Transportation Management Areas

(TMAs). A number of Census Bureau defined areas across the United States have recently exceeded 200,000 in population as determined by the 2000 Census. Accordingly, this notice hereby designates such areas as TMAs. Designated TMAs are subject to special planning and programming requirements. The FTA and the FHWA have developed a series of ''Questions and Answers'' related to applying 2000 Census data to Urbanized and Urban areas in the FTA and FHWA planning processes. More information can be found at *http://www.fhwa.dot.gov/planning/census/faqa2cdt.htm* or *http://www.fta.dot.gov/library/planning/census/qa.html.* These requirements apply to the metropolitan planning area that must be determined jointly under 23 U.S.C. 134(c), and 49 U.S.C 5303(d).

Additional areas shall be designated as TMAs upon request of the Governor and the MPO or affected local officials. Notification of any additional TMAs will be issued through a Secretarial Memorandum to the appropriate State Governors and MPOs, not as a notice published in the **Federal Register**. The UZAs with populations over 200,000, which are hereby designated as TMAs, are listed below. Three areas were previously designated TMAs at Gubernatorial request; Santa Barbara, California; Southern New Jersey, New Jersey; and Petersburg, Virginia. Of these three areas, only Santa Barbara, California did not meet the statutory population threshold for formal designation. However, Santa Barbara continues to be designated as a TMA as a result of the previous request.

There have been significant changes in the Census 2000 universe of urbanized areas from those defined, based on the 1990 census and criteria. These changes include new areas, areas formed by splits or mergers, name changes, and areas with significant boundary changes.

For multi-state urbanized areas over 200,000 population, the urbanized area is listed under the State with the largest share of the population. However, the TMA designation applies to the entire multi-state urbanized area. Montgomery, Alabama was previously designated a TMA, but fell below 200,000 in population and thus no longer meets the minimum population threshold to be classified as a TMA and is not included in the list of TMAs. Lorain-Elyria, Ohio was also previously designated as a TMA but is not included in the current list, since its Census designated population no longer meets the 200,000 threshold after a portion of the area has been absorbed by another, larger TMA (Cleveland).

The Census Bureau defined the Census 2000 urbanized areas using the criteria published in the **Federal Register** on March 15, 2002 (67 FR 11663). As a result of using these definitions, there were significant changes in the Census 2000 universe of urbanized areas from those defined, based on the 1990 census and criteria. A detailed description of the terminology and changes noted in the column entitled ''Area Comparison to 1990 Census TMAs'' is presented in the Census Bureau's notice of ''Qualifying Urban Areas for Census 2000'' in the **Federal Register** on May 1, 2002 (67 FR 21961).

**Authority:** 23 U.S.C. 315; 23 U.S.C. 134(i), 49 U.S.C. 5305, 49 CFR 1.48 and 1.51.

Issued on: July 1, 2002.

**Jennifer L. Dorn,**

*Federal Transit Administrator.*

**Mary E. Peters,**

*Federal Highway Administrator.*

| State/urbanized area (UZA) | UZA 2000 population | Area comparison to 1990 Census TMAs; population |
|---|---|---|
| Alabama | | |
| Birmingham, AL | 663,615 | No change. |
| Mobile, AL | 317,605 | No change. |
| Huntsville, AL | 213,253 | New TMA. |
| State Total | 1,194,473 | |
| Alaska | | |
| Anchorage, AK | 225,744 | Reduced in Geographic Area. |
| State Total | 225,744 | |
| Arizona | | |
| Phoenix—Mesa, AZ | 2,907,049 | No change. |
| Tucson, AZ | 720,425 | Reduced in Geographic Area. |
| State Total | 3,627,474 | |
| Arkansas | | |
| Little Rock, AR | 360,331 | Name Change. |
| State Total | 360,331 | |
| California | | |
| Los Angeles—Long Beach—Santa Ana, CA | 11,789,487 | TMA formed by UA split. |
| San Francisco—Oakland, CA | 2,995,769 | Increased in Geographic Area. |
| San Diego, CA | 2,674,436 | No change. |
| San Jose, CA | 1,538,312 | Reduced in Geographic Area. |
| Riverside—San Bernardino, CA | 1,506,816 | No change. |
| Sacramento, CA | 1,393,498 | No change. |
| Fresno, CA | 554,923 | No change. |
| Concord, CA | 552,624 | TMA formed by UA split. |
| Mission Viejo, CA | 533,015 | TMA formed by UA split. |
| Bakersfield, CA | 396,125 | No change. |
| Oxnard, CA | 337,591 | TMA formed by UA split. |
| Stockton, CA | 313,392 | No change. |
| Modesto, CA | 310,945 | No change. |
| Santa Rosa, CA | 285,408 | New TMA. |
| Lancaster—Palmdale, CA | 263,532 | New TMA. |
| Indio—Cathedral City—Palm Springs, CA | 254,856 | TMA formed by UA merger with Name Change. |
| San Rafael—Novato, CA | 232,836 | TMA formed by UA split. |

| State/urbanized area (UZA) | UZA 2000 population | Area comparison to 1990 Census TMAs; population |
|---|---|---|
| Temecula—Murrieta, CA | 229,810 | No change. |
| Antioch, CA | 217,591 | New TMA with Name Change. |
| Thousand Oaks, CA | 210,990 | TMA formed by UA split. |
| Victorville—Hesperia—Apple Valley, CA | 200,436 | New TMA with Name Change. |
| State Total | 26,792,392 | |
| Colorado | | |
| Denver—Aurora, CO | 1,984,887 | Name Change. |
| Colorado Springs, CO | 466,122 | No change. |
| Fort Collins, CO | 206,633 | New TMA. |
| State Total | 2,657,642 | |
| Connecticut | | |
| Bridgeport—Stamford, CT—NY | 888,890 | TMA formed by UA merger with Name Change. |
| Hartford, CT | 851,535 | TMA formed by UA merger with Name Change. |
| New Haven, CT | 531,314 | Name Change. |
| State Total | 2,271,739 | |
| Delaware | | |
| State Total. | | |
| District of Columbia | | |
| Washington, DC—VA—MD | 3,933,920 | Name Change. |
| State Total | 3,933,920 | |
| Florida | | |
| Miami, FL | 4,919,036 | TMA formed by UA merger with Name Change. |
| Tampa—St. Petersburg, FL | 2,062,339 | Name Change. |
| Orlando, FL | 1,157,431 | Reduced in Geographic Area. |
| Jacksonville, FL | 882,295 | No change. |
| Sarasota—Bradenton, FL | 559,229 | No change. |
| Palm Bay—Melbourne, FL | 393,289 | No change. |
| Cape Coral, FL | 329,757 | Name Change. |
| Pensacola, FL–AL | 323,783 | Name Change. |
| Port St. Lucie, FL | 270,774 | TMA formed by UA merger with Name Change. |
| Daytona Beach—Port Orange, FL | 255,353 | Name Change. |
| Bonita Springs—Naples, FL | 221,251 | New TMA with Name Change. |
| Tallahassee, FL | 204,260 | New TMA. |
| State Total | 11,578,797 | |
| Georgia | | |
| Atlanta, GA | 3,499,840 | No change. |
| Augusta—Richmond County, GA—SC | 335,630 | Name Change. |
| Columbus, GA—AL | 242,324 | No change. |
| Savannah, GA | 208,886 | New TMA, Reduced in Geographic Area. |
| State Total | 4,286,680 | |
| Hawaii | | |
| Honolulu, HI | 718,182 | No change. |
| State Total | 718,182 | |
| Idaho | | |
| Boise City, ID | 272,625 | New TMA. |
| State Total | 272,625 | |
| Illinois | | |
| Chicago, IL—IN | 8,307,904 | TMA formed by UA merger with Name Change. |
| Rockford, IL | 270,414 | Increased in Geographic Area. |
| Peoria, IL | 247,172 | No change. |
| Round Lake Beach—McHenry—Grayslake, IL—WI | 226,848 | New TMA. |
| State Total | 9,052,338 | |
| Indiana | | |
| Indianapolis, IN | 1,218,919 | No change. |
| Fort Wayne, IN | 287,759 | No change. |
| South Bend, IN—MI | 276,498 | Name Change. |
| Evansville, IN—KY | 211,989 | New TMA. |
| State Total | 1,995,165 | |
| Iowa | | |
| Des Moines, IA | 370,505 | No change. |
| Davenport, IA—IL | 270,626 | Name Change. |
| State Total | 641,131 | |
| Kansas | | |

| State/urbanized area (UZA) | UZA 2000 population | Area comparison to 1990 Census TMAs; population |
|---|---|---|
| Wichita, KS | 422,301 | No change. |
| State Total | 422,301 | |
| Kentucky | | |
| Louisville, KY—IN | 863,582 | No change. |
| Lexington—Fayette, KY | 250,994 | No change. |
| State Total | 1,114,576 | |
| Louisiana | | |
| New Orleans, LA | 1,009,283 | No change. |
| Baton Rouge, LA | 479,019 | No change. |
| Shreveport, LA | 275,213 | No change. |
| State Total | 1,763,515 | |
| Maine | | |
| State Total. | | |
| Maryland | | |
| Baltimore | 2,076,354 | TMA formed by UA merger with Name Change. |
| State Total | 2,076,354 | |
| Massachusetts | | |
| Boston, MA—NH—RI | 4,032,484 | TMA formed by UA merger with Name Change. |
| Springfield, MA—CT | 573,610 | No change. |
| Worcester, MA—CT | 429,882 | No change. |
| Barnstable Town, MA | 243,667 | New TMA. |
| State Total | 5,279,643 | |
| Michigan | | |
| Detroit, MI | 3,903,377 | No change. |
| Grand Rapids, MI | 539,080 | No change. |
| Flint, MI | 365,096 | No change. |
| Lansing, MI | 300,032 | Name Change. |
| Ann Arbor, MI | 283,904 | No change. |
| State Total | 5,391,489 | |
| Minnesota | | |
| Minneapolis—St. Paul, MN | 2,388,593 | No change. |
| State Total | 2,388,593 | |
| Mississippi | | |
| Jackson, MS | 292,637 | Reduced in Geographic Area. |
| Gulfport—Biloxi, MS | 205,754 | New TMA. |
| State Total | 498,391 | |
| Missouri | | |
| St. Louis, MO—IL | 2,077,662 | No change. |
| Kansas City, MO—KS | 1,361,744 | TMA formed by UA split. |
| Springfield, MO | 215,004 | New TMA. |
| State Total | 3,654,410 | |
| Montana | | |
| State Total. | | |
| Nebraska | | |
| Omaha, NE—IA | 626,623 | No change. |
| Lincoln, NE | 226,582 | New TMA. |
| State Total | 853,205 | |
| Nevada | | |
| Las Vegas, NV | 1,314,357 | No change. |
| Reno, NV | 303,689 | No change. |
| State Total | 1,618,046 | |
| New Hampshire | | |
| State Total. | | |
| New Jersey | | |
| Atlantic City, NJ | 227,180 | New TMA. |
| Trenton, NJ | 268,472 | Name Change. |
| State Total | 495,652 | |
| New Mexico | | |
| Albuquerque, NM | 598,191 | No change. |
| State Total | 598,191 | |
| New York | | |

| State/urbanized area (UZA) | UZA 2000 population | Area comparison to 1990 Census TMAs; population |
|---|---|---|
| New York—Newark, NY—NJ—CT | 17,799,861 | Name Change, Reduced in Geographic Area. |
| Buffalo, NY | 976,703 | Name Change. |
| Rochester, NY | 694,396 | No change. |
| Albany, NY | 558,947 | Name Change. |
| Syracuse, NY | 402,267 | No change. |
| Poughkeepsie—Newburgh, NY | 351,982 | TMA formed by UA merger with Name Change. |
| State Total | 20,784,156 | |
| North Carolina | | |
| Charlotte, NC—SC | 758,927 | Name Change, Increased in Geographic Area. |
| Raleigh, NC | 541,527 | No change. |
| Winston-Salem, NC | 299,290 | New TMA. |
| Durham, NC | 287,796 | No change. |
| Fayetteville, NC | 276,368 | No change. |
| Greensboro, NC | 267,884 | New TMA. |
| Asheville, NC | 221,570 | New TMA. |
| State Total | 2,653,362 | |
| North Dakota | | |
| State Total. | | |
| Ohio | | |
| Cleveland, OH | 1,786,647 | No change. |
| Cincinnati, OH—KY—IN | 1,503,262 | Name Change, Increased in Geographic Area. |
| Columbus, OH | 1,133,193 | No change. |
| Dayton, OH | 703,444 | Increased in Geographic Area. |
| Akron, OH | 570,215 | Reduced in Geographic Area. |
| Toledo, OH—MI | 503,008 | No change. |
| Youngstown, OH—PA | 417,437 | TMA formed by UA merger with Name Change. |
| Canton, OH | 266,595 | No change. |
| State Total | 6,883,801 | |
| Oklahoma | | |
| Oklahoma City, OK | 747,003 | No change. |
| Tulsa, OK | 558,329 | No change. |
| State Total | 1,305,332 | |
| Oregon | | |
| Portland, OR—WA | 1,583,138 | Name Change. |
| Eugene, OR | 224,049 | New TMA. |
| Salem, OR | 207,229 | New TMA. |
| State Total | 2,014,416 | |
| Pennsylvania | | |
| Philadelphia, PA—NJ—DE—MD | 5,149,079 | TMA formed by UA merger with Name Change. |
| Pittsburgh, PA | 1,753,136 | No change. |
| Allentown—Bethlehem, PA—NJ | 576,408 | Name Change. |
| Scranton, PA | 385,237 | Name Change. |
| Harrisburg, PA | 362,782 | No change. |
| Lancaster, PA | 323,554 | New TMA. |
| Reading, PA | 240,264 | New TMA. |
| State Total | 8,790,460 | |
| Rhode Island | | |
| Providence, RI—MA | 1,174,548 | TMA formed by UA merger with Name Change. |
| State Total | 1,174,548 | |
| South Carolina | | |
| Charleston—North Charleston, SC | 423,410 | Name Change. |
| Columbia, SC | 420,537 | No change. |
| Greenville, SC | 302,194 | No change. |
| State Total | 1,146,141 | |
| South Dakota | | |
| State Total. | | |
| Tennessee | | |
| Memphis, TN—MS—AR | 972,091 | Name Change. |
| Nashville-Davidson, TN | 749,935 | Name Change. |
| Knoxville, TN | 419,830 | No change. |
| Chattanooga, TN—GA | 343,509 | No change. |
| State Total | 2,485,365 | |
| Texas | | |
| Dallas—Fort Worth—Arlington, TX | 4,145,659 | Name Change. |
| Houston, TX | 3,822,509 | Increased in Geographic Area. |

| State/urbanized area (UZA) | UZA 2000 population | Area comparison to 1990 Census TMAs; population |
|---|---|---|
| San Antonio, TX | 1,327,554 | No change. |
| Austin, TX | 901,920 | No change. |
| El Paso, TX | 674,801 | No change. |
| McAllen, TX | 523,144 | Name Change. |
| Denton—Lewisville, TX | 299,823 | TMA formed by UA merger with Name Change. |
| Corpus Christi, TX | 293,925 | No change. |
| Lubbock, TX | 202,225 | New TMA. |
| State Total | 12,191,560 | |
| Utah | | |
| Salt Lake City, UT | 887,650 | Reduced in Geographic Area. |
| Ogden—Layton, UT | 417,933 | Name Change, Increased in Geographic Area. |
| Provo—Orem, UT | 303,680 | No change. |
| State Total | 1,609,263 | |
| Vermont | | |
| State Total. | | |
| Virginia | | |
| Virginia Beach, VA | 1,394,439 | Name Change, Reduced in Geographic Area. |
| Richmond, VA | 818,836 | TMA formed by UA merger with Name Change. |
| State Total | 2,213,275 | |
| Washington | | |
| Seattle, WA | 2,712,205 | TMA formed by UA split with UA merger. |
| Spokane, WA—ID | 334,858 | Name Change. |
| State Total | 3,047,063 | |
| West Virginia | | |
| State Total. | | |
| Wisconsin | | |
| Milwaukee, WI | 1,308,913 | No change. |
| Madison, WI | 329,533 | No change. |
| State Total | 1,638,446 | |
| Wyoming | | |
| State Total. | | |
| Puerto Rico | | |
| San Juan, PR | 2,216,616 | TMA formed by UA merger with Name Change. |
| Aguadilla—Isabela—San Sebastian, PR | 299,086 | New TMA with Name Change. |
| State Total | 2,515,702 | |
| U.S. Totals | 163,700,187 | |
| U.S. & Puerto Rico Totals | 166,215,889 | |

[FR Doc. 02–16998 Filed 7–5–02; 8:45 am]
BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2002–11420, Notice 2]**

### DaimlerChrysler Corporation, Inc., Grant of Application for Decision of Inconsequential Noncompliance

DaimlerChrysler Corporation, Inc., (DaimlerChrysler) has determined that approximately 28,265 of its model year 2002 RS vehicles (Dodge and Chrysler mini-vans) do not meet the labeling requirements of paragraph S5.3 of Federal Motor Vehicle Safety Standard (FMVSS) No. 120 ''Tire Selection and Rims for Motor Vehicles Other than Passenger Cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), DaimlerChrysler has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR section 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on February 6, 2002, in the **Federal Register** (67 FR 5640). NHTSA received no comments.

DaimlerChrysler determined that the rim size was inadvertently omitted from the tire size designation included on the certification label affixed to 28,265 of its model year 2002 RS vehicles. The recommended tire size designation for these vehicles is P215/65R16. Due to an error in the printing process, the rim size designation number, specifically the number 16, was inadvertently omitted from the certification label. As a result, the recommended tire size designation on the vehicle's certification label reads as ''P215/65R,'' rather than ''P215/65R16.''

DaimlerChrysler believes that the noncompliance is inconsequential to motor vehicle safety for several reasons. First, the noncompliant 2002 RS vehicles were constructed with P215/65R16 tires. DaimlerChrysler believes that most vehicle owners, dealers, and tire service technicians would refer to the vehicles' existing tires (specifically P215/65 R16 tires) to determine the appropriate size for a replacement tire rather than to the certification label. Second, the certification label lists the complete designated rim size, including the rim diameter, appropriate for the P215/65 R16 tires.

The agency believes the true measure of inconsequentiality with respect to the noncompliance with FMVSS No. 120, paragraph S5.3, is whether the tire rim size information is indicated to the consumer on the certification label. Normally, both the tire size and rim

type designations that appear on the vehicle certification label indicate the recommended rim size. In the case of this noncompliance, the rim size is missing only from the tire size designation. Therefore, the consumer can still determine the recommended rim size from the rim type designation on the certification label.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DaimlerChrysler's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: July 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–17009 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–12366 Notice 1]**

### General Motors Corporation; Receipt of Application for Determination of Inconsequential Noncompliance

General Motors Corporation (GM) of Warren, Michigan has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 209 ''Seat Belt Assemblies,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. GM has filed a report of noncompliance pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120, and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Pursuant to the requirements of 49 CFR part 556, GM requests exemption from the notification and remedy requirements of 49 U.S.C. sections 30118(d) and 30120(h). This exemption is requested for noncompliance with certain provisions of FMVSS No. 209. Based on its review of an analysis provided by TK Holdings, Inc. (TKH), the seat belt supplier, both GM and TKH believe that due to redundant emergency locking features of the subject safety belts, combined with the very low number of potentially noncomplying belts, the noncompliance in question is inconsequential to motor vehicle safety.

**Summary of the Petition**

According to GM, certain 2001 and 2002 vehicles that it produced between July 1, 2000 and April 29, 2002 may not meet the requirements of S4.3(j)(1) of FMVSS No. 209. Specifically, it is possible that approximately 90 seat belt assemblies per million (0.009%) produced by TKH between July 1, 2000 and January 14, 2002 for the front outboard seats, might not lock before the webbing extends 25 mm (1 inch) when the retractor assembly is subjected to an acceleration of 7 $m/s^2$ (0.7 g). For vehicles produced from January 15, 2002 through April 29, 2002, the frequency of the noncompliance declines to approximately 32 assemblies per million (0.003%). The noncompliance occurs because the vehicle-sensitive emergency locking system in a small number of seat belt assemblies can be disabled by atypical handling during transit from TKH to the seat suppliers or during installation in the vehicle seats. The specific noncompliance is discussed in more detail in the April 9, 2002 Part 573 report submitted to NHTSA.

The noncompliance initially was discovered by TKH when seat belt assemblies shipped to Europe for ECE Type Approval were returned because of the noncomplying condition. During inspections of completed seating units at some of the seat assembly plants, a small number of seat belt assemblies were discovered in which the vehicle-sensitive emergency locking system was not functioning. Upon analysis of these parts, TKH determined that there was a possibility that atypical handling during transit could disable this vehicle-sensitive emergency locking function in approximately 58 out of every 1 million retractors. TKH also determined that subsequent handling of the seat belt assemblies at the seat-manufacturing facilities could produce additional incidents on the order of 32 per million retractors, for a total of 90 retractor assemblies per million.

On January 15, 2002, TKH initiated a 100% inspection of the seat belt assemblies upon their arrival at the seat-manufacturing facilities, and some inspections of the seat belts after installation in seats was started on January 30, 2002. During March and April of 2002, upon learning that handling of the seat belt assemblies at the seat-manufacturing facilities also could disable the vehicle-sensitive emergency locking function, TKH progressively initiated (or reinitiated) a 100% inspection of the seat belts in assembled seats. GM claims that, for seating units produced prior to January 15, 2002, there is a potential noncompliance of 90 belts per million produced, and for seating units produced from January 15, 2002 through April 29, 2002, there is a potential noncompliance of 32 belts per million produced.

Since April 30, 2002, when all seat belts and all seating units have been subjected to a 100% inspection, GM is confident that all vehicles produced include belts assemblies that comply with the emergency locking requirements of FMVSS 209. Further, beginning in April 2002, a design change was made to this emergency locking system to improve the robustness of the mechanism to make sure that it cannot be disabled by handling during shipping or during installation in the seats. TKH intends to end the 100% inspection of seating units and seat belt assemblies after a high level of confidence is established by inspecting the improved assemblies.

Based on the TKH analysis to date, GM estimates that in the approximately 1,870,000 vehicles produced between May 2000 (the earliest vehicle production start date among the affected vehicles) and April 29, 2002, there are approximately 271 noncomplying seat belt assemblies. This represents a combined rate of approximately 0.007%.

**Availability of the Petition and Other Documents**

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12366. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street SW, Washington, DC 20590 (10:00 a.m. to 5:00 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''simple search.''

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number ''12366.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

**Comments**

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401, 400 Seventh Street SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment closing date:* August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–17010 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–12544; Notice 1]**

### Mercedes-Benz, U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz, U.S.A., Inc., (MBUSA) has determined that a limited number of model year 2003 Mercedes-Benz SL-Class, E-Class and CLK-Class vehicles it produced and sold is not in full compliance with 49 CFR 571.135, Federal Motor Vehicle Safety Standard (FMVSS) No. 135, ''Passenger Car Brake Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' MBUSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant vehicles were produced and sold with brake warning indicators that do not meet certain requirements mandated by FMVSS No. 135. Paragraph S5.5.5(a) of FMVSS No. 135 requires that all vehicles be equipped with a brake warning indicator lamp. The standard enumerates specific minimum parameters applicable to the warning:

> Each visual indicator shall display a word or words in accordance with the requirements of Standard No. 101 (49 CFR 571.101) [i.e., ''Brake''] and this section, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm (1/8 inch) high and the letters and background shall be of contrasting colors, one of which is red. Words and symbols in addition to those required by Standard No. 101 and this section may be provided for purposes of safety.

The affected vehicles are equipped with a ''Brake'' indicator warning lamp located in the upper right hand corner of the speedometer display. The letters in the indicator warning ''BRAKE'' were changed from all upper case letters to mixed upper and lower case letters. As a result, the letters ''B'' and ''k'' in the ''Brake indicator lamp meet the minimum height requirements of FMVSS No. 135, but the letters ''r,'' ''a,'' and ''e'' are 7/10 mm shorter than the minimum 3.2 mm requirements. MBUSA does not believe that the 7/10 mm difference is discernable by the average driver for the following reasons:

1. The ''Brake'' warning indicator is still easily recognizable due to its positioning on the dashboard, the color of the indicator and other factors.

2. In addition to the ''Brake'' warning indicator, each of the affected Mercedes-Benz vehicles is also equipped with a dual screen message center that provides brake system information in a highly visible and audible manner.

MBUSA believes that the noncompliance is inconsequential to motor vehicle safety, and no corrective action is warranted. Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: August 7, 2002.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–17011 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Petition for Exemption from the Vehicle Theft Prevention Standard; BMW

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of BMW of North America, LLC (BMW) for an exemption of a high-theft line, the BMW [confidential nameplate], from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. The BMW vehicle line will replace the current Z3 vehicle line. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. BMW requested confidential treatment for some of the information submitted in support of its petition. The agency will address BMW's request for confidential treatment by separate letter.

**DATES:** The exemption granted by this notice is effective beginning with the 2003 model year (MY).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street SW, Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTAL INFORMATION:** In a petition dated May 17, 2002, BMW of North America, LLC (BMW), requested

exemption from the parts-marking requirements of the theft prevention standard (49 CFR part 541) for the BMW [confidential] vehicle line, beginning with MY 2003. The petition has been filed pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for an entire vehicle line. Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW [confidential] vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts-marking requirements for not more than one additional line of a manufacturer for MYs 1997–2000. However, it does not address the contingency of what to do after model year 2000 in the absence of a decision under Section 33103(d). 49 U.S.C. 33103(d)(3) states that the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of antitheft devices and finds that antitheft devices are an effective substitute for parts-marking. The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Upon consultation with the Department of Justice, we determined that the appropriate reading of Section 33103(d) is that the National Highway Traffic Safety Administration (NHTSA) may continue to grant parts-marking exemptions for not more than one additional model line each year, as specified for model years 1997–2000 by 49 U.S.C. 33106(b)(2)(C). This is the level contemplated by the Act for the period before the Attorney General's decision. The final decision on whether to continue granting exemptions will be made by the Attorney General at the conclusion of the review pursuant to Section 330103(d)(3).

BMW's submittal is considered a complete petition, as required by 49 CFR part 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, BMW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. BMW will install its antitheft device as standard equipment on the MY 2003 BMW [confidential] vehicle line. The antitheft device is a passive, electronically-coded vehicle immobilizer (EWS) system. The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. In addition to the key, the antitheft device can be activated by the use of its radio frequency remote control. Locking the vehicle door and trunk by using the key cylinder or the radio frequency remote control will further secure the vehicle. BMW stated that the frequency codes for the remote control constantly change to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control.

The EWS system consists of a key with a transponder, a loop antenna (coil) around the steering lock cylinder, an EWS control unit and an engine control unit (DME/DDE) with encoded start release input.

BMW stated that in the key is a transponder, a special transmitter/receiver that communicates with the EWS control through the transceiver module. The transponder chip which is integrated in the key consists of a transmitter/receiver, a small antenna coil, and a memory which can be written to and read from. The memory contains its own unique key and customer service data.

BMW states that the EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. BMW also states that the engine control unit with coded start release input has been designed in such a manner that the ignition and the fuel supply are only released when a correct release signal has been sent by the EWS control unit. The EWS control unit inspects the key data for correctness and allows the ignition to operate and fuel supply to be released when a correct signal has been received.

The vehicle is also equipped with a central locking system which locks all doors, the hood, the trunk and fuel filler lid. The central locking system also allows the driver to unlock the driver's door while the passenger doors remain locked. This feature offers additional security by preventing unauthorized entry of the vehicle through the passenger doors. BMW also states that it is also possible to unlock all doors via the central locking system. To prevent locking the keys in the car upon exiting, the driver's door can only be locked with a key or by use of the radio frequency remote control after it is closed. This also locks the other doors. If the doors are open at the time of locking, they are automatically locked when they are closed.

BMW discussed the uniqueness of its locks and its ignition key. The keys have guide-ways milled in the middle of both sides of the key bit. The same key operates the door locks and the ignition/steering lock and it can be inserted in a keyhole in either direction. However, BMW stated that its vehicle's locks are almost impossible to pick, and its ignition key cannot be duplicated on the open market.

BMW also stated that a special key blank, key-cutting machine and owner's individual key code are needed to cut a new key, and that its key blanks, machines and codes will be closely controlled. Additionally, new keys will only be issued to authorized persons and spare keys can only be obtained through the dealership because they are not copies of lost originals, but new keys with their original electronic identification. As an additional security measure, lost keys can be disabled at the vehicle and enabled again. BMW also stated that every key request is documented so that any inquiries by insurance companies and investigative authorities can be followed up on.

BMW states that the steering/ignition lock is hardened against the grip of a screw and the housing is reinforced to prevent removal of the lock. When the key is removed, a mechanism causes the lock to engage, thereby preventing steering wheel movement without any additional action. Additionally, vehicles equipped with automatic transmission have an ignition/transmission interlock that prevents ignition key removal unless the shift lever is in the ''Park'' position preventing movement of the shift lever until the key is turned in the lock.

The BMW [confidential nameplate] battery will be covered and inaccessibly located. Disconnecting the battery will not unlock the doors. However, in the event of an accident, an inertia switch will automatically unlock all the doors.

BMW also stated that its antitheft device does not incorporate any audible or visual alarms. However, based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the data indicate that lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

BMW compared the device proposed for its new line with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of part 541, and has concluded that the antitheft device proposed for this line is no less effective than those devices in the lines for which NHTSA has already granted exemptions from the parts-marking requirements. The antitheft system that BMW intends to install on its new vehicle line for MY 2003 exactly the same system that is currently installed on its Carline 3, Carline 5, Carline 7, X5 and MINI vehicle lines. The agency granted BMW's petition for modification of its Carline 7 beginning with MY 1995 (*See* 59 FR 47973, September 19, 1994); and its petitions for exemptions granted in full for Carline 5 beginning with MY 1997, Carline 3 beginning with MY 1999, the X5 vehicle line beginning with MY 2000, and the MINI beginning with MY 2002. (*See* 61 FR 6292, February 16, 1996, 62 FR 62800, November 25, 1997, 64 FR 33947, June 24, 1999 and 66 FR 33604, June 22, 2001 respectively).

In order to ensure reliability and durability of the device, BMW conducted performance tests based on its own specified standards. BMW provided a detailed list of the following tests conducted: climatic tests, high temperature endurance run, thermoshock test in water, chemical resistance, vibrational load, electrical ranges, mechanical shock tests, and electromagnetic field compatibility.

Additionally, BMW stated that its immobilizer system fulfills the requirements of the European vehicle insurance companies which became standard as of January 1995. The requirements prescribe that the vehicle must be equipped with an electronic vehicle immobilizing device which works independently from the mechanical locking system and prevents the operation of the vehicle through the use of coded intervention in the engine management system. In addition, the device must be self-arming (passive), become effective upon leaving the vehicle, or not later than the point at which the vehicle is locked, and allow deactivation of the vehicle by electronic means and not by use of the mechanical key.

Based on evidence submitted by BMW, the agency believes that the antitheft device for the vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR part 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device. The device lacks the ability to attract attention to the efforts of unauthorized persons to enter or operate a vehicle by a means other than a key (§ 541.6(a)(3)(ii)).

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information BMW provided about its antitheft device. For the foregoing reasons, the agency hereby grants in full BMW of North America's petition for an exemption for the MY 2003 vehicle line from the parts-marking requirements of 49 CFR part 541. If BMW decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.'' The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself.

The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety, Performance Standards.*

[FR Doc. 02–17008 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–12367; Notice 1]**

### Toyota Motor Corporation; Receipt of Application for Determination of Inconsequential Non-Compliance

Toyota Motor Corporation (TMC) of Toyota-cho, Aichi-ken, Japan, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. Chapter 301 ''Motor Vehicle Safety'' for noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 205 ''Glazing Materials,'' on the basis that the noncompliance is inconsequential to motor vehicle safety. TMC has filed a report of noncompliance pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. *See* 49 U.S.C. 30118(d) and 30120(h).

TMC submitted the following information in accordance with the requirements of 49 CFR part 556, ''Exemption for Inconsequential Defect or Noncompliance.''

**Summary of the Petition**

TMC has determined that certain 2002 model year Lexus SC430 vehicles are equipped with an airdam which fails to meet the marking requirement of FMVSS No. 205 ''Glazing Materials.'' Based on production records, TMC has determined the affected vehicle population includes model year 2002 Lexus SC430 vehicles produced by TMC between January 8, 2001 and May 17, 2001. The total number of vehicles potentially affected is 5,789.

Certain Lexus SC430 vehicles were equipped with an airdam, which was not marked as specified in Section 6 of ANS Z26 (incorporated by reference in FMVSS No. 205), with the ''DOT'' symbol and a manufacturer's code marking. According to TMC, during its design and testing process, it confirmed that the airdam meets the performance requirements of ANS Z26 for item 4 and item 5 glazing as referenced by FMVSS

No. 205. They supplied two ''Notice of Equipment Compliance'' reports. The first one provided compliance information for the material that was used in the vehicle prior to inclusion of the marking and that expired in 1998. TMC also provided a second set of compliance information for the same material, which was used after the marking was placed on the airdam. TMC claims there is virtually no difference between the compliance data; therefore, TMC believes that there is no safety risk.

TMC maintains that, although this failure to mark constitutes a noncompliance with the marking requirements of FMVSS No. 205, it is inconsequential to motor vehicle safety and, therefore, TMC should be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act.

**Availability of the Petition and other Documents**

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2002–12367. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (10:00 a.m. to 5:00 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''Simple Search.''

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number ''12367.'' After typing the docket number, click on ''Search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

**Comments**

Interested persons are invited to submit written data, views and arguments on the petition of TMC described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 7, 2002.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 2, 2002.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 02–17012 Filed 7–5–02; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–2002–11270, Notice No. 02–6]**

### Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Safety advisory notice.

**SUMMARY:** This is to notify the public that the Department of Transportation is investigating the unauthorized marking of high- and low-pressure compressed gas cylinders, primarily fire extinguishers and self-contained breathing apparatuses, by Tech Fire and Safety, Inc. (Tech Fire). Tech Fire is located at 514 4th Street, Watervliet, NY 12189. In 2000, Research and Special Programs Administration (RSPA) conducted an investigation and evaluation of Tech Fire's DOT specification and exemption cylinder retesting procedures and determined that Tech Fire was not fit to conduct such retests. Consequently, RSPA terminated Tech Fire's approval to test DOT specification and exemption cylinders on October 2, 2001. RSPA subsequently received information that Tech Fire had continued to retest and mark DOT specification cylinders as properly tested in accordance with the Hazardous Materials Regulations (HMR) after its approval to retest had been revoked.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from rupture of a cylinder. Cylinders not retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce. Only DOT-approved facilities are authorized to perform cylinder hydrostatic retesting.

**FOR FURTHER INFORMATION CONTACT:** Chris Michalski, Hazardous Materials Enforcement Specialist, Eastern Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277.

**SUPPLEMENTARY INFORMATION:** Through its previous investigations of Tech Fire, RSPA determined that Tech Fire demonstrated a history of non-compliance with the HMR and of improper retesting of cylinders. Based on this non-compliance, RSPA terminated Tech Fire's approval to restest DOT specification and exemption cylinders on October 2, 2001. Subsequently, RSPA was notified that Tech Fire had continued to represent cylinders as being properly retested in accordance with the HMR after its approval to conduct such retests was no longer valid.

The purpose of this safety advisory is to notify the public that Tech Fire is not authorized to retest DOT specification or exemption cylinders. Anyone who has a cylinder serviced by Tech Fire after October 2, 2001, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility.

Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged. Cylinders that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged. Upon discharge, the cylinders should be taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and to ensure their suitability for continuing service. The inspector can provide a list of authorized retest facilities in your area, or you may obtain the list at the following Web site: *http://hazmat.dot.gov.* Under no circumstances should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and

retested by a DOT-authorized retest facility.

Tech Fire's Retester Identification Number (RIN) was B753. The cylinders in question are stamped or labeled with RIN B753 in the following pattern:

B7

M Y

35

M is the month of retest (e.g., 10), and Y is the year of the retest (e.g., 01).

RSPA requests that any person possessing a cylinder described in this safety advisory telephone or provide a facsimile to Inspector Michalski with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information for the cylinder, and (4) the month and year of the last marked retest by Tech Fire.

Issued in Washington, D.C. on July 2, 2002.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 02–16999 Filed 7–5–02; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before August 7, 2002.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Annual Thrift Satisfaction Survey.

*OMB Number:* 1550–0087.

*Form Number:*

*Description:* This survey will be sent to federal savings associations on an annual basis to obtain information about their satisfaction with OTS services.

*Type of Review:* Renewal.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents:* 300.

*Estimated Frequency of Response:* Annually.

*Estimated Burden Hours per Response:* .25 hours.

*Estimated Total Burden:* 75 hours.

*Clearance Officer:* Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 2002.

**Deborah Dakin,**

*Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. 02–16909 Filed 7–5–02; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 28, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 7, 2002 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1128.

*Form Number:* IRS Form 8814.

*Type of Review:* Extension.

*Title:* Parents' Election To Report Child's Interest and Dividends.

*Description:* Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 1,100,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—26 min.

Learning about the law or the form—9 min.

Preparing the form—24 min.

Copying, assembling, and sending the form to the IRS—16 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 1,408,000 hours.

*Clearance Officer:* Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports, Management Officer.*

[FR Doc. 02–16910 Filed 7–5–02; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

### Customs COBRA Fees Advisory Committee

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

**ACTION:** Notice of meeting.

**SUMMARY:** This document announces a change to the date and time of the first scheduled meeting of the U.S. Customs COBRA Fees Advisory Committee. This notice also publishes the provisional agenda for the meeting and identifies representatives from the private sector transportation industry that have been appointed by the Commissioner of Customs as COBRA Fees Advisory Committee members.

**DATES:** The first meeting of the U.S. Customs COBRA Fees Advisory Committee has been rescheduled for July 15, 2002, from 1 p.m. to 3 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Interested parties must provide Customs with notice of their intent to attend the meeting by July 11, 2002. Notice may be provided to Carlene Warren at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carlene Warren, U.S. Customs Service, Office of Field Operations, Passenger Programs, at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c), as amended by the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36), directs the Commissioner of Customs to establish an advisory committee whose membership consists of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under 19 U.S.C. 58c.

The Committee will advise the Commissioner of Customs on issues relating to inspection services performed by the Customs Service, including issues pertaining to the time periods during which inspections should be performed, the proper number and deployment of inspection officers, and the amount of any proposed fees.

The Commissioner of Customs has appointed the following representatives from the private sector transportation industry as COBRA Fees Advisory Committee members:

(1) Kathy Hansen, Manager, Customs Compliance Con-Way Transportation Services, Inc.;

(2) Ann W. White, Director of Industry Affairs, American Airlines;

(3) Barbara Kostuk, Director, Federal Affairs & Facilitation Air Transport Association;

(4) Benson Bowditch, Jr., Manager, Compliance Department Lykes Brothers Steamship Company; and

(5) Joseph Mangiaracino, Team Leader, National Customer Service Center Union Pacific Railroad.

On June 14, 2002, a notice published in the **Federal Register** (67 FR 40983) announced that the first COBRA Fee Advisory Committee meeting was scheduled for June 28, 2002.

This notice announces that the meeting has been rescheduled. The first meeting of the COBRA Fees Advisory Committee is now scheduled for July 15, 2002, from 1 p.m. to 3 p.m., in room 6.4–B of the Ronald Reagan Building located at 1300 Pennsylvania Avenue, NW., Washington, DC 20229. The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. Interested parties, other than Advisory Committee members, who wish to attend the meeting should contact Carlene Warren by July 11, 2002, at (202) 927–1391 or via e-mail at *Carlene.warren@customs.treas.gov.*

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

#### Agenda

I. Opening remarks by COBRA Fees Advisory Committee Chairperson, Deputy Commissioner of the U.S. Customs Service, Douglas M. Browning

II. Briefing by Office of Finance—Budget

III. Topics for Discussion

1. Consideration of New Fees:

a. In Light of New Security Procedures and Equipment;

b. Fees on Cargo

IV. Other Business

V. Adjourn

Dated: July 3, 2002.

**Douglas M. Browning,**

*Deputy Commissioner of Customs.*

[FR Doc. 02–17114 Filed 7–5–02; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 990–EZ

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–EZ, Short Form Return of Organization Exempt from Income Tax.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** Title: Short Form Return of Organization Exempt From Income Tax.

*OMB Number:* 1545–1150.

*Form Number:* 990–EZ.

*Abstract:* An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax exempt organizations are operating within the limitations of their tax exemption.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 124,184.

*Estimated Time Per Respondent:* 55 hrs., 38 min.

*Estimated Total Annual Burden Hours:* 6,909,598.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 25, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–17014 Filed 7–5–02; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–C

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–C, Cancellation of Debt.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cancellation of Debt.

*OMB Number:* 1545–1424.

*Form Number:* 1099–C.

*Abstract:* Form 1099–C is used by Federal government agencies, financial institutions, and credit unions to report the cancellation or forgiveness of a debt of $600 or more, as required by section 6050P of the Internal Revenue Code. The IRS uses the form to verify compliance with the reporting rules and to verify that the debtor has included the proper amount of canceled debt in income on his or her income tax return.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, and the Federal government.

*Estimated Number of Responses:* 647,993.

*Estimated Time Per Response:* 10 min.

*Estimated Total Annual Burden Hours:* 110,159.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–17015 Filed 7–5–02; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–121063–97]**

### Proposed Collection; Comment Request for Regulation Project

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121063–97 (TD 8972), Averaging of Farm Income (§ 1.1301–1).

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Averaging of Farm Income.

*OMB Number:* 1545–1662.

*Regulation Project Numbers:* REG–121063–97.

*Abstract:* Code section 1301 allows an individual engaged in a farming business to elect to reduce his or her regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. The regulation provides that the election for averaging farm income is made by filing Schedule J of Form 1040, which is also used to record and total the amount of tax for each year of the four year calculation.

*Current Actions:* There is no change to this existing regulation.

*Type of review:* Extension of OMB approval.

*Affected Public:* Farms and individuals or households.

The burden for this requirement is reflected in the burden estimate for Schedule J of Form 1040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–17016 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 210

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 210, Preparation Instructions for Media Labels.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of Notice 210 should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Preparation Instructions for Media Labels.

*OMB Number:* 1545–0295.

*Form Number:* Notice 210.

*Abstract:* Section 6011(e)(2)(A) of the Internal Revenue Code requires certain filers of information returns to report on magnetic media. Notice 210 instructs the filers on how to prepare a pressure sensitive label that is affixed to the media informing the IRS as to what type of information is contained on the media being submitted. This label must be attached to each and every piece of media to identify items needed so that the media can be processed by the Internal Revenue Service.

*Current Actions:* There are no changes being made to Notice 210 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and not-for-profit institutions.

*Estimated Number of Respondents:* 150,000.

*Estimated Time Per Respondent:* 5 minutes.

*Estimated Total Annual Burden Hours:* 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–17020 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8884

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8884, New York Liberty Zone Business Employee Credit.

**DATES:** Written comments should be received on or before September 6, 2002, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* New York Liberty Zone Business Employee Credit.

*OMB Number:* 1545–1785.

*Form Number:* 8884.

*Abstract:* Form 8884 is used by business owners to request the Liberty Zone Credit for wages paid to qualified employees. This form was created by section 301 of the Job Creation and Worker Assistance Act of 2002.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

*Estimated Number of Respondents:* 176,250.

*Estimated Time Per Respondent:* 11 hours, 45 minutes.

*Estimated Total Annual Burden Hours:* 15,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–17021 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1120PC

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120PC, U.S. Property and Casualty Insurance Company Income Tax Return.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Property and Casualty Insurance Company Income Tax Return.

*OMB Number:* 1545–1027.

*Form Number:* 1120–PC.

*Abstract:* Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,200.

*Estimated Time Per Respondent:* 191 hours, 51 minutes.

*Estimated Total Annual Burden Hours:* 422,070.

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–17022 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6765

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6765, Credit for Increasing Research Activities.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Credit for Increasing Research Activities.

*OMB Number:* 1545–0619.

*Form Number:* 6765.

*Abstract:* IRC section 38 allows a credit against income tax (Determined under IRC section 41) for an increase in research activities in a trade or business. Form 6765 is used by businesses and individuals engaged in a trade or business to figure and report the credit. The data is used to verify that the credit claimed is correct.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 23,947.

*Estimated Time Per Respondent:* 22 hours, 58 minutes.

*Estimated Total Annual Burden Hours:* 529,948.

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 1, 2002.

**Carol Savage,**

*Program Analyst.*

[FR Doc. 02–17023 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1099–MSA

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MSA, Distributions From an MSA or Medicare+Choice MSA.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Distributions From an MSA or Medicare+Choice MSA.

*OMB Number:* 1545–1517.

*Form Number:* 1099–MSA.

*Abstract:* This form is used to report distributions from a medical savings account as required by Internal Revenue Code section 220(h).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 25,839

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 3,617

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–17024 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8379

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8379, Injured Spouse Claim and Allocation.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Injured Spouse Claim and Allocation. OMB Number: 1545–1210.

*Form Number:* 8379.

*Abstract:* Form 8379 is used by a non-obligated spouse to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past due obligation owed to a state or Federal agency by the other spouse. The IRS uses the information provided by the injured spouse on For 8379 to determine the proper allocation of the joint refund.

*Current Actions:* There are no changes being made to the form at this time. Type of Review: Extension of a currently approved collection.

*Affected Public:* Individuals.

*Estimated Number of Responses:* 300,000.

*Estimated Time Per Response:* 1 hour., 47 minutes.

*Estimated Total Annual Burden Hours:* 534,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–17025 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 9465

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9465, Installment Agreement Request.

**DATES:** Written comments should be received on or before September 6, 2002 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Agreement Request.

*OMB Number:* 1545–1350.

*Form Number:* 9465.

*Abstract:* Form 9465 is used by the public to provide identifying account information and financial ability to

enter into an installment agreement for the payment of taxes. The form is used by IRS to establish a payment plan for taxes owed to the federal government, if appropriate, and to inform taxpayers about the application fee and their financial responsibilities.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 760,000.

*Estimated Time Per Respondent:* 1 hour, 4 minutes.

*Estimated Total Annual Burden Hours:* 805,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2002.

**Glenn Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 02–17026 Filed 7–5–02; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Submission for OMB Review; Comment Request

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before August 7, 2002.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov*; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, fax to (202) 906–6518, or e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Savings and Loan Holding Company Registration Statement—H–(b)10.

*OMB Number:* 1550–0020.

*Form Number:* H–(b)10.

*Regulation Requirement:* 12 CFR 584.1(a).

*Description:* The information collection is used to determine a savings and loan holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings association.

*Type of Review:* Renewal.

*Affected Public:* Savings Associations.

*Estimated Number of Respondents:* 72.

*Estimated Frequency of Response:* Event-generated.

*Estimated Burden Hours per Response:* 8 hours.

*Estimated Total Burden:* 576 hours.

*Clearance Officer:* Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 27, 2002.

**Deborah Dakin,**

*Deputy Chief Counsel, Regulations and Legislation Division.*

[FR Doc. 02–16926 Filed 7–5–02; 8:45 am]

BILLING CODE 6720–01–P

# Corrections

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTEMENT OF DEFENSE

### Department of the Army

### Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Automated Method of Identifying and Archiving Nucleic Acid Sequences

*Correction*

In notice document 02–16375 beginning on page 43587 in the issue of Friday, June 28, 2002, make the following correction:

On page 43588, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the third line, ''(301) 619–7807'' should read, ''(301) 619–7808''.

[FR Doc. C2–16375 Filed 7–5–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 02–ACE–3]**

### Amendment to Class E Airspace; Caruthersville, MO

*Correction*

In rule document 02–9406 beginning on page 19107 in the issue of Thursday, April 18, 2002, make the following correction:

**§ 71.1 [Corrected]**

On page 19108, in the second column, in §71.1, under the heading ''**ACE MO E5 Caruthersville, MO [REVISED]**'', ''(Lat. 36°10'30''N., long. 90°40'30''W.)'' should read ''(Lat. 36°10'30''N., long. 89°40'30''W.)''.

[FR Doc. C2–9406 Filed 7–5–02; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NE–04–AD; Amendment 39–12754; AD 2002–10–08]**

**RIN 2120–AA64**

### Airworthiness Directives; General Electric Company CF6–80E1 Series Turbofan Engines

*Correction*

In rule document 02–12631 beginning on page 36090 in the issue of Thursday, May 23, 2002, make the following correction:

**§39.13 [Corrected]**

On page 36091, in the second column, in §39.13, under the heading ''**2002–10–08 General Electric Company:**'', ''Docket No. 2000–NE–04–AD.'' should read ''Docket No. 2002–NE–04–AD.''.

[FR Doc. C2–12631 Filed 7–5–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 8, 2002

# Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Parts 21, 36, and 91**

**Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 21, 36, and 91**

**[Docket No. FAA–2000–7587 Amdt No. 21–81, 36–54 & 91–275]**

**RIN 2120–AH03**

# Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

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

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

**SUMMARY:** The FAA is amending the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These changes are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for subsonic jet airplanes and subsonic transport category large airplanes. These changes will provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards will simplify airworthiness approvals for import and export purposes.

**DATES:** *Effective Date:* August 7, 2002. *Comments Date:* Comments on revised 36.2 concerning the applicable noise requirements are due on or before September 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** James Skalecky, AEE–100, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3699; facsimile (202) 267–5594; or e-mail at *james.skalecky@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

This final rule is being adopted with prior notice and prior public comment. In response to a comment received during the comment period the FAA is proposing a change to section 36.2. Considering the degree of the change from what was noted in Notice No. 00–08 and the requirement that is being implemented, this final rule includes a request for comments only on revised section 36.2.

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

## Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search).*

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Bulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the Government Printing Offices's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number of docket number of this rulemaking.

## Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov.*

## Background

### *Current Regulations*

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribed ''standards to measure aircraft noise and sonic boom;...and regulations to control and abate aircraft noise and sonic boom.'' Part 36 of Title 14 of the Code of Federal Regulations contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. Subpart A, B, and C and appendices A, B, and C of part 36 contain the requirements and standards and apply to subsonic jet airplanes and subsonic transport category large airplanes. Appendices A, B, and C of part 36 specify the test conditions, procedures, and noise levels necessary to demonstrate compliance.

### *Government and Industry Cooperation*

In June 1990 at a meeting of the JAA Council, which consists of JAA members from European countries and the FAA, the FAA Administrators committed the FAA to support the harmonization of U.S. regulations with the Joint Aviation Regulations (JAR). The JARs are developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the government on major regulatory issues facing the agency. The FAA tasked ARAC with noise certification issues. These issues involve the harmonization of 14 CFR part 36 with JAR 36, the harmonization of associated guidance material including equivalent procedures, and interpretations of the regulations. On October 17, 1995, the ARAC established the FAR/JAR Harmonization Working Group for Subsonic Transport Category Large Airplanes and Subsonic Turbojet Powered Airplanes (60 FR 53824). The working group task included reviewing the applicable provisions of subparts A, B, and C, and appendices A, B, and C part 36, and harmonizing them with the corresponding applicable provisions of JAR 36. The FAA asked the working group to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume

1, and its associated Technical Manual, as the basis for development of these harmonization proposals. The working group forwarded a recommendation to amend part 36 to the ARAC. After due consideration, including a meeting open to the public on May 18, 2000, ARAC forwarded this recommendation, in the form of a draft NPRM, to the FAA for consideration.

On July 11, 2000, the FAA published Notice No. 00–08 entitled ''Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes'' (65 FR 42796). The FAA solicited comments on the proposals, which are discussed in the following section. This final rule is based on Notice No. 00–08.

**Discussion of Comments**

Four commenters responded to Notice No. 00–08. These comments and the FAA responses are discussed below.

**General Comments**

The Air Line Pilots Association (ALPA) comments that it had reviewed both the Notice of Proposed Rulemaking (NPRM) (Notice No. 00–08) and draft Advisory Circular 36–4C (65 FR 48794). In its comments, ALPA compliments the FAA and JAA for pursuing the harmonization of noise certification standards and concurred with both documents. ALPA also states that certification standards are the appropriate means of reducing noise, and that aviation noise reduction should be accomplished primarily through technological advances in engine and aircraft design/certification, and not with the development of special pilot procedures.

The Aerospace Industries Association (AIA) endorses the FAA's efforts to harmonize the U.S. and European regulations. The AIA also comments that the proposed rule would improve the compatibility of part 36 with the noise standards prescribed in ICAO Annex 16, Volume 1. However, AIA also urges FAA to eliminate the language differences that would remain between part 36 and ICAO Annex 16 and its associated guidance material. The AIA identified several sections where it believes that these differences would cause the typical noise certification applicant to question whether the two standards (*i.e.*, part 36 and ICAO Annex 16) have the same meaning. The AIA comments that these differences could make it more difficult and costly for applicants that might want reciprocal approvals by different certificating authorities.

*FAA Response*

While recognizing AIA's concern about potential misinterpretations that might result from the language differences between part 36 and ICAO Annex 16, harmonization of part 36 with JAR 36 and ICAO Annex 16 is not contingent upon these standards being identical, word for word. These language differences resulted primarily from the need to (1) ensure that the terminology used in part 36 is consistent with that which is commonly used in U.S. regulations, and (2) more precisely define several JAR 36 and ICAO Annex 16 provisions that were incorporated into part 36. The FAA believes that, rather than leading to misinterpretation, as suggested by AIA, more precise definitions of these regulatory provisions will result in less chance of misinterpretation. Accordingly, the FAA has not changed the proposed rule to eliminate these language differences.

*Calibration*

The AIA notes the inconsistent use of the term ''changes'' in section A36.3.9.5 of the proposed rule, compared to ''any changes,'' used in section A36.3.9.7 to refer to calibration requirements.

*FAA Response*

The FAA agrees. The word ''any'' has been removed from section A36.3.9.5.

*Sound Propagation Effects on the Lateral Noise Measurement*

The AIA comments that the material in section A36.9.3.2(b)(1) concerning sound propagation effects on the lateral noise measurement would be more appropriate in section A36.9.3.2(b)(2)(ii).

*FAA Response*

The FAA agrees and the material has been moved to section A36.9.3.2(b)(2)(ii). This text is now designated as a ''note,'' since it is advisory in nature. This change is also included in section A36.9.4.2(b)(2)(ii), which contains the same material.

*Compatibility With ICAO Standards*

The AIA comments that the proposed rule preamble discussion under ''Compatibility With ICAO Standards'' suggests that the FAA is willing to simply file differences between the 14 CFR part 36 noise standards and ICAO noise standard and maintain that status because it had not been possible to reach agreement on some items in the ARAC Harmonization Working Group. The AIA urges the FAA to review the proposed rule to re-assess the FAA's position on achieving full compatibility with ICAO noise standards. The AIA further urges that all items that have not been agreed upon by the Harmonization Working Group should be identified as technical issues to be studied and resolved by appropriate task groups within ICAO committee on Environmental Protection (CAEP) Working Group 1.

*FAA Response*

Those items identified in the proposed rule as items for which the FAA intends to file differences were placed in that category after considerable review by the Harmonization Working Group indicated that the differences could not realistically be resolved prior to publication of the proposed rule. The FAA fully intends to continue to work toward resolution of these remaining differences, and is currently participating in ICAO CAEP Working Group 1 task groups that are addressing each of these differences.

*Special Retroactive Requirements*

The AIA expresses support for the FAA's recognition of the incompatibility of current 14 CFR part 36, ICAO Annex 16, and JAR 36 on the date used in determining the applicable noise standards relative to the date of type certificate application. The AIA comments, however, that simply removing section 36.2, as proposed, would not solve the incompatibility problem. Further, given the text contained in ICAO Annex 16 (*i.e.,* date of application for the certificate of airworthiness for the prototype), AIA does not view the proposed rule as meeting the FAA's stated intent to ''harmonize with the applicability designation of part 36 with that contained in section 1.7 of ICAO Annex 16, Chapter 1.''

The AIA comments that the proposed rule did not make clear how the FAA would handle the date for applicable noise standards for type design changes if reference to part 36 is removed from part 21.

Further, considering the proposal to revise section 36.2, the AIA questions whether section A36.1.1 should continue to specify that the procedures used for noise certification are those in effect on the effective date of this final rule.

*FAA Response*

The FAA agrees that removing and reserving section 36.2 and deferring to part 21 as proposed is not adequate to determine the applicable noise certification basis. Accordingly, section 36.2 has been retained and revised to

address the concerns expressed by AIA in its comment, while maintaining the FAA's intent to use the date of certification application as a basis for part 36 applicability. The heading of section 36.2 is also changed to ''Requirements as of date of application.'' The revisions made to section 36.2 are within the scope of Notice No. 00–08; the FAA is not proposing a new standard. The change was made because of the comment that was received relative to section 36.2. Given the change from Notice No. 00–08 in the manner in which this requirement is implemented, however, this final rule includes a request for comments on the revised section 36.2.

The FAA recognizes that revised section 36.2 in this final rule does not correspond word for word with section 1.7 of ICAO Annex 16, Chapter 1. The FAA believes, however, that the revised section 36.2 is in agreement with the intent of section 1.7 to use the date of certification application as the basis for noise certification standard applicability.

The change to section 36.2 specifies that the part 36 requirements applicable to a specific certification project are those in effect on the date of application for the new, amended, or supplemental type certificate. The FAA also agrees with the AIA's comment that a date need not be specified in section A36.1.1. Accordingly, since section 36.2 will determine the applicable noise certification requirements, no date is specified in section A36.1.1.

*Measurement of Airplane Noise Received on the Ground*

Transport Canada comments that the calibration adjustments of proposed section A36.3.9.1 be applied to the measured sound levels at the output of the analyzer, rather than within the analyzer, as permitted by the current rule. The commenter states that because the algorithms for adjustments are defined and pre-programmed into the analyzer by the applicant, the impact on the final result can be predicted with a high degree of accuracy. The commenter further states that, provided that these correction algorithms are discussed and agreed upon with the certificating authority, it should not make much difference whether they are programmed internally or applied externally to the analyzer. The commenter recommends that the current rule requirement be retained.

*FAA Response*

The FAA disagrees with the comment. There have been instances in which certification applicants have either not applied, or have incorrectly applied, calibration adjustments to acoustic data. Although such adjustments are usually of small magnitude, their effect can be significant, especially when calculated noise levels are close to the noise level limits specified in part 36.

As the commenter suggests, the effect of applying these adjustments will be the same, whether performed internally or externally to the analyzer. Other adjustments to acoustic data, however, such as microphone and system response corrections, are required to be applied externally to the analyzer, even though it is technically possible with many current systems to apply them internally.

External application of these corrections enables the reconstruction of calculated noise levels from raw acoustic data, if such need should arise. Therefore, even though the internal or external application of these calibration adjustments will have the same effect, the requirement to apply the calibration adjustments externally to the analyzer will remain as proposed to enable the FAA to determine whether these adjustments have been applied correctly. Moreover, the requirement to apply these calibration adjustments externally was included in the revision to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001.

*Reporting of Airplane Center of Gravity*

Transport Canada recommends that the FAA provide a more detailed explanation of why information on center of gravity is needed and how it will benefit aircraft definition for noise certification purposes.

Airbus (U.K.) also comments that section A36.5.2.5(c), would require noise certification applicants to report the center of gravity range for each series of test runs. The commenter states that it already reports center of gravity in the flight manual, but notes that it currently reports the takeoff center of gravity as being ''mid center of gravity'' and the approach center of gravity as being ''forward center of gravity.'' The commenter hopes that this reporting practice would continue to be sufficient and that no greater detail would be required.

*FAA Response*

In section A36.5.2.5, the FAA proposed specific airplane configuration items and engine operating parameters that must be reported to the FAA in the applicant's noise certification compliance report. The FAA explained that each of the proposed configuration items and parameters can affect the airplane noise signature, and that the reporting requirements for these items and parameters already exist under current section A36.5, which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported.

The FAA proposed in section A36.5.2.5(c) that the test airplane's center of gravity be reported. Transport Canada requests that the FAA provide more detail to explain why reporting is needed. In response to Transport Canada's comment, the airplane center of gravity is an example of an identifying characteristic of the airplane test configuration and an item that could influence measured noise levels. The center of gravity will affect the performance of the airplane and is therefore an integral part of the noise certification flight test and reference procedure. For example, for the approach noise certification, where part 36 requires that the reference airplane configuration be the noisiest configuration, the forward center of gravity position is usually associated with the noisiest airplane configuration. The forward center of gravity position forces the airplane's elevator to push down on the tail thereby increasing airframe drag and, in turn, the power required to maintain the required 3 degree glideslope. Both the increase in airframe drag and required power result in a higher approach noise level.

The final rule specifically identifies the requirement to report center of gravity. Accordingly, the current practice identified by Airbus (U.K.) of reporting center of gravity as ''forward'' or ''mid'' for each series of test runs will still be acceptable after the effective date of this final rule. Further, the center of gravity used in demonstrating compliance with part 36 is not required to be reported in the Airplane Flight Manual for noise certification purposes, as Airbus (U.K.) implies. This final rule only specifies that the center of gravity range must be reported in the applicant's noise certification compliance report.

*Reporting of Propeller Pitch Angle*

Transport Canada comments on the requirement to report propeller pitch angle proposed in section A36.5.2.5(d). Because the pitch angle at which a propeller operates is a function of torque demand and propeller revolutions per minute (RPM) the commenter recommended that torque and propeller RPM be reported as a substitute for propeller pitch angle. The commenter stated that Stage 3 noise compliant turboprops generally operate on the principle of governed propeller speed. In other words the propeller RPM

is held constant by varying the pitch angle based on torque demand. The commenter further stated that, while torque is a measured parameter, propeller pitch angle is not.

*FAA Response*

The FAA agrees that torque and propeller RPM are an acceptable substitute for propeller pitch angle. The source noise (i.e., the noise generated by the airplane) adjustments required by section A36.9.3.4 can be made using torque and propeller RPM, and torque and propeller RPM can be more readily determined than propeller pitch angle. Engine torque and propeller rotational speed reporting requirements were proposed and reporting of these parameters is required by section A36.5.2.5(h)(2). Therefore, the proposed requirement to report propeller pitch angle has been removed in this final rule.

*Adjustment of Airplane Flight Test Results*

Transport Canada comments that section A36.9.1.1 needs an explanatory note to identify the components that are the likely noise sources that must typically be addressed in accounting for the effect that airspeed has on source noise.

*FAA Response*

The FAA agrees with the commenter's recommendation to identify the components that are the likely noise sources to typically be addressed in accounting for the effect of airspeed on source noise. This type of information is, however, more appropriate for inclusion in guidance material associated with part 36 rather than in part 36 itself. Therefore, information on the components to typically be addressed in accounting for the effect of airspeed on source noise have been included in Advisory Circular 36–4C, which is being published concurrently with this final rule.

*Noise Certificates*

In the proposed rule discussion of compatibility with ICAO standards, the FAA stated that the agency is not authorized to issue Noise Certificates. The proposed rule also notes that while section 36.1581 of part 36 requires that the certificated noise levels be included in the Airplane Flight Manual (AFM), the FAA does not require the AFM to be carried in the airplane. An operations manual that may not contain certificated noise levels is carried in some airplanes. The FAA invited comments on the extent of any problems encountered because noise compliance data are not on board the airplane.

We received one comment concerning this subject. Airbus (U.K.) comments that it has received occasional queries from British Aircraft Corporation (BAC) 1–11 operators who have had difficulties with certain airport authorities when approved noise data have not been available. The commenter states that in the absence of a noise certificate, the AFM is the only FAA-approved manufacturer's document that is, or may be, available to provide substantiation of the noise levels. If the AFM is not carried on board, the commenter recommends that the FAA consider issuing noise certificates.

*FAA Response*

Because only one comment was received, there is no indication that a widespread problem exists. The FAA, however, is continuing to pursue solutions that would result in sufficient noise data being carried on board aircraft to assist carriers in certain situations.

*Noise Certification Reference Procedures*

Airbus (U.K.) comments on proposed section B36.7(c)(5). Airbus (U.K.) states that the landing approach certification is already done at a range of aircraft configurations in case specific airports need it.

*FAA Response*

No change is made to the final rule based on this comment. The proposed rule did not propose to change the current section C36.9(b) requirement that bases the approach noise certification on the airplane landing configuration that is the most critical from a noise standpoint. The proposed rule moves the requirement from current section C36.9(b) to section B36.7(c)(5) to more closely align the formatting of part 36 with JAR 36 and ICAO Annex 16. Further, this requirement is consistent with that contained in JAR 36 and ICAO Annex 16.

*Noise Certification Test Procedures*

Airbus (U.K.) comments that the approach glide path angle (3 degrees ± 0.5 degrees) proposed in section B36.8(e) does not allow for designs for steeper approaches, despite the existing use of steeper approaches at specific airports. The commenter further states that if an aircraft was now designed specifically for steeper approach and was not capable of the 3 degree approach it might be uncertifiable, or difficult to certify, for noise purposes.

*FAA Response*

The proposed rule did not propose any change to the current section A36.5(c)(2)(ii) 3 degree approach reference glide path angle or the current section C36.9(c) glide path angle test tolerance. The proposed rule moves the current requirement for approach glide path angle from the current sections to sections B36.7(c)(1) and B36.8(e) to more closely align the formatting of part 36 with JAR 36 and ICAO Annex 16. The approach glide path angle requirements are also consistent with those contained in JAR 36 and ICAO Annex 16.

In addition, while the 3 degree reference glide path angle is currently used to establish the part 36 approach noise certification level, part 36 requirements for noise tests have no bearing on the use of other glide path angles during normal operation of an airplane. The FAA believes, however, that a glide path angle of 3 degrees is the nominal glide path angle that is generally used during normal operations by the class of airplanes to which part 36, subpart B is appropriate. In the case of an airplane that is designed with steep approach capability such that it may not be capable of a 3 degree approach, the FAA may determine that part 36, subpart B is not the appropriate noise certification standard for that airplane. If such a determination were made, an appropriate noise certification basis for the airplane would be developed using U.S. rulemaking procedures including a public comment period. No change to the glide path requirement proposed in sections B36.7(c)(1) and B36.8(e) of the proposed rule is being made.

*Corrections and Other Minor Changes to the Proposed Rule*

This final rule includes some corrections and other minor changes from the proposed rule.

Typographical errors, word omissions, etc., that appeared in the proposed rule have been corrected. Incorrect section and appendix designations have also been corrected. For example, the change in appendix designation from ''C'' to ''B'' was not changed in all of the sections that it should have been. Corrections to terminology have been made. For example, in some sections of part 36 the proposed change in terminology from ''sideline'' to ''lateral'', or from ''turbojet'' to ''jet'' was not carried through in all of the sections that needed to be changed. Errors in the section cross reference table have been corrected.

Sections 36.1(f)(4) and 36.1(f)(6) have been changed to reflect the relocation of the tradeoff provision from current section C36.5(b) to section B36.6.

In section 36.103(a) the reference to the ''flight test conditions'' of section B36.8 has been changed to ''test procedures'' to be consistent with the title of section B36.8.

In section B36.4(b), the phrase ''* * * obtain a sufficient number * * *'' has been changed to ''* * * use a sufficient number * * *'' since the word ''use'' more appropriately defines the requirement of this section for a sufficient number of noise measurement points (i.e., locations) to be used in demonstrating the maximum lateral noise level.

The title of section B36.7 has been changed from ''Noise certification reference procedures'' to ''Noise certification reference procedures and conditions'' to be consistent with the content of section B36.7.

Section B36.7(b)(3) now contains reference to section B36.7(b)(2) rather than B36.7(b)(1). This change was made because section B36.7(b)(2) is a more appropriate reference to the thrust cutback requirements.

The symbol ''$EPNL_r$'' meaning ''Effective perceived noise level adjusted for reference conditions'', has been added to section A36.6. This symbol is used in section A36.9.4.3.1.

In order to reflect the section formatting used by ICAO, the ambient noise requirements of proposed sections A36.4.9.11 and A36.3.9.12 have been adopted in this final rule as a part of a new section A36.3.10, ''Adjustments for Ambient Noise''. This formatting was used by ICAO in the amendment to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001.

*Draft Advisory Circular 36–4C*

The FAA made draft Advisory Circular (AC) 36–4C available for public comment and published a notice of availability in the **Federal Register** on August 9, 2000 (65 FR 48794). In the proposed rule, the FAA stated that it intended to publish AC 36–4C concurrently with this final rule. The AIA comments that its review of the draft AC indicates that it encompasses much more explanation and interpretation of the regulatory requirements than the current ICAO Environmental Technical Manual guidance material, which is focused primarily on the use of equivalent procedures. The AIA encourages the FAA to take two important steps regarding AC 36–4C. As a first step, the AIA suggests that there is important work to be done in coordination with manufacturers for buy-in of the document concept before it is published, followed by integration of all sections of the document so that it can be easily used by readers and applicants. Second, the AIA suggests that the FAA recommend to ICAO Working Group 1 that it study the document and consider development of similar internationally accepted guidance material concerning compliance with the ICAO Annex 16 overall noise certification process.

*FAA Response*

The FAA agrees with the AIA's observation that AC 36–4C encompasses more than the current ICAO Environmental Technical Manual. AC 36–4C was developed to provide comprehensive guidance on implementing the part 36 noise certification standards. In meeting this objective, AC 36–4C covers many more subjects than the ICAO Environmental Technical Manual.

Given that the AIA members constitute a significant segment of the intended users of AC 36–4C, the FAA accepted the assistance of the AIA in editing the draft AC to make it more useful to the intended users. These changes eliminated redundancies and improved the integration of the guidance material with its associated regulatory text. These changes have been incorporated into the final version of AC 36–4C, which is being published concurrently with this final rule.

The FAA agrees with AIA's suggestion that the FAA recommend to ICAO Working Group 1 that it study the document and consider development of similar internationally accepted guidance material concerning compliance with the ICAO Annex 16 overall noise certification process. In fact, ICAO CAEP Working Group 1 has begun development of such a document under its current work program.

**Synopsis of the Final Rule**

Part 36 contains noise standards for aircraft type and airworthiness certification. Subparts A, B, and C, and the related appendices A, B, and C, of part 36 prescribe noise levels and test procedures for subsonic jet airplanes and subsonic transport category large airplanes, including rules governing the issuance of original, amended, or supplemental type certificates.

This final rule adopts changes to part 36 in three major categories. First, there are substantive changes to technical material, such as a revised method for demonstrating the lateral noise certification level for propeller-driven airplanes. These changes are discussed individually in this preamble. Second, there are many changes to regulatory text that will serve to minimize the language differences between part 36 and JAR 36, while having no substantive effect on the regulatory standards of part 36. These text changes are not specifically discussed in this preamble. Third, there are numerous changes to the section designations of current Appendices A, B, and C of part 36 that will more closely align part and JAR 36 formats. Changes in this category will have no substantive effect on the regulatory standards of part 36. The changes in part 36 section designations are shown in a tabular format that identifies current part 36 sections and the corresponding sections of the revision. This redesignation table appears at the end of the section-by-section discussion.

**Section-by-Section Discussion**

The following is a section-by-section discussion of the substantive changes to 14 CFR part 36 and its appendices. Throughout the final rule, the term ''jet'' has been used when referring to turbojet and turbofan engines. This changes the terminology in current part 36, which uses the term ''turbojet'' when referring to both turbojet and turbofan engines. This change will result in the same term being used in 14 CFR part 36 and JAR 36, when referring to turbojet and turbofan engines. For consistency with part 36, this change in terminology has also been included in the aircraft noise related sections of parts 21 and 91. This change to parts 21 and 91 is discussed in the following section-by-section discussion.

*Sections 21.93 and 21.183*

Section 21.93(b)(2) and section 21.183(e)(1), which pertain to the part 36 noise certification requirements, are revised to add the term ''jet'' and retain the term ''turbojet powered'' when referring to turbojet or turbofan engines. This change is made to reflect the use of the term ''jet'' in part 36 and does not change the meaning of the term turbojet as it is used in either the noise certification related sections, or other sections of 14 CFR chapter 1.

*Section 36.1*

This final rule removes section 36.1(d)(3). Amendments 36–10 (43 FR 28406, June 29, 1978) should have removed this section when it redesignated section 36.1(d)(3) as section 36.1(d)(1)(iii).

Section 36.1(f) and its subparagraphs are revised to incorporate changes in terminology, *i.e.,* from ''takeoff'' to ''flyover,'' ''sideline'' to ''lateral,'' and ''turbojet'' to ''jet,'' and the changes to

part 36 appendix and section designations that result from this final rule. Several of these changes were inadvertently omitted from the proposed rule, but are necessary to correctly reflect the changes in part 36 formatting and terminology.

Sections 36.1(f)(4) and 36.1(f)(6) are revised to reflect the relocation of the tradeoff provision from current section C36.5(b) to Section B36.6. These changes are necessary to reflect the change in past 36 formatting.

*Section 36.2*

The context of section 36.2, ''Special retroactive requirements'' is revised, and the heading of this section is changed to ''Requirements as of date of application''. As discussed under the Discussion of Comments section of this preamble, this final rule retains and revises section 36.2, rather than removing this section, as proposed. Revised section 36.2 maintains the intent of the proposal (*i.e.,* to base applicability on the date of certification) while addressing the comments submitted by the AIA.

Current section 36.2 requires that the noise certification applicant show compliance with the part 36 requirements that are in effect on the date of certification. This provision was included in part 36 before the FAA had the authority to prevent the issuance of a type certificate for an aircraft design that did not include reasonable noise reduction design practices. The FAA subsequently received this authority under the Noise Control Act of 1972; the retroactive requirement contained in section 36.2 is no longer necessary. Therefore, this final rule revises section 36.2 to specify compliance with the noise certification requirements that are effective on the date of application for the type certificate, amended type certificate, or supplemental type certificate. This change will harmonize the applicability designation of part 36 with the intent of section 1.7 of ICAO Annex 16, Chapter 1. Given the change from Notice No. 00–08 in the manner in which this requirement is implemented, the FAA invites comments on revised section 36.2.

*Section 36.6*

This final rule updates the incorporation by the reference form the new measurement requirements specified in section A36.3. These specifications are referred to under new section A36.3, which updates requirements for measurement and analysis systems to address the latest standards and equipment technology. Updated addresses for the International Electrotechnical Commission, American National Standards Institute, and FAA Regional Headquarters are also included in section 36.6.

*Section 36.7*

Section 36.7 is revised to incorporate changes in terminology, *i.e.,* from ''takeoff'' to ''flyover,'' ''sideline'' to ''lateral,'' and ''turbojet'' to ''jet''. Section 36.7 is also revised to reflect the changes to part 36 appendix and section designations that result from the changes adopted in this final rule. Several of these changes were inadvertently omitted from the proposed rule, but are included in this final rule to correctly reflect the changes in part 36 formatting and terminology.

*Sections 36.101 and 36.103*

Two sections, 36.101, Noise measurement, and 36.103, Noise evaluation, were combined to become a new section 36.101, Noise measurement and evaluation. New section 36.101 reflects the combination of current Appendix A and Appendix B into revised Appendix A. These changes more closely align part 36 and JAR 36 formats without introducing any substantive changes. For the same reasons, section 36.201 is redesignated as section 36.103.

*Subpart C*

The text in subpart C has been reincorporated in subpart B and A and the title for subpart C is reserved.

*Section 36.301*

Section 36.301 is revised by replacing the reference to ''Appendix C'' with a reference to ''Appendix B''. This revision reflects the changes in part 36 formatting.

*Section 36.1581*

Section 36.1581 is revised to incorporate changes in terminology, *i.e.,* from ''takeoff'' to ''flyover,'' ''sideline'' to ''lateral,'' and ''turbojet'' to ''jet''. Section 36.1581 is also revised to reflect the appendix designation changes. The change in terminology from ''takeoff'' to ''flyover'' and from ''sideline'' to ''lateral,'' and the replacing of the reference to part 36 Appendix C with a reference to Appendix B reflects the changes in part 36 formatting and terminology.

**Appendix A—Aircraft Noise Measurement and Evaluation Under § 36.101**

Revised Appendix A to part 36, Aircraft Noise Measurement and Evaluation under section 36.101 replaces current Appendices A and B. The revised Appendix A to part 36 was developed to maintain a section format consistent with JAR 36, Appendix A, and with ICAO Annex 16, Appendix 2. The text of JAR 36, Appendix A, mirrors ICAO Annex 16, Appendix 2.

*Section A36.1 Introduction*

Section A36.1.2 is added to state that the noise certification instructions and procedures are intended to ensure uniform results and to permit comparison between tests of various types of aircraft conducted in different geographical locations.

*Section A36.2 Noise Certification Test and Measurement Conditions*

Section A36.2 replaces current section A36.1. This new section describes the conditions under which noise certification testing is conducted and the measurement procedures that are required.

The note in section A36.2.1.1 references the guidance material on the use of equivalent procedures contained in Advisory Circular 36–4C, ''Noise Standards: Aircraft Type and Airworthiness Certification.'' Current AC 36–4B, ''Noise Certification Handbook,'' contains guidance material on the use of equivalent procedures. AC 36–4C revises and significantly changes the format and content of the advisory material and is not titled, ''Noise Standards: Aircraft Type and Airworthiness Certification.'' The FAA is issuing new AC 36–4C concurrently with this final rule. The AC 36–4C is referred to as ''the current advisory circuit for this part'' throughout the regulatory text in this final rule.

Under this final rule, the material in current section A36.1(c)(1) is moved to section A36.2.2.2(a) and revised to remove the word ''rain,'' since rain is included in the term ''precipitation.''

The material in section A36.1(c)(2) is moved to section A26.2.2.2(b) and the minimum test temperature limit decreased from 36 °F (2.2 °C) to 14 °F (−10 °C). The current 36 °F (2.2 °C) temperature limit is considered unnecessarily restrictive, given that no higher levels of atmospheric absorption, compared with those existing in the current test window, could be encountered by lowering the test day temperature. Under this revised minimum test temperature limit, testing must be conducted in conformance with the operational temperature limit for the noise measuring equipment used.

In Notice No. 00–08, new section A36.2.2.2(c) did not include the current section A36.1(c)(3) provision that permits expanded atmospheric attenuation rates when the dew point

and dry bulb temperatures used for obtaining relative humidity are measured with a device which is accurate to within ±0.5 °C. As explained in Notice No. 00–08, the allowance for expanded atmospheric attenuation rates was not included because it would continue to be permitted as an equivalent procedure. Subsequent to the publication of Notice No. 00–08, however, the FAA determined that it is more appropriate to retain the allowance for expanded atmospheric attenuation rates as an alternative procedure in the rule text of part 36. Therefore, this allowance is contained in section A36.2.2.2(c) of this final rule.

In addition, the allowance for expanded atmospheric attenuation coefficients has been revised to be consistent with the ICAO Environmental Technical Manual allowance by (1) eliminating the 14 dB/100 meter limit on the allowable extension, (2) requiring the use of atmospheric layering in accordance with the requirements of new section A36.2.2.3, and (3) adding an alternative allowance for cases where the peak noy values at the time of tone-corrected perceived noise level (PNLT) occur at frequencies of less than or equal to 400 hertz (Hz). The effect of this change is a further expansion of the allowable test weather conditions, but with the requirement that atmospheric layering be used.

The requirements to obtain meteorological measurements within ''25 minutes'' of each noise test measurement as required in current section A36.9(b)(3) is changed to ''30 minutes'' in section A36.2.2.2(g). Thirty minutes is the established international standard in ICAO Annex 16. The FAA was unable to find a technical reason why the meteorological measurement time was originally set at 25 minutes. Based on technical and application considerations, an increment of 5 minutes does not constitute a substantive difference. No known technical criteria exist to assess this minimal time increment. This change will achieve harmonization by adopting a single international standard.

Current section A36.9(d)(3) is revised and moved to section A36.2.2.3. This final rule changes the method used to establish layer depth to reflect the international standard. Current part 36 does not provide specific criteria for determining layer depth, except to require that it be no greater than 100 feet. The criteria for determining layer depth that is adopted by this final rule is the same as that used to specify the onset of required layering, *i.e.,* under weather conditions where the atmospheric attenuation rate changes by more than ±1.6 dB/1000 ft (±0.5 dB/100m) over the sound propagation distance. Under this final rule, the minimum layer depth is established as 100 feet (30 meters). Thus, the layer depth would be 100 feet (30 meters) in cases where the atmospheric rate change criteria would limit the layer depth to less than 100 feet (30 meters).

*Section A36.3 Measurement of Aircraft Noise Received on the Ground*

The changes to this section update the requirements for measurement and analysis systems to include the latest standards and equipment technology. These changes were drafted by an international task group having years of knowledge and experience in the noise certification of airplanes. This task group was assembled under Working Group 1 of the ICAO Committee on Aviation Environmental Protection (CAEP) to draft changes that would update the ICAO Annex 16 requirements for measurement and analysis systems. On June 27, 2001, the ICAO Council approved the revision to ICAO Annex 16 that includes the updated requirements.

The primary purpose of the international task group was to address considerations related to the use of digital equipment. Many of these considerations are addressed in the International Electro-Technical Commission (IEC) Standard 61265 and IEC Standard 61260. Accordingly, much of the pertinent text from these standards has been included in the requirements developed by the international task group. These IEC standards also reflect general improvements to instrumentation technology that have occurred over the past decade, although they are not necessarily related to the advent of digital technology. In addition to improvements tied to the IEC standards, several changes that resulted from the work of the task group are linked to general advancements in noise measurement instrumentation.

Revised section A36.3 includes the following specific changes. Current section A36.3 does not include definitions. Section A36.3.1, Definitions, is added to define the terms used in section A36.3. Section A36.3.2, Reference environmental conditions, is added in this final rule to specify the performance of a measurement system.

Section A36.3.3.2 is added and specifies anti-alias requirements for measurement systems that include analog-to-digital signal conversion.

Section A36.3.4.1 adds a requirement that windscreen insertion loss not exceed ±1.5 dB. Section A36.3.9.10 also limits the change in windscreen insertion loss calibration to 0.4 dB from the previous calibration.

Sections A36.3.5.3 and A36.3.5.4 specify microphone sensitivity requirements only at the midband frequencies. This is a simplification of the current part 36 requirement contained in sections A36.3(c)(2)(ii) and A36.3(c)(2)(iii). The new sections also specify more stringent tolerances on microphone sensitivity. Typical microphones that are currently used in part 36 noise certification testing comply with this more stringent microphone sensitivity requirement.

Section A36.3.6.3 adds a tolerance for frequency response of the measurement system.

Section A36.3.6.4 adds a ±0.5 dB tolerance for amplitude fluctuations of a recorded 1 kHz signal on analog tape.

Section A36.3.6.5 adds a tolerance for amplitude linearity, at several specific frequencies, for the measurement system (exclusive of the microphone).

Section A36.3.6.6 requires that the electronic signal level corresponding to the calibration sound pressure level be from 5 db to 30 dB less than the upper boundary of the measurement system level range. This replaces the 10 dB requirement in current part 36, section A36.3(c)(3)(i).

Section A36.3.6.8 adds a requirement for an overload indicator in the recording and reproducing system.

Section A36.3.6.9 allows for measurement system attenuators to operate in known intervals of decibel steps, rather than in equal interval steps, as in current part 36 section A36.3(b)(6).

Section A36.3.7.2(e) adds a requirement that the analyzer operate in real time from 50 Hz through at lease 12 kHz.

Section A36.3.7.3 specifies IEC 61260 class 2 electrical performance requirements as the minimum standard for analyzers. This change updates the specifications for analyzers used in conjunction with part 36 noise certification. Section A36.3.7.3 also includes a note stating that IEC 61260 specifies procedures for testing one-third octave band analysis systems for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth). The IEC filter bandwidth adjustment method requires that the adjustment be based on more frequencies than are required under current part 36.

Section A36.3.7.4 contains a correction to the slow time-weighting characteristics in current section A36.3(d)(5) (ii) and (iii). Section

A36.3.7.6 specifies that the instant in time at which a slow time-weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. The current requirement specifies that the instant in time at which a sound pressure level is characterized must be the midpoint of the averaging period.

Section A36.3.7.5 specifies a continuous exponential averaging process equation through which simulated slow time-weighted sound pressure levels can be obtained. Section A36.3.7.5 also specifies an equation that results in an approximation of continuous exponential averaging.

Section A36.3.7.7 requires that the analyzer resolution be 0.1 dB or finer. The current requirement, in section A36.3(d)(7) specifies that the amplitude resolution of the analyzer must be at least ±0.25 dB.

Section A36.3.9.1 requires that calibration adjustments be applied to the measured sound levels determined from the output of the analyzer; the current rule permits these calibrations to be applied within the analyzer. As discussed in the disposition of comments, this change is necessary to enable the FAA to determine whether these calibration adjustments have been applied correctly.

Section A36.3.9.3 allows the free-field corrections based on grazing incidence to be applied when the sound incidence angle is within ±30 degrees of grazing incidence.

Section A36.3.9.4 requires that at lease 30 seconds of pink noise be recorded for analog tape recorders; the current section A36.3(e)(4)(ii) requirement is for at lease 15 seconds of pink noise. This change will result in a more accurate pink noise correction and will be the same as the Annex 16 requirement.

Section A36.3.9.6 requires that attenuator accuracy be within 0.1 dB. Section A36.3(b)(6) currently requires that attenuator accuracy be within 0.2 dB. This final rule requires that calibration be checked within six months of each test series, while the current rule does not specify a time period.

Sections A36.3.9.5 and A36.3.9.7 change calibration requirements for the pink noise generator and sound calibrator. This change allow calibration to occur within six months before or after the test instead of requiring it to be within the preceding six months as required by current section A36.3(e)(7).

Section A36.3.9.7 adds a new calibration requirement that limits the change in output of the sound calibrator to not more than 0.2 dB.

Section A36.3.9.8 allows the use of sound calibrators other than pistonphones, as specified by current section A36.3(e)(4). Section A36.3.8.1 specifies the class 1L requirements of IEC 60942, entitled ''Electroacoustics—Sound calibrators,'' as the minimum standard for the sound calibrator.

Section A36.3.9.9 adds a requirement for the recording medium (e.g., tape reel) to carry at least a 10-second duration sound pressure level calibration at its beginning and end. This change more precisely defines the current section A36.3(e)(4) sound pressure level calibration requirement.

*Section A36.4 Calculations of Effective Perceived Noise Level From Measured Data*

To further harmonize the formats of part 36 and JAR 36, Table B–1, ''Perceived Noisiness (NOYs) as a Function of Sound Pressure Level,'' referenced in current section B36.13(a), is moved to AC 36–4C. The final rule now uses the equation to obtain the values. The noy values contained in Table B–1 can be calculated for the equations contain in section A36.4.7.3.

A minor technical change is made to the Perceived Noise Level (PNL) equation in section A36.4.2.1(c) (current section B36.3(c)). The more exact term 10/log 2 is replacing the rounded-off term 33.22. The difference between PNL values that are determined using the current and changed equations is not expected to be significant.

To harmonize the formats of part 36 and JAR 36, Figure B1, ''Perceived noise level as a function of noys'', is moved from current section B36.3(c) to AC36–4C. The perceived noise level values contained in figure B1 can be calculated from the equations contained in section A36.4.2.1(c).

Section A36.4.5.2 changes the value of ''d'' in the equation for the duration correction factor from 1.0 seconds to 0.5 seconds to reflect current standard practice. The same changes are included in section A36.4.5.4 and section A36.6. This change is a text update to reflect the current practice of using 0.5 second data samples, and has no substantive effect.

To harmonize the formats of part 36 and JAR 36, the material in section B36.5(m) addressing methods for removing the effects of tones resulting from ground plane reflections is moved to AC 36–4C.

Current section B36.9(e), which specifies the duration time interval when the value of PNLT(k) at the 10 dB-down points is 90 PNdB or less, is removed. This provision was eliminated for applications made after September 17, 1971, by Amendment 36–5 (41 FR 35053, August 19, 1976). The text permitting the use of this provision was retained in part 36 unnecessarily.

Section B36.9(f) is also removed. The text contained in current section B36.9(f) was added to part 36 in 1976 to distinguish between the procedure for determining duration for applications made before and after September 17, 1971. This distinction is no longer necessary since current section B36.9(e) is removed. The section B36.9(f) requirement for the aircraft testing procedures to include the 10 dB-down points is contained in section A36.2.3.2 of this final rule.

*Section A36.5 Data Reporting*

Section A36.5.2 requires that the data specified in that section be reported to the FAA in the applicant's noise certification compliance report. While current part 36 does not specifically identify a requirement for the applicant to submit a noise certification compliance report, these reports represent the standard practice that is used by applicants for submitting this information to the FAA. This final rule now requires a report be submitted. Section A36.5.2.5 also identifies the specific airplane configuration items and engine operating parameters that must be reported. Each of these configuration items and parameters can affect airplane noise. The reporting requirement for these items and parameters exists under current section A36.5 which specifies that the aircraft configuration and engine performance parameters relative to noise generation be reported. Further, these configuration items and parameters are also included in the international standard.

Section A36.5.2.5(c) requires that the test airplane's center of gravity be reported to the FAA. Airplane center of gravity is an example of an identifying characteristic of the airplane test configuration, and is an item that could influence measure noise levels. Section A36.5.2.5(d) requires that the airbrake position also be reported. Sections A36.5.2.5(e), (f), and (j), respectively, require reporting of whether the auxiliary power unit (APU) is operating, the status of pneumatic engine bleeds and engine power take-offs, and non-standard airplane test configurations.

Section A36.5.2.5(h)(2) requires reporting of engine performance parameters specifically related to propeller-driven airplanes.

Current section A36.5(d)(3) does not permit an effective perceived noise level (EPNL) to be computed or reported from data from which more than four one-third octave bands in any spectrum

within the 10 dB-down points have been excluded from the EPNL computation. This section is removed since correction (adjustment) methods for removing the effects of ambient noise from airplane noise data must be used in lieu of excluding one-third octave bands. Section A36.3.10.2 will specify the ambient noise level limitations that require corrections (adjustments) to be made, and also will reference AC 36–4C, which contains a procedure for removing the affects of ambient noise.

Current section A36.5(e)(4), that addresses the use of equivalent procedures, is removed. The key requirement of the section, that the FAA must approve equivalent procedures, is already addressed in section 36.101. Additional information on the use of equivalent procedures is provided in the note contained in section A36.2.1.1.

*Section A36.6 Nomenclature: Symbols and Units*

Section A36.6, Nomenclature: Symbols and units replaces current section A36.7, symbols and units. Section A36.6 incorporates ICAO Annex 16 symbols and units, while retaining the English units. This change is made to more closely align part 36 with JAR 36. No substantive technical changes are anticipated to result from incorporation of the ICAO Annex 16 symbols and units.

*Section A36.7 Sound Attenuation in Air*

Currently, atmospheric attenuation rates of sound with distance must use be determined in accordance with Society of Automotive Engineers, Inc. (SAE), Aerospace Recommended Practice (ARP) 866A (SAE ARP 866A), as specified in current section A36.9(c). In this final rule, section A36.7.2 contains the actual formulation (equations) from SAE ARP 866A. These equations are provided in both the International System of Units and the English System of Units. Whereas equations are continuous and provide consistent values, tables and graphs can provide minor differences. Accordingly, the tables are being removed and applicants must use the equation. This change will further harmonize part 36 and JAR 36 and is not expected to result in any substantive difference in attenuation rates.

*Section A36.9 Adjustment of Airplane Flight Test Results*

The current distinction between allowable/required positive and negative correction procedures, contained in current sections A36.11(a)(1) and (2), is not included in new section A36.9.1. This distinction is no longer relevant given: (1) The evolution of data correction procedures since part 36 was originally promulgated in 1969 and, (2) the need for noise certification levels to reflect airplane noise characteristics as accurately as possible. Prior to any noise certification compliance test, a noise certification applicant is required to identify, and obtain FAA approval of, any planned or anticipated data correction that is not a mandatory correction procedure under part 36.

Current section A36.1(b)(3) is deleted because it is obsolete. This section requires that the corrections prescribed in current section A36.5(d) be made when the height of the ground at a noise measuring station differs from that of the nearest point on the runway by more than 20 feet. A 20-foot height allowance/tolerance could change the final EPNL value by several tenths of a dB under some circumstances. Under current noise certification practices, corrections (adjustments) are made over the sound propagation path from the microphone to airplane height as part of normal data corrections (adjustments). These corrections (adjustments) are specified in current section A36.11 and new section A36.9.

Section A36.9.1.1(d) will require that the effect that airspeed has on source noise be considered with regard to the difference between test day airplane speed and the airplane reference flight profile speed.

The symbols and figures used to described the takeoff and approach profiles in current sections A36.11(b) and (c), are replaced by the JAR 36 symbols and figures that have been incorporated into section A36.9.2. There are no substantive changes to the takeoff and approach profile technical requirements as a result of these changes.

Section A36.9.3.2.1 provides equations that enable data adjustments to be made using either the English System of Units or International System of Units.

The material in current section B36.11(c) will be moved to section A36.9.3.2.2 and revised to specify the adjustment for multiple peak values of PNLT. This adjustment is based upon the difference in corrected PNLT values, rather than upon APNL as in the current part 36. This change more clearly defines the intent of the multiple peak correction.

Under section A36.9.3.3.2 a correction term is added to account for the difference between (1) the measured airspeed during the noise certification flight test and (2) the airspeed calculated for the noise certification reference flight procedure. This correction term is added to the duration correction ($\Delta 2$) contained in current section A36.11(e). The speed correction term is defined as 10 log ($V/V_r$), where V is the airplane test speed and $V_r$ is the airplane reference speed. This change specifies the speed correction that is required by current section A36.11(f)(1).

**Appendix B—Noise Levels for Transport Category and Jet Airplanes Under § 36.103**

Appendix B will include the material from current appendix C. This will make Appendix B essentially the same as JAR 36, section 1, subpart B.

*Section B36.3 Reference Noise Measurement Points*

The material in current section C36.3 is moved to section B36.3 and revised as follows. The term ''takeoff'' in current section C36.3(a) is replaced with the term ''flyover'' in section B36.3(b). The term ''sideline'' in current section C36.3(c) is replaced with ''lateral'' in section B36.3(a). These terminology changes harmonize the part 36 terminology with that used in JAR 36 and ICAO Annex 16.

Section B36.3(a)(2) will include a simplified test procedure that may be used in determining the sideline (lateral) noise certification level for propeller-driven airplanes. This procedure is also contained in JAR 36 and ICAO Annex 16. For propeller-driven airplanes, it can be difficult to establish the maximum lateral noise level specified under current section C36.3(c) because this noise level may occur at a very low height. There is usually a significant difference in noise levels between the port and starboard sides of a propeller-driven airplane. By measuring full-power noise at a predetermined point (650 meters) below the takeoff flight path, many of the difficulties that arise because of the directional nature of the noise from propeller-driven airplanes when measured at the conventional lateral site will be eliminated. Ground effects that distort measurements will also be reduced.

Under the current requirement, it is difficult to judge the airplane altitude at which the peak noise level occurs, and in the past this has required applicants to conduct as many as 30 flight tests to satisfy certifying authorities, an expensive process. Moreover, the current method for testing propeller-driven airplanes has generally resulted in low confidence in accuracy and repeatability of measurements. The

simplified test procedure is available as an alternative to the current section C36.3(c) method for tests conducted before August 7, 2002, after which it will become the sole method for demonstrating sideline (lateral) noise level compliance.

Current section C36.3(b) is moved to section B36.3(c) and text is added to define the approach measurement point relative to the runway threshold. This change will clearly describe the geometric relationship between the test airplane and the ground, and will harmonize part 36 and JAR 36.

Current section A36.1(b)(7), allows (when approved) for the sideline (lateral) noise certification level demonstration for jet airplanes to be based on the assumption that the peak sideline (lateral) noise level occurs at an airplane altitude of 1,000 feet (1,440 feet for Stage 1 or Stage 2 four-engine airplanes). Notice No. 00–08 proposed to move this procedure to the guidance material in AC 36–4C. Subsequent to the publication of Notice No. 00–08, however, the FAA determined that it is more appropriate to retain this procedure in part 36 as an alternative procedure for determining the maximum lateral noise level. This procedure is included in section B36.3(a)(1). In addition, the target altitude and target altitude tolerance requirements of this section are adjusted so that they are now consistent with those of the similar procedure contained in section 2.1.3.2 of the ICAO Environment Technical Manual.

*Section B36.4 Test Noise Measurement Points*

Most of the requirements of current section A36.1(b)(7) are moved to section B36.4.

Section B36.4(b) requires that, in demonstrating the sidelines (lateral) noise certification level for propeller-driven airplanes, noise measurements be made at symmetrically located noise measurements points on either side of the runway for each and every noise measurement point along the main sideline (lateral) noise measurement line. This change is made because of the asymmetric nature of propeller noise. Part 36 has required simultaneous measurement at one test measurement point opposite the main lateral measurement line to account for the possibility of lateral noise asymmetry. In the case of propeller-driven airplanes, however, whose noise field is known to be asymmetrical, having only one measuring point opposite the main lateral measurement line is not adequate to define the peak lateral noise on the other side of runway from the main lateral line. This change will further harmonize part 36 and JAR 36.

*Section B36.5 Maximum Noise Levels*

The material in current section C36.5 is moved to section B36.5 and revised to include minor format and language changes to harmonize with JAR 36. Amendment 36–15 ''Standards Governing the Noise Certification of Aircraft'' (53 FR 26360, May 6, 1988) removed section C36.5(c); the references to section C36.5(c) in current section C36.5(a) should have been removed under that amendment but was not. The reference is removed in this final rule.

In order to further harmonize part 36 and JAR 36, the term ''sideline'' has been changed to ''lateral'' in each place that it appears throughout section B36.5. This change in terminology does not affect the noise measurement/analysis procedures or noise limits. Similarly, the term ''takeoff'' has been changed to ''flyover.'' No change in test procedures should be inferred from this change.

*Section B36.6 Trade-offs*

The requirements of current section C36.5(b) are moved to section B36.6. The reference to section 367(d)(3)(i)(B), in current section C36.5(b), is changed to section 36.7(d)(1)(ii) in the new section. This section reference should have been changed in 1988 by Amendment 36–15.

*Section B36.7 Noise Certification Reference Procedures*

The takeoff and approach reference and test limitation in current sections C36.7 and C36.9 are moved to sections B36.7 and B36.8. This material is also revised as follows.

Section B36.7(b)(1) requires the use of ''average engine'' performance in defining the takeoff thrust for the reference takeoff procedure. Specifying the use of ''average engine'' performance further harmonizes the part 36 takeoff reference procedure with JAR and ICAO Annex 16, and will eliminate confusion in compliance with the requirement.

Section B36.7(b)(1) also specifies ''Takeoff thrust/power'' as the maximum available for normal operations given in the performance section of the airplane flight manual for the reference atmospheric conditions given in section B36.7(a)(5).

Currently section C36.7(b)(2) specifies different minimum cutback altitudes for jet and propeller-driven airplanes. Section B36.7(b)(1)(ii) contains the same minimum cutback altitude for all airplanes, which is the altitude specified in current section C36.7(b)(2) for jet airplanes. Since the selection of the minimum cutback altitude is determined by the minimum safe altitude for cutback initiation, there is no reason to distinguish between propeller-driven and jet airplanes. It is the FAA's understanding that this change will not have a substantive effect in practice.

Since cutback initiation heights greater than 1,500 feet are generally chosen for propeller-driven airplanes and this height is greater than both the current and revised part 36 minimum requirements, the FAA has determined that there will be no change in practice.

In this final rule, the requirements of section A36.1(b)(2) are moved to section B36.7(b)(3) and revised to require that, for tests conducted on or after August 7, 2002, the lateral (sideline) noise level be demonstrated using full takeoff power throughout the takeoff flight path. Before that date, the lateral noise level may be demonstrated using the current section A36.1(b)(2) procedure, under which both the takeoff (flyover) and sideline (lateral) noise certification levels are determined using a single reference flight path that may include a thrust cutback. This change reflects the intent of the international standard that the lateral measurement be based on the full-power condition. Since the revised lateral procedure might result in increased stringency, the use of this procedure is optional for tests conducted before August 7, 2002. This change will mainly affect three and four engine airplanes.

The takeoff reference speed requirement specified in current section C36.7(e)(1) is revised to be consistent with the takeoff reference speed contained in JAR 36 and ICAO Annex 16. The all-engine operating climb speed range (V2+10 to V2+20 kts) specified in section B36.7(b)(4) represents the typical range of takeoff initial climb speed seen in normal operation for most airplanes. For some airplanes, this change to part 36 could result in an increase of up to 10 knots in the noise certification reference takeoff speed relative to the current part 36 reference takeoff speed requirements. For the affected airplanes, the increased takeoff speed could result in some noise level reduction at the sideline (lateral) noise measurement point with a resulting increase in noise level at the takeoff (flyover) noise measurement point. The FAA has found the change in takeoff reference speed to be acceptable because of this tradeoff of sideline (lateral) and takeoff (flyover) noise levels, although it might not be a one-to-one tradeoff.

In section B36.7(b)(5) the FA is adding a definition of configuration, which includes specific configuration

elements, based on certification experience, that can have a effect on source noise. There is no change in takeoff configuration requirement.

Section B36.7(b)(7) defines ''average engine'' as the average of all the certification compliant engines used during the airplane flight tests up to and during certification when operating within the limitations and according to the procedures given in the Flight Manual.

Current section C36.9(d) requires that all engines must operate at approximately the same power or thrust for approach tests conducted to demonstrate compliance with part 36. In this final rule, this specific requirement is removed, and instead, section A36.9.3.4 will require that source noise adjustments be applied to account for any differences between test and reference conditions, in engine parameters that affect engine noise (e.g., corrected low pressure rotor speed). This change will meet the intent of the current part 36 requirement and also further harmonizes with JAR 36.

Current section C36.9(e)(1), reference approach speed, is revised to incorporate the use of 1–g stall-based approach speeds by basing the approach noise certification reference speed on the reference landing speed ($V_{REF}$) that is used for the airworthiness certification. In Notice No. 95–17, published on January 18, 1996 (61 FR 1260), the FAA proposed to redefine the reference stall speeds for transport category airplanes as the 1–g stall speed instead of the minimum speed obtained in the stalling maneuver. Notice No. 95–17 proposed that a definition of $V_{REF}$ would be added to 14 CFR part 1. Since a final rule based on Notice No. 95–17 has not been published, the definition of $V_{REF}$ has been included in this final rule. The definition of $V_{REF}$ is the only element of Notice No. 95–17 that has been included in this final rule. In section B36.7(c)(2), $V_{REF}$ is defined as ''the speed of the airplane, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings.'' The change to section C36.9(e)(1) is also consistent with a change to ICAO Annex 16 that was approved by the ICAO Council on June 27, 2001. Current section C36.9(e)(1) is redesignated as section B36.7(c)(2).

*Section B36.8 Noise Certification Test Procedures*

Current sections A36.1(d)(5) and A36.1(d)(7), which contain limitations on the difference between the test weight and the maximum takeoff/approach weight for which noise certification is requested, are replaced by section B36.8(d). The current limitations help insure the integrity of the final certification results by indirectly limiting the magnitude of the EPNL adjustments that may be applied to the test data in normalizing to the noise certification reference conditions. Section B36.8(d) will directly limit the magnitude of the correction by specifying a limitation on the EPNL adjustment that can be made when correcting between test weight and maximum certification weight.

The current requirements of section A36.5(d)(5) are revised and moved to section B36.8(f). The amounts of adjustment permitted when equivalent test procedures are different from the reference procedures remain unchanged, except that the amended requirements do not specify that tradeoffs are permitted when comparing adjusted levels against the appendix B noise level limits, for the purpose of determined adjustment limits. Several interpretations of the current requirement are possible as to whether this final rule represents a more stringent or less stringent adjustment limitation as compared with the current limitation. The FAA believes that the change to remove the tradeoff provision from the current limitation and base the limitation solely on the difference between the adjusted noise levels and the maximum noise levels in section B36.5 meets the intent of the adjustment limitation, as stated above, and clarifies ambiguity in its interpretation. The change also results in harmonization of the adjustment limitation with that in JAR 36 and ICAO Annex 16.

Section B36.8(g) will revise the test speed tolerance specified in current sections C36.7(e)(1) and C36.9 (e)(3). Current section C36.7(e)(1) specifies that takeoff tests must be conducted at the test day speeds ±3 knots. Current section C36.9(e)(3) specifies that a tolerance of ±3 knots may be used throughout the approach noise testing. Section B36.8(g) will specify that during takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within ±3% of the average airspeed between the 10 dB-down points. In the final rule, the instantaneous indicated airspeed is determined from the pilot's airspeed indicator. If the instantaneous indicated airspeed exceeds ±3 kt (±5.5 km/h) of the average airspeed over the 10 dB-down points, and is determined by the FAA representative on the flight deck as the result of atmospheric turbulence, then that flight must be rejected for noise certification purposes.

**Appendix G—Noise Requirements for Propeller-Driven Small Airplanes and Commuter Category Airplanes Under Subpart F**

*Section G36.105 Sensing, Recording, and Reproducing Equipment*

To maintain the correct cross reference, this final rule changes the references in paragraph (f) from section A36.3(e) to A36.3.8 and A36.3.9.

**Appendix H—Noise Requirements for Helicopters Under Subpart H Section H36.101 Noise Certification Test and Measurement Conditions.**

To maintain the correct cross reference, this final rule amends section H36.101(d)(1) by removing the reference to ''appendix B'' and adding ''appendix A.''

*Section H36.111 Reporting and Correcting Measured Data*

To maintain the correct cross reference, this final rule amends section H36.111(c)(3) by removing the reference ''A36.3(f)(3)'' and adding ''A36.3.10.1.''

*Section H36.201 Noise Evaluation in EPNdB*

To maintain the correct cross reference, this final rule amends section H36.201 by: (1) Removing the reference to ''appendix B'' in paragraph (a) of this section and adding ''appendix A,'' and (2) removing the reference to ''B36.5(a)'' in paragraph (b) of this section and adding ''A36.4.3.1(a).''

*Sections 91.801 and 91.851*

Section 901.801(a)(1), 91.801(a)(2), 91.801(c), 91.801(d), and 91.851, which are related to the part 36 noise certification requirements, are revised to incorporate the term ''jet'' in addition to ''turbojet'' when referring to turbojet or turbofan engines. This change is made to reflect the use of the term ''jet'' in part 36 and does not change the meaning of the term turbojet as it is used in either the noise certification related sections, or other sections of 14 CFR chapter 1.

REDESIGNATION TABLE FOR APPENDICES A AND B

| Cross Reference Table | |
|---|---|
| Old section | New section |
| A36.1 | A36.1, A36.2 |
| A36.1(a) | A36.1.1, A36.2.1.1 |
| A36.1(b) | A36.2.2 |
| A36.1(b)(1) | A36.2.3.2, B36.3 |
| A36.1(b)(2) | A36.7(b)(3) |
| A36.1(b)(3) | Deleted |
| A36.1(b)(4) | A36.2.2.1 |
| A36.1(b)(5) | A36.2.2.4 |
| A36.1(b)(6) | A36.2.2.1 |

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table

| Old section | New section |
|---|---|
| A36.1(b)(7) | A36.9.3.5, A36.9.3.5.1, B36.4(b) |
| A36.1(c) | A36.2.2.2 |
| A36.1(c)(1) | A36.2.2.2(a) |
| A36.1(c)(2) | A36.2.2.2(b) |
| A36.1(c)(3) | A36.2.2.2(c) AC 36–4C |
| A36.1(c)(4) | A36.2.2.2(e) |
| A36.1(c)(5) | A36.2.2.2(f) |
| A36.1(d)(1) | B36.8(b), B36.2 |
| A36.1(d)(2) | A36.2.3.1 |
| A36.1(d)(3) | A36.2.3.2, A36.2.3.3 |
| A36.1(d)(4) | B36.7(b), B36.8 |
| A36.1(d)(5) | B36.8(d) |
| A36.1(d)(6) | B36.7(c), B36.8(e) |
| A36.1(d)(7) | B36.8.(d) |
| A36.1(d)(8) | A36.2.3.3 |
| A36.3 | A36.3 |
| A36.3(a) | A36.3.3 |
| A36.3(b) | A36.3.3.1 |
| A36.3(c)(2)(i–iv), A36.3(f)(1) | A36.3.5 |
| A36.3(c)(2)(v) | A36.3.4 |
| A36.3(c)(3) | A36.3.6 |
| A36.3(d) | A36.3.7 |
| A36.3(e)(1–6), A36.3(f)(2) | A36.3.9 |
| A36.3(f)(2–4) | A36.3.10.1 |
| A36.3(e)(7) | A36.3.8 |
| A36.5(a) | A36.5.1.1, A36.5.1.2, A36.5.1.3 |
| A36.5(b)(1) | A36.5.2.1 |
| A36.5(b)(2) | A36.5.2.2 |
| A36.5(b)(3) | A36.5.2.3 |
| A36.5(b)(4) | A36.5.2.4 |
| A36.5(b)(5)(i–vi) | A36.5.2.5 |
| A36.5(b)(vii) | A36.5.2.5(i) |
| A36.5(b)(6) | A36.2.3.2, A36.2.3.3 A36.5.2.5(i) |
| A36.5(c) | A36.5.3 |
| A36.5(c)(1) | B36.7(a)(5) |
| A36.5(c)(2) | B36.3(c), B36.7(b)(6), B36.7(c)(1), B36.7(c)(4) |
| A36.5(d)(1) | A36.5.3.1, A36.9, B36.8(c) |
| A36.5(d)(2) | A36.9.1 |
| A36.5(d)(2)(i)–(iv) | B36.8(d) |
| A36.5(d)(3) | A36.3.10.2 |
| A36.5(d)(4) | A36.3.10.2 |
| A36.5(d)(5) | B36.8(f) |
| A36.5(e)(1) | A36.5.4.1 |
| A36.5(e)(2) | A36.5.4.2 |
| A36.5(e)(3) | A36.5.4.3 |
| A36.5(e)(4) | Deleted |
| A36.7 | A36.6, A36.9.5, A36.9.6 |
| A36.9(a) | A36.9.1.1 |
| A36.9(b)(1) | A36.2.2.4 |
| A36.9(b)(2) | A36.2.2.2(b) |
| A36.9(b)(3) | A36.2.2.2(g) |
| A36.9(c) | A36.7 |
| A36.9(d)(1) | A36.9.1, A36.9.1.1 |
| A36.9(d)(2) | A36.2.2.2(d) |
| A36.9(d)(3) | A36.2.2.3 |
| A36.11(a) | A36.9.1 |
| A36.11(a)(1) | Deleted |
| A36.11(a)(2) | Deleted |

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table

| Old section | New section |
|---|---|
| A36.11(a)(3)(i) | A36.9.1, B36.7 |
| A36.11(a)(3)(ii) | A36.9.1.1 |
| A36.11(a)(3)(iii) | A36.9.1.1 |
| A36.11(a)(3)(iv) | A36.9.1.1, A36.9.3.4 |
| A36.11(a)(3)(v) | A36.9.1 |
| A36.11(b)(1)(i–ii) | A36.9.2.1 |
| A36.11(b)(2) | A36.9.3.1, A36.9.4.1 |
| A36.11(b)(3) | A36.9.3.2(a) |
| A36.11(c) | A36.9.2.2 |
| A36.11(c)(1) | A36.9.3.2(a–c) |
| A36.11(c)(2) | A36.9.3.2(a) |
| A36.11(d)(1–3) | A36.9.3, A36.9.3.1, A36.9.3.2.1, A36.9.3.2.1.1, A36.9.3.2.1.2 |
| A36.11(e)(1–2) | A36.9.3.3.1, A36.9.3.3.2 |
| A36.11(f) | B36.4(a), AC 36–4C |
| A36.11(f)(1) | A36.9.1.2 |
| A36.11(f)(2) | A36.9.1.2 |
| A36.11(f)(2)(i–ii) | A36.9.4 |
| B36.1 | A36.1, A36.1.1, A36.4.1.3 |
| B36.1(a) | B36.4.1.3(a) |
| B36.1(b) | A36.4.1.3(b) |
| B36.1(c) | A36.4.1.3(c) |
| B36.1(d) | A36.4.1.3(d) |
| B36.1(e) | A36.4.1.3(e) |
| B36.3 | A36.4.2.1 |
| B36.3(a) | A36.4.2.1(a) |
| B36.3(b) | A36.4.2.1(b) |
| B36.3(c) | A36.4.2.1(c), AC 36–4B |
| B36.5 | A36.4.3.1 |
| B36.5(a) | A36.4.3.1(a) |
| B36.5(b) | A36.4.3.1(b) |
| B36.5(c) | A36.4.3.1(c) |
| B36.5(d) | A36.4.3.1(d) |
| B36.5(e) | A36.4.3.1(e) |
| B36.5(f) | A36.4.3.1(f) |
| B36.5(g) | A36.4.3.1(g) |
| B36.5(h) | A36.4.3.1(h) |
| B36.5(i) | A36.4.3.1(i) |
| B36.5(j) | A36.4.3.1(j) |
| B36.5(k) | A36.4.3.1(j) |
| B36.5(l) | A36.4.3.1(j) |
| B36.5(m) | A36.4.3.1(j), AC 36–4C |
| B36.5(n) | A36.4.4.2 |
| B36.7 | A36.4.4 |
| B36.7(a) | A36.4.4.1, A36.4.4.1 Note 1 |
| B36.7(b) | A36.4.4.1-Note 2 |
| B36.9 | A36.4.5.1 |
| B36.9(a) | A36.4.5.2 |
| B36.9(b) | A36.4.5.3 |
| B36.9(c) | A36.4.5.4 |
| B36.9(d) | A36.4.5.5 |
| B36.9(e) | Deleted |
| B36.9(f) | Deleted |
| B36.11(a) | A36.4.6 |
| B36.11(b) | Deleted |
| B36.11(c) | A36.9.3.2.2 |
| B36.13(a) | A36.4.7.1, Table A1 moved to AC 36–4C |
| B36.13(a)(1), (2), (3) | A36.4.7.2(a–c) |
| B36.13(b) | A36.4.7.3 |
| B36.13(c) | A36.4.7.4 |

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

Cross Reference Table

| Old section | New section |
|---|---|
| C36.1 | B36.1 |
| C36.3(a) | B36.3(b) |
| C36.3(b) | B36.3.(c) |
| C36.3(c) | B36.3(a) |
| C36.5(a) | B36.5 |
| C36.5(a)(1) | B36.5(a) |
| C36.5(a)(2) | B36.5(b) |
| C36.5(a)(2)(i) | B36.5(b)(1) |
| C36.5(a)(2)(ii) | B36.5(b)(2) |
| C36.5(a)(3) | B36.5(c) |
| C36.5(a)(3)(i)(A) | B36.5(c)(1)(i) |
| C36.5(a)(3)(i)(B) | B36.5(c)(1)(ii) |
| C36.5(a)(3)(i)(C) | B36.5(c)(1)(iii) |
| C36.5(a)(3)(ii) | B36.5(c)(2) |
| C36.5(a)(3)(iii) | B36.5(c)(3) |
| C36.5(b)(1) | B36.6 |
| C36.5(b)(2) | B36.6 |
| C36.5(b)(3) | B36.6 |
| C36.7(a) | B36.7(a)(3) |
| C36.7(b) | B36.7(b)(1)(i) |
| C36.7(b)(1) | B36.7(b)(1)(i) |
| C36.7(b)(2) | B36.7(b)(1)(ii) |
| C36.7(c) | B36.7(b)(2) |
| C36.7(d) | B36.7(b)(5) |
| C36.7(e)(1) | B36.7(b)(4) |
| C36.7(e)(1) Next to last sentence | B36.8(g) |
| C36.7(e)(2) | B36.7(b)(4) |
| C36.7(e)(3) | B36.7(a)(5), A36.9.1 |
| C36.9.(a) | B36.7(a)(3), B36.7(c)(1) |
| C36.9(b) | B36.7(c)(3) & B36.7(c)(4) |
| C36.9(c) | B36.7(c)(1), B36.7(c)(3) |
| C36.9(d) | Deleted |
| C36.9(e)(1) | B36.7(c)(2) |
| C36.9(e)(2) | B36.7(c)(2) |
| C36.9(e)(3) | B36.8(g) |

CROSS REFERENCE TABLE

| New section | Old section |
|---|---|
| A36.1 | A36.1, B36.1 |
| A36.1.1 | A36.1(a), B36.1 |
| A36.1.2 | New section |
| A36.1.3 | New section |
| A36.2 | A36.1 |
| A36.2.1 | A36.1(a) |
| A36.2.1.1 | A36.1(a) |
| A36.2.2 | A36.1(b) |
| A36.2.2.1 | A36.1(b)(4), A36.1(b)(6) |
| A36.2.2.2 | A36.1(c) |
| A36.2.2.2(a) | A36.1(c)(1) |
| A36.2.2.2(b) | A36.1(c)(2), A36.9(b)(2) |
| B36.2.2.2(c) | A36.1(c)(3) |
| B36.2.2.2(d) | A36.9(d)(2) |
| A36.2.2.2(e) | A36.1(c)(4) |
| A36.2.2.2(f) | A36.1(c)(5) |
| A36.2.2.2(g) | A36.9(b)(3) |
| A36.2.2.3 | A36.9(d)(3) |
| A36.2.2.4 | A36.1(b)(5), A36.1(d) |
| A36.2.3 | A36.1(d) |
| A36.2.3.1 | A36.1(d)(2) |

CROSS REFERENCE TABLE—Continued

| New section | Old section |
|---|---|
| A36.2.3.2 | A36.1(b)(1), A36.1(d)(3), A36.5(b)(6) |
| A36.2.3.3 | A36.1(d)(8), A36.5(b)(6) |
| A36.3 | A36.3 |
| A36.3.1 | New |
| A36.3.2 | New |
| A36.3.3 | A36.3(a) |
| A36.3.3.1 | A36.3(b) |
| A36.3.3.2 | New |
| A36.3.4 | A36.3(c)(2)(v) |
| A36.3.5 | A36.3(c)(2)(i–iv), A36.3(f)(1) |
| A36.3.6 | A36.3(c)(3) |
| A36.3.7 | A36.3(d) |
| A36.3.8 | A36.3.(e)(7) |
| A36.3.9 | A36.3(e)(1–6), A36.3(f)(2) |
| A36.3.10.1 | A36.3(f)(2–4) |
| A36.3.10.2 | A36.5(d)(3–4) |
| A36.4 | B36.1 |
| A36.4.1 | B36.1 |
| A36.4.1.1 | B36.1 |
| A36.4.1.2 | B36.1 |
| A36.4.1.3 | B36.1 |
| A36.4.2 | B36.3 |
| A36.4.2.1 | B36.3; AC 36–4C |
| A36.4.3 | B36.5 |
| A36.4.3.1 | B36.5(a–m) |
| A36.4.3.2 | B36.5(n) |
| A36.4.4 | B36.7 |
| A36.4.4.1 | B36.7 (a) & (b) |
| A36.4.4.2 | B36.5(n) |
| A36.4.5 | B36.9 |
| A36.4.5.1 | B36.9 |
| A36.4.5.2 | B36.9(a) |
| A36.4.5.3 | B36.9(b) |
| A36.4.5.4 | B36.9(c) |
| A36.4.5.5 | B36.9(d) |
| A36.4.6 | B36.11 |
| A36.4.6 | B36.11(a) |
| A36.4.7 | B36.13 |
| A36.4.7.1 | B36.13(a) |
| A36.4.7.2 | B36.13(a) (1–3) |
| A36.4.7.3 | B36.13(b) |
| A36.4.7.4 | B36.13(c) |
| A36.5 | A36.5 |
| A36.5.1 | A36.5(a) |
| A36.5.1.1 | A36.5(a) |
| A36.5.1.2. | A36.5(a) |
| A36.5.1.3 | A36.5(a) |
| A36.5.2 | A36.5(b) |
| A36.5.2.1 | A36.5(b)(1) |
| A36.5.2.2 | A36.5(b)(2) |
| A36.5.2.3 | A36.5(b)(3) |
| A36.5.2.4 | A36.5(b)(4) |
| A36.5.2.5 | A36.5(b)(5) |
| A36.5.3 | A36.5(c) |
| A36.5.3.1 | A36.5(d)(1) |
| A36.5.4 | A36.5(e) |
| A36.5.4.1 | A36.5(e)(1) |
| A36.5.4.2 | A36.5(e)(2) |
| A36.5.4.3 | A36.5(e)(3) |
| A36.6 | A36.7 |
| A36.7.1–A36.7.3 | A36.9(c) |
| A36.8 | New section—Reserved |
| A36.9 | A36.5(d)(1), A36.11 |

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

| Cross Reference Table | |
|---|---|
| Old section | New section |
| A36.9.1 | A36.5(d)(2), A36.9(d)(1), A36.11(a), A36.11(a)(3)(i) & (v) |
| A36.9.1.1 | A36.9(a), A36.9(d)(1), A36.11(a)(3)(ii–iii), A36.11(a)(3)(iv) |
| A36.9.1.2 | A36.11(f) (1–2) |
| A36.9.2 | A36.11(b) & (c) |
| A36.9.2.1 | A36.11(b)(1)(i–ii) |
| A36.9.2.2 | A36.11(c) |
| A36.9.3 | A36.11 |
| A36.9.3.1 | A36.11(a), A36.11(f)(1) |
| A36.9.3.2(a) | A36.11(b)(3), A36.11(c)(2) |
| A36.9.3.2.(b) | New section |
| A36.9.3.2.1 | A36.11(d)(1–3) |
| A36.9.3.2.1.1 | A36.11(d)(1)(ii) |
| A36.9.3.2.1.2 | A36.11(d)(1)(ii) |
| A36.9.3.2.2 | A36.11(c) |
| A36.9.3.3 | A36.11(e) |
| A36.9.3.3.1 | A36.11(e)(1)–(2) |
| A36.9.3.3.2 | A36.11(e) |
| A36.9.3.4 | A36.11(a)(3)(iv) |
| A36.9.3.4.1 | A36.11(a)(3)(iv) |
| A36.9.3.4.2 | A36.11(a)(3)(iv) |
| A36.9.3.5 | A36.1(b)(7) |
| A36.9.3.5.1 | A36.1(b)(7) |
| A36.9.4 | A36.11(f)(2) (i–ii) |
| A36.9.4.1. | A36.11(b)(2), A36.11(f)(2)(i–ii) |
| A36.9.4.2 | A36.11(f)(2)(i–ii) |
| A36.9.4.2.2 | A36.11(f)(2)(i–ii) |
| A36.9.4.2.3 | A36.11(f)(2)(i–ii) |
| A36.9.4.3 | A36.11(f)(2)(i–ii) |
| A36.9.4.4 | A36.11(f)(2)(i–ii) |
| A36.9.4.4.1 | A36.11(f)(2)(i–ii) |
| A36.9.5 | A36.7 |
| A36.9.6 | A36.7 |
| B36.1 | C36.1 |
| B36.2 | A36.1(d)(1) |
| B36.3(a) | C36.3(c) |
| B36.3(b) | C36.3(a) |
| B36.3(c) | A36.5(c)(2), C36.3(b) |
| B36.4(a) | A36.11(f) |
| B36.4(b) | A36.1(b)(7) |
| B36.5 | C36.5(a) |
| B36.5(a) | C36.5(a)(1) |
| B36.5(b) | C36.5(a)(2) |
| B36.5(b)(1) | C36.5(a)(2)(i) |
| B36.5(b)(2) | C36.5(a)(2)(ii) |
| B36.5(c) | C36.5(a)(3) |
| B36.5(c)(1)(i) | C36.5(a)(3)(i)(A) |
| B36.5(c)(1)(ii) | C36.5(a)(3)(i)(B) |
| B36.5(c)(1)(iii) | C36.5(a)(3)(i)(C) |
| B36.5(c)(2) | C36.5(a)(3)(ii) |
| B36.5(c)(3) | C36.5(a)(3)(iii) |
| B36.6 | C36.5(b)(1)–(3) |
| B36.7(a)(1) | |
| B36.7(a)(2) | A36.11(a)(3)(i) |
| B36.7(a)(3) | C36.7(a), C36.9(a) |
| B36.7(a)(4) | New section—Reserved |
| B36.7(a)(5) | A36.5(c)(1), C36.7(e)(3) |
| B36.7(b)(1) | C36.7(b) |
| B36.7(b)(2) | C36.7(c) |
| B36.7(b)(3) | A36.1(b)(2) |
| B36.7(b)(4) | C36.7(e)(1–2) |

REDESIGNATION TABLE FOR APPENDICES A AND B—Continued

| Cross Reference Table | |
|---|---|
| Old section | New section |
| B36.7(b)(5) | C36.7(d) |
| B36.7(b)(6) | A36.5(c)(2) |
| B36.7(b)(7) | New section |
| B36.7(c) | C36.9 |
| B36.7(c) | C36.9(a) |
| B36.7(c)(1) | C36.5(c)(2), C36.9(c) |
| B36.7(c)(2) | C36.9(e)(1), C36.9(e)(2) |
| B36.7(c)(3) | C36.9(b–c) |
| B36.7(c)(4) | C36.5(c)(2) |
| B36.7(c)(5) | C36.9(b) |
| B36.8(a) | New section |
| B36.8(b) | A36.1(d)(1) |
| B36.8(c) | A36.5(d), A36.11(a) |
| B36.8(d) | A36.1(d)(2)(i–iv) |
| B36.8(e) | A36.1(d)(6) |
| B36.8(f) | A36.5(d)(5) |
| B36.8(g) | C36.7(e)(1), C36.9(e)(3) |

**Paperwork Reduction Act**

Notice No. 00–08, Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes, contained proposed information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review.

The agency did not receive any comments concerning this collection of information. The collection of information was approved and assigned OMB Control Number 2120–0659.

**Compatibility With ICAO Standards**

In keeping with the U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. The FAA is participating in an effort, sponsored by the ICAO Committee on Aviation Environmental Protection (CAEP) Working Group 1, that is aimed at resolving these differences. Any remaining differences with Annex 16 Recommended Standards and Practices after conclusion of these efforts will be filed with ICAO. Differences will not be filed for those items that are ''notes'' in Annex 16.

*Wind Speed.* Section A36.2.2.2(e) of this final rule requires that tests be carried out under atmospheric conditions where the average wind velocity 10 meters above ground does

not exceed 12 knots and the crosswind velocity for the airplane does not exceed 7 knots. Section A36.2.2.2(e) of the final rule also specifies that maximum wind velocity 10 meters above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB-down time interval. Section A36.2.2.2(e) of ICAO Annex 16, Appendix 2 contains a similar average wind speed limitation, but specifies a maximum windspeed limitation only in cases where an anemometer with a built-in detector time constant of less than 30 seconds is used. The FAA has not agreed to adopt this ICAO Annex 16 provision because it could result in tests being conducted in windspeed conditions that exceed those currently permitted under part 36; based on the information that was available to it, the harmonization working group could not determine the effect that these higher wind conditions might have on the resulting noise levels.

*Adjustments to PNL and PNLT.* In adjusting measured sound pressure level data to reference conditions, a note in Annex 16, Appendix 2 section 9.3.2.1 suggests that when a sound pressure level value is equal to zero (for example, as a result of applying a background noise correction) the adjusted sound pressure level must be kept equal to zero in the adjustment process. The FAA does not agree with this provision. The FAA has determined that the sound pressure level values should be carried through the adjustment process regardless of whether they are greater than zero, equal to zero, or less than zero. It is entirely possible for a negative or zero sound pressure level value that results from the background noise correction process to become positive when adjusted to account for the difference between the test and reference airplane heights above the noise measurement point.

*Design characteristics that requires different reference procedures.* Section 3.6.1.4 of ICAO Annex 16, Chapter 3 permits the certificating authority to approve reference procedures that are different from those contained in sections 3.6.2 and 3.6.3 of ICAO Annex 16 when design characteristics of an airplane would prevent flight from being conducted in accordance with sections 3.6.2 and 3.6.3 of ICAO Annex 16. The FAA will not adopt this ICAO Annex 16 provision. The FAA recognizes that there may be a need for changes to the specified reference procedures when part 36 may not be appropriate for a particular airplane. In cases where part 36 is not appropriate, the rulemaking process, which includes a public comment period, would be followed to develop an appropriate noise certification standard. Accordingly, although the provision is not being adopted, the section reference will be reserved to preserved the ICAO format as much as possible.

*Noise Certificates.* A note in section 1.2 of ICAO Annex 16, Chapter 1 indicates that documents attesting to noise certification may take the form of a separate noise certificate or a suitable statement contained in another document approved by the State of Registry and required by that State to be carried in the aircraft. The FAA however, is not authorized to issue noise certificates.

The U.S. regulations require that the certification noise levels be included in the Airplane Flight Manual (AFM)/ Rotorcraft Flight Manual (RFM), and an AFM/REM is approved for each carrier/ operator or airplane/rotorcraft model by the FAA. Some U.S. operating regulations, however, such as 14 CFR part 121, allow an operator to create an operations manual that is based on the limitations and performance requirements contained within the FAA-approved AFM. This manual is required to be used by the flight, maintenance, and ground crews of the operators. There is no specific requirement that the entire FAA-approved AFM be carried in the airplane. The operations manual (or Flight Crew Operating Manual) may not contain the noise characteristics page from the FAA-approved AFM depending on how the manual was constructed and whether or not the information contained on the noise characteristics page was deemed of any benefit to the flight or operations crews.

In Notice No. 00–08, the FAA invited comments on the extent of any problems encountered due to the absence of noise compliance substantiation when the Airplane Flight Manual is not on board the airplane. One comment was received on this subject and is included under the Discussion of Comments section of this preamble.

**Economic Summary**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards. Where appropriate, agencies are directed to use those international standards as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules. This requirement applies only to rules that include a Federal mandate on State, local, or tribal governments or the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits which do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will reduce trade barriers by narrowing the difference between United States and Joint Aviation Authority regulations; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

The FAA has placed these analyses in the docket and summarized them below.

*Comments*

Four parties provided comments in response to the NPRM. Only one party, the Aerospace Industries Association (AIA) made any comment on the costs associated with the proposal and the reference concerned only one of the five broad categories to which AIA addressed its comments. In the category entitled ''FAA differences representing additional or dissimilar requirements'', AIA lists twelve sections of the NPRM that ''either are or can easily be interpreted to be different than those in Annex 16''.

The AIA states that ''these differences, if maintained, would also make it much more difficult and costly to applicants that might want reciprocal approvals by different certificating authorities''. The FAA reviewed the sections in question and in some cases was unable to determine the specific concern that the commenter was raising.

In eight of the sections, the FAA views the minor text differences as serving to clarify part 36 requirements without introducing any additional or dissimilar requirements relative to Annex 16. In the ninth section, the FAA concludes that, rather than adding a

burden, the changed text clarifies that the specified windscreen testing need only be performed under certain conditions and does not view the section as an additional or dissimilar requirement for ICAO Annex 16. The FAA corrected an equation in the tenth section. The FAA has been unable to identify any costs associated with ten of the twelve sections in question and in view of the lack of any specific cost data submitted by the commenter the FAA concludes that there are no additional costs associated with these amendments.

The comments on the two remaining sections in question are beyond the scope of this rulemaking. In one case, adoption of the ICAO provision would violate United States administrative procedures and in the second case, the FAA intends to work within the ICAO process to achieve future resolution of the difference.

**Analysis of Costs**

The FAA has analyzed the expected costs of this regulatory rule for a 10-year period, from 2002 through 2011. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 2000 dollars.

The sections of the final rule that will impose costs fall into three categories: (1) Software costs, (2) additional or new measuring provisions, and (3) additional reporting requirements.

*Software Costs*

Section A36.3.7.6 specifies that the instant in time at which a slow time-weighted sound pressure level is characterized should be 0.75 seconds earlier than the actual readout time. Implementation of this change will require modifying the computer software used by the applicant. The FAA must verify the software change. The estimated time required to make this one-time software change is 40 hours for each applicant. The estimated time required by the FAA to verify correct implementation of the change is 20 hours for each applicant.

Based on internal data, the FAA estimates that 11 applicants will incur this one-time cost. This is significantly less than the number of applicants estimated in the NPRM. The NPRM erroneously included all original equipment manufacturers and supplemental type certificate applicants as being required to make this software change. The estimated cost to the industry is $39,200. The verification cost to the FAA is estimated at $17,400. The FAA estimates that these software costs will be incurred in the first 3 years of the 10-year period; the present value cost to the industry and the FAA will be $34,200 and $15,200, respectively.

*Measurement Costs*

Section B36.4(b) will add a special requirement for propeller-driven airplanes that will require the placement of symmetrically positioned microphones at each and every test measurement point. However, most applicants already take advantage of FAA-approved equivalent test procedures that require only one set of symmetrical microphones for sideline noise measurements. These equivalent test procedures will be unaffected by this change and most applicants are expected to continue to use them. If more than a two-microphone array were used, however, the cost will be realized as part of the certification test performed under the specifications of JAR 36 or ICAO Annex 16.

Industry sources estimate that there are currently six firms engaged in the noise certification of large propeller-driven airplanes and that all but one are foreign manufacturers that already incur this cost if they are not using the approved equivalent procedure. The domestic firm is a large entity that probably also already incurs this cost under the JAR specifications if it does not use the approved equivalent procedures. Therefore, changing part 36 will not result in increased costs for known applicants.

An applicant choosing to use multiple pairs of microphones, however, could incur additional costs ranging up to an estimated $29,350 per test. The FAA has calculated costs assuming two domestic large-propeller applicants will conduct 4 tests meeting this requirement over the next 10 years. The total cost is estimated to be $117,400, or $83,000 discounted.

*Reporting Costs*

Section A36.5.2.5 (c through f, h(2), j) adds five new data elements to be reported to the FAA. All of these new reporting requirements are already a part of the international standard. Because most applicants already address these requirements under JAR 36 or ICAO Annex 16, and the data is already reported to the FAA on a voluntary basis, minimal cost impact is expected. Additional labor costs for documenting data not previously reported are estimated to range from $525 to $2,100 per certification.

Based on FAA estimates, 14 noise certification projects involving flight tests are undertaken each year. Four of these projects are conducted among the 15 foreign firms that already comply with these new reporting requirements under JAR 36 or ICAO Annex 16 and thus will not incur additional reporting costs.

Ten projects are conducted from among the 24 domestic firms engaged in flight testing and the FAA estimates that these firms will conduct 100 tests over the next 10 years. The FAA further estimates that some domestic firms will incur additional reporting costs of $1,315 per test, based on the midpoint of the estimated additional labor costs (($525 + $2,100)/2).

Domestic firms with a large international presence are estimated to conduct 40 of the 100 tests to be conducted over the next 10 years, based on the composition of the industry. Because these larger firms already frequently comply with the existing international reporting standard, the FAA estimates that only 10 of the 40 tests to be conducted by these firms will result in the additional reporting costs of $1,315 each, or a total of $13,150. The FAA estimates that of the 60 tests to be conducted by smaller domestic firms, 24 tests will incur the additional reporting costs of $1,315 per test or a total of $31,600 over the next 10 years. Thus, the additional labor costs for reporting the additional information will total approximately $44,700 for these affected firms.

It is possible, however, that some applicants might accrue additional costs. If an applicant is required to invest in new instrumentation or data recording equipment to comply with these requirements, the estimated total reporting costs could increase to between $5,250 and $10,500 per test. One possible scenario could entail the purchase and installation of instrumentation hardware at $4,400, plus the labor cost for adding recording capability, and data recording and analysis at $3,600 for a total of $8,000 of additional cost. The FAA estimates that three domestic firms, one large and two small, could incur this additional cost of $7,960 for each test and that each of these firms will conduct 4 tests for a total of 12 tests over the next 10 years at a total cost of $95,520. Thus, the total additional reporting costs to the industry will be $140,200, or $98,485 discounted, based on the minimal additional reporting costs of $44,700 and $95,520 incurred by the firms requiring additional instrumentation and data recording.

*Summary of Increased Costs*

The following table summarizes the estimated cost of changing the noise

certification standards of part 36 and achieving greater harmonization with the JAA regulations.

TOTAL COST OF FINAL CHANGES TO PART 36

| | Total cost | Present value |
|---|---|---|
| Software Costs: | | |
| Industry | $39,160 | $34,250 |
| FAA | 17,380 | 15,200 |
| Total Software Costs | 56,540 | 49,450 |
| Measurement Costs | 117,400 | 83,000 |
| Reporting Costs | 140,200 | 98,500 |
| Grand Total Costs | 314,140 | 230,950 |
| Total Industry Costs | 296,760 | 215,750 |
| Total FAA Costs | 17,380 | 15,200 |

*Cost Savings*

Several of the amendments should result in cost savings to applicants, depending upon the current inventory of an applicant's test equipment and the particular weather circumstances of the flight test. Given the uncertainty in the annual number and duration of flight tests, however, it is difficult to accurately quantify these savings.

For example, Section A36.2.2.2(b) will lower the minimum test temperature from 36 degrees Fahrenheit to 14 degrees Fahrenheit. One of the largest cost elements of the test certification process if the cost associated with airplane down time; by extending the temperature range, down time should be minimized. Down time occurs when the test aircraft, crew, equipment, and technicians are ready to commence testing but testing is delayed or postponed because the weather conditions specified in Section A36.2 are not met.

While airplane noise testing is not normally planned for cold weather, circumstances may dictate that the test be conducted under conditions which could take advantage of this new lower temperature. Under this circumstance assuming various scenarios of daily temperature patterns that could result in reduced hours of airplane down time, an applicant might reduce the total on-site test time of a typical certification flight test conducted under these conditions by 10 to 15 percent.

As an example of the impact of permitting testing to be conducted at a lower temperature, assuming an on-site test time of 5 to 7 days to complete a typical certification flight test under these conditions, the applicant might reduce the total test time between half a day to one full day by testing during a time period when the lower temperature condition prevailed. Assuming a cost factor of $157,200 to $209,700 per day for larger planes and $73,400 to $146,800 per day for smaller airplanes, cost reductions per test made possible by this change in minimum test temperatures could range between approximately $78,600 and $209,700 for larger airplanes and manufacturers and between $36,700 and $146,800 for smaller airplanes and manufacturers. The number of such tests conducted under cold weather conditions might be, at most, one per applicant over a 10-year period Some applicants might nit encounter this situation during a 10-year period.

Based on the size of the firms conducting noise certifications, the FAA estimates that 25 larger applicants will each derive cost savings of $144,100 per test and 14 smaller firms will save $91,700 each per test, based on the mid-points of the estimated savings ranges. Because it is possible that certain applicants may not encounter this situation in the 10-year period, however. the FAA has reduced the number of firms by three, one large and two small. Thus large firms will save $3.46 million ($144,100 × 24) and small firms $1.1 million ($91,700 × 12). The estimated industry cost savings over ten years totals $4.56 million (3.46 + $1.10 million), or $3.2 million discounted.

Amended section B36.3(a) includes a simplified test procedure that may be used in determining the sideline (lateral) noise level for propeller-driven large airplanes. This test procedure allows the full power noise measurement to be obtained at a point (650m) below the takeoff flight path and thus eliminates 40 to 45 fly-bys per test, and between 2 and 8 microphone systems depending on the size of the array used by the applicant. (Many applicants currently use a 2-microphone sideline array.

In addition to the savings resulting from the reduction in the number of fly-bys and the number of microphone systems, further cost savings will result from a reduction in site surveying and field set-up expenses in addition to the analysis and reporting savings that result from fewer fly-bys. The total cost savings of these changes are estimated by industry experts at $200,000 to $350,000 per test for manufacturers of propeller-driven large airplanes. As an example, based on a reduction of 42 fly-bys the midpoint of the estimated range, and an example cost of $6,290 per fly-by, cost savings of $264,180 would be realized.

In addition, assuming a reduction of 4 microphone systems, including surveying, setup, recording analysis, and reporting at an assumed cost factor of $7,340 per system, another $29,360 in savings will be realized for a total estimated savings of $293,540 per test under this example. The FAA estimates that no more than 10 tests and that the derived estimated cost savings will total $2.94 million based on a per test savings of $293,540 or $2.06 million discounted.

Industry sources estimate that cost savings of $26,205 to $52,410 per year for those applicants with considerable certification activity will be realized by the harmonization of testing, data measurement and analysis, reporting and documentation, and other noise certification efficiencies. Industry sources also claim that these cost savings will be achieved by a reduction in the confusion and the multiple interpretations that lead to delays and duplicate effort caused by the existing dual certification standards. The FAA estimates that 10 firms engaged in noise certification activities, each employing 10,000 or more workers, will each achieve cost savings of $39,310 (the midpoint of the estimated savings) or $393,000 annually for the industry. The estimated industry cost savings over ten

years totals $3.93 million, or $2.76 million discounted.

The following table summarizes the estimated cost savings of the final rulemaking.

TOTAL COST SAVINGS OF AMENDMENTS TO PART 36

[In millions of dollars]

| | B36.22.2 savings | B36.3(a) savings | Efficiency savings | Total savings |
|---|---|---|---|---|
| Savings | $4.56 | $2.94 | $3.93 | $11.4 |
| Present Value | 3.20 | 2.06 | 2.76 | 8.02 |

The FAA has not been able to quantify other potential savings that may be made possible by the greater efficiencies and flexibility resulting from the uniformity that the final rule provides.

*Summary*

When this new final rule becomes effective, U.S. noise certification procedures will be nearly uniform with the JAA procedures. This harmonization between the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for subsonic jet airplanes and subsonic transport category large airplanes will result in significant cost savings without compromising the environmental benefits of the noise certification standards.

This final rule's estimated cost savings, over ten years, (attributable to specific changes to part 36) will be $7.5 million, or $5.26 million discounted., In addition, $3.93 million, $2.76 million discounted, could be derived from overall efficiencies attributable to the harmonization effort in achieving near uniformity of the FAA and JAA standards for a total estimated saving of $11.43 million, $8.,02 million discounted.

The final rule's cost consist of software costs of $56,500, measurement costs of $117,400 and reporting costs of $140,200 for a total of $314,100, or $230,900 discounted.

**Final Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (Act) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Adoption of this final rule will impose costs of $314,000 on the FAA and noise certification applicants over the ten year period, of which $241,120 is estimated to be incurred by small applicants. Small firms will incur software costs of $28,480, measurement costs of $117,400, and reporting-related costs of $95,250. This is a conservative estimate because it assumes small firms will elect to use multiple pairs of microphones to conduct tests when most applicants already utilize a less costly equivalent procedure that is FAA-approved.

Small firms are firms employing 1,500 employees or fewer based on Small Business Administration guidelines. A review of firms engaged in noise certification of subsonic jet airplanes and subsonic transport category large airplanes found that 14 firms met the criteria. The FAA assumes that no more than two small firms will elect to use multiple microphone systems to test large-propeller airplanes two times each and each will incur measurement costs of $58,700 for a total cost of $117,400.

Additional reporting costs requiring additional instrumentation and data recording totaling $63,680 over the ten year period will be incurred by two other small applicants or $31,840 each. Additional labor costs for new reporting requirements totaling $31,560 over the 10 year period will be incurred by 6 small firms at a cost to each of these smaller firms over the 10 years period of $5,260. Eight small noise certification firms will incur one-time software costs of $3,560 each. Small firms that incur the software charge and also incur labor costs to report additional data will have an annualized cost of $770. The FAA does not consider these costs to be significant. The highest potential annualize cost, $6,700, will be borne by two firms that incur both the software and reporting costs ($780, annualized) and also elect to use multiple microphones four times each to measure the noise of a large propeller-driven airplane ($5,910 annualized).

The FAA does not have information on the revenues of these two potential small entrants but based on information about two small current manufacturers the revenue from the sale of one of their aircraft ranges from $750,000 to $2.7 million depending on the model. If a new entrant sells only a single aircraft each year, the cost of this final rule will be less than one percent of the lowest price aircraft. Hence, the FAA has determined that the estimated costs of compliance are marginal with this final rule are marginal.

Therefore, the FAA has determined that this final rule will not have a significant economic impact to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where

appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential affect of this final rule and has determined that it will impose the same costs on domestic and international entities for comparable services and thus has a neutral trade impact. It will reduce trade barriers by narrowing differences between United States and Joint Aviation Authority regulations.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This rule does not contain such a mandate. Therefore, the requirements of Title Ii of the Unfunded Mandates Reform Act of 1995 do not apply.

**Environmental Assessment**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA concludes that this final rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

**Energy Impact**

The energy impact of the final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the document is not a major regulatory action under the provision of the EPCA.

**List of Subjects in 14 CFR Parts 21, 36, and 91**

Aircraft, Noise control.

**The Amendment**

In consideration of the foregoing the FAA amends parts 21, 36, and 91 of Title 14 Code of Federal Regulations, as follows:

## PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

**Authority:** 49 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

### § 21.93 [Amended]

2. In paragraph (b)(2) remove the words ''Turbojet powered'' and add the words ''Jet (Turbojet powered)'' in its place.

### § 21.183 [Amended]

3. In paragraph (e)(1) remove the words ''turbojet powered'' and add the words ''jet (turbojet powered)'' in its place.

## PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for part 36 continues to read as follows:

**Authority:** 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11513, 35 FR 4247, 3 CFR 1966–1970 Comp., p. 902.

### § 36.1 [Amended]

5. Amend § 36.1 as follows:

a. In paragraph (a)(1) remove the words ''turbojet powered'' and add the word ''jet'' in its place.

b. In paragraph (b) introductory text remove the words ''turboject powered'' and add the word ''jet'' in its place; and remove the reference to ''appendix C'' and add ''appendix B'' in its place.

c. Remove paragraph (d)(3).

d. In the introductory text of (f) remove the words ''turbojet powered'' and add the word ''jet'' in its place.

e. In paragraph (f)(1) remove the reference to ''C36.5(a)(2)'' and add ''B36.5(b)'' in ins place; remove the reference to ''appendix C'' and add ''appendix B'' in its place; remove the word ''takeoff'' and add the word ''flyover'' in its place; and remove the word ''sideline'' and add the word ''lateral'' in its place;

f. In paragraph (f)(2) remove the word ''takeoff'' and add the word ''flyover'' in its place; and remove the word ''sideline'' and add the word ''lateral'' in its place;

g. In paragraph (f)(3) remove the reference to ''C36.5(a)(2)'' and add ''B36.5(b)'' in its place; and remove the reference to ''C36.5(a)(3)'' and add ''B36.5(c)'' in its place; and remove all references to ''appendix C'' and add ''appendix B'' in its place;

h. In paragraph (f)(4) remove the reference to ''C36.5'' and add ''B36.5(b)'' in its place; remove the reference to ''appendix C'' and add ''appendix B'' in its place; and add the words ''specified in section B36.6'' after ''tradeoff provisions'';

i. In paragraph (f)(5) remove the reference to ''C36.5(a)(3)'' and add ''B36.5(c)'' in its place; remove the reference to ''appendix C'' and add ''appendix B'' in its place;

j. In paragraph (f)(6) remove the reference to ''C36.5'' and add ''B36.5(c)'' in its place; remove the reference to ''appendix C'' and add ''appendix B'' in its place; and add ''appendix B'' in its place; and add the words ''specified in section B36.6'' after ''tradeoff provisions'';

k. In paragraph (g) remove the word ''turbojet'' and add the word ''jet'' in its place.

6. Revise the heading and § 36.2 to read as follows:

### § 36.2 Requirements as of date of application.

(a) Section 21.17 of this chapter notwithstanding, each person who applies for a type certificate for an aircraft covered by this part, must show that the aircraft meets the applicable requirements of this part that are effective on the date of application for that type certificate. When the time interval between the date of application for the type certificate and the issuance of the type certificate exceeds 5 years, the applicant must show that the aircraft meets the applicable requirements of this part that were effective on a date, to be selected by the applicant, not earlier than 5 years before the issue of the type certificate.

(b) Section 21.101(a) of this chapter notwithstanding, each person who applies for an acoustical change to a type design specified in § 21.95(b) of this chapter must show compliance with the applicable requirements of this part that are effective on the date of application for the change in type design. When the time interval between the date of application for the change in type design and the issuance of the amended or supplemental type certificate exceeds 5 years, the applicant must show that the aircraft meets the applicable requirements of this part that were effective on a date, to be selected by the applicant, not earlier than 5 years before the issue of the amended or supplemental type certificate.

(c) If an applicant elects to comply with a standard in this part that was effective after the filing of the application for a type certificate or change to a type design, the election:

(1) Must be approved by the FAA;

(2) Must include standards adopted between the date of application and the date of the election;

(3) May include other standards adopted after the standard elected by the applicant as determined by the FAA.

**§ 36.6 [Amended]**

7. Amend § 36.6 as follows:

a. Add paragraphs (c)(1)(vi) through (x);

b. Revise paragraphs (d)(1)(i) and (ii), (e)(3)(iii), (e)(3)(vi), (e)(3)(vii), and (e)(3)(ix).

**§ 36.6 Special retroactive requirements.**

* * * * *

(c) * * *

(1) * * *

(iv) IEC Publication 61094–3, entitled ''Measurement Microphones— Part 3: Primary Method for Free-Field Calibration of Laboratory Standard Microphones by the Reciprocity Technique'', edition 1.0, dated 1995.

(vii) IEC Publication 61094–4, entitled ''Measurement Microphones—Part 4: Specifications for Working Standard Microphones'', edition 1.0, dated 1995.

(viii) IEC Publication 61260, entitled ''Electroacoustics-Octave-Band and Fractional-Octave-Band filters'', edition 1.0, dated 1995.

(ix) IEC Publication 61265, entitled ''Instruments for Measurement of Aircraft Nose-Performance Requirements for systems measure one—Third-Octave-Band Sound pressure Levels in Noise Certification of Transport-Category Aeroplanes,'' edition 1.0, dated 1995.

(x) IEC Publication 60942, entitled ''Electroacoustics—Sound Calibrators,'' edition 2.0, dated 1997.

* * * * *

(d) * * *

(1) * * *

(i) International Electrotechnical Commission, 3, rue de Varembe, Case postale 131, 1211 Geneva 20, Switzerland.

(ii) American National Standard Institute, 11 West 42nd Street, New York City, New York 10036.

(e) * * *

(3) * * *

(iii) Southern Region Headquarters, 1701 Columbia Avenue, College Park, Georgia, 30337.

* * * * *

(vi) Southwest Region Headquarters, 2601 Meacham Boulevard, Fort Worth, Texas, 76137–4298.

(vii) Northwest Mountain Region Headquarters, 1601 Lind Avenue, Southwest, Renton, Washington 98055.

* * * * *

(ix) Alaskan Region Headquarters, 222 West 7th Avenue, #14, Anchorage, Alaska, 99513.

* * * * *

**§ 36.7 [Amended]**

8. Amend § 36.7 to read as follows:

a. In the heading of the section and in paragraph (a) remove the words ''turbojet powered'' and add the word ''jet'' in its place.

b. In paragraph (b)(1) remove the reference to ''Appendices A and B'' and add ''Appendix A'' in its place.

c. In paragraph (b)(2) remove the reference to ''C36.5'' and add ''B36.5'' in its place, remove the reference to ''C36.7'' and add ''B36.7'' in its place; remove the reference to ''C36.9'' and add ''B36.8'' in its place; and remove the reference to ''appendix C'' in both places it appears and add ''appendix B'' in its place;

d. In paragraph (c)(1) remove the reference to ''C36.5(b)'' and add ''B36.6'' in its place; and remove the reference to ''appendix C'' and add ''appendix B'' in its place;

e. In paragraph (c)(2)(ii) remove the words ''takeoff and sideline'' and add the words ''flyover and lateral'' in its place;

f. In paragraph (d)(1) introductory text remove the word ''turbojet'' and add the word ''jet'' in its place;

g. In paragraph (d)(1)(ii) remove the reference to ''C36.5(b)'' and add ''B36.6'' in its place; and remove the reference to ''appendix C'' and add ''appendix B'' in its place;

h. In paragraph (d)(1)(iii) remove the words ''takeoff and sideline'' and add the words ''flyover and lateral'' in its place;

i. In paragraph (d)(2) introductory text remove the word ''turbojet'' in both places that it appears and add the word ''jet'' in its place.

j. In paragraph (d)(2)(ii) remove the words ''takeoff and sideline'' and add the words ''flyover and lateral'' in its place.

## Subpart B—Transport Category Large Airplanes and Jet Airplanes

9. Revise the heading of Subpart B to read as set forth above.

10. Revise section 36.101 to read as follows:

**§ 36.101 Noise measurement and evaluation.**

For transport category large airplanes and jet airplanes, the noise generated by the airplane must be measured and evaluated under appendix A of this part or under an approved equivalent procedure.

11. Revise section 36.103 to read as follows:

**§ 36.103 Noise Limits.**

(a) For subsonic transport category large airplanes and subsonic jet airplanes compliance with this section must be shown with noise levels measured and evaluated as prescribed in appendix A of this part, and demonstrated at the measuring points, and in accordance with the test procedures under section B36.8 (or an approved equivalent procedure), stated under appendix B of this part.

(b) Type certification applications for subsonic transport category large airplanes and all subsonic jet airplanes must show that the noise levels of the airplane are no greater than the Stage 3 noise limits stated in section B36.5(c) of appendix B of this part.

**36.201 (Subpart C) [Removed]**

12. Remove and reserve subpart C, consisting of section 36.201.

**§ 36.301 [Amended]**

13. In paragraph (a) of section 36.301 remove the reference to ''appendix C'' and add ''appendix B'' in its place.

**§ 36.1581 [Amended]**

14. Amend § 36.1581 (a)(1) and (d) by removing the words ''turbojet powered'' and adding the word ''jet'' in its place; in paragraph (a)(1) remove the reference to ''appendix C'' and add ''appendix B'' in its place; and in paragraph (a)(1) remove the words ''takeoff, sideline'' and add the words ''flyover, lateral'' in its place.

15. Revise appendix A of part 36 to read as follows:

## Appendix A to Part 36—Aircraft Noise Measurement and Evaluation Under § 36.101

Sec.

A36.1 Introduction.
A36.2 Noise certification test and measurement conditions.
A36.3 Measurement of aircraft noise received on the ground.
A36.4 Calculations of effective perceived noise level from measured data.
A36.5 Reporting of data to the FAA.
A36.6 Nomenclature: symbols and units.
A36.7 Sound attenuation in air.
A36.8 [Reserved]
A36.9 Adjustment of airplane flight test results.

*Section A36.1 Introduction*

A36.1.1 This appendix prescribes the conditions under which airplane noise certification tests must be conducted and

states the measurement procedures that must be used to measure airplane noise. The procedures that must be used to determine the noise evaluation quantity designated as effective perceived noise level, EPNL, under §§ 36.101 and 36.803 are also stated.

A36.1.2 The instructions and procedures given are intended to ensure uniformity during compliance tests and to permit comparison between tests of various types of airplanes conducted in various geographical locations.

A36.1.3 A complete list of symbols and units, the mathematical formulation of perceived noisiness, a procedure for determining atmospheric attenuation of sound, and detailed procedures for correcting noise levels from non-reference to reference conditions are included in this appendix.

*Section A36.2 Noise Certification Test and Measurement Conditions*

A36.2.1 *General.*

A36.2.1.1 This section prescribes the conditions under which noise certification must be conducted and the measurement procedures that must be used.

**Note:** Many noise certifications involve only minor changes to the airplane type design. The resulting changes in noise can often be established reliably without resorting to a complete test as outlined in this appendix. For this reason, the FAA permits the use of approved equivalent procedures. There are also equivalent procedures that may be used in full certification tests, in the interest of reducing costs and providing reliable results. Guidance material on the use of equivalent procedures in the noise certification of subsonic jet and propeller-driven large airplanes is provided in the current advisory circular for this part.

A36.2.2 *Test environment.*

A36.2.2.1 Locations for measuring noise from an airplane in flight must be surrounded by relatively flat terrain having no excessive sound absorption characteristics such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas. No obstructions that significantly influence the sound field from the airplane must exist within a conical space above the point on the ground vertically below the microphone, the cone being defined by an axis normal to the ground and by a half-angle 80° from this axis.

**Note:** Those people carrying out the measurements could themselves constitute such obstruction.

A36.2.2.2 The tests must be carried out under the following atmospheric conditions.

(a) No precipitation;

(b) Ambient air temperature not above 95°F (35°C) and not below 14°F (−10°C), and relative humidity not above 95% and not below 20% over the whole noise path between a point 33 ft (10 m) above the ground and the airplane;

**Note:** Care should be taken to ensure that the noise measuring, airplane flight path tracking, and meteorological instrumentation are also operated within their specific environmental limitations.

(c) Relative humidity and ambient temperature over the whole noise path between a point 33 ft (10 m) above the ground and the airplane such that the sound attenuation in the one-third octave band centered on 8 kHz will not be more than 12 dB/100 m unless:

(1) The dew point and dry bulb temperatures are measured with a device which is accurate to ±0.9°F (±0.5°C) and used to obtain relative humidity; in addition layered sections of the atmosphere are used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; or

(2) The peak noy values at the time of PNLT, after adjustment to reference conditions, occur at frequencies less than or equal to 400 Hz.;

(d) If the atmospheric absorption coefficients vary over the PNLTM sound propagation path by more than ±1.6 dB/1000 ft (±0.5 dB/100m) in the 3150Hz one-third octave band from the value of the absorption coefficient derived from the meteorological measurement obtained at 33 ft (10 m) above the surface, ''layered'' sections of the atmosphere must be used as described in section A36.2.2.3 to compute equivalent weighted sound attenuations in each one-third octave band; the FAA will determine whether a sufficient number of layered sections have been used. For each measurement, where multiple layering is not required, equivalent sound attenuations in each one-third octave band must be determined by averaging the atmospheric absorption coefficients for each such band at 33 ft (10 m) above ground level, and at the flight level of the airplane at the time of PNLTM, for each measurement;

(e) Average wind velocity 33 ft (10 m) above ground may not exceed 12 knots and the crosswind velocity for the airplane may not exceed 7 knots. The average wind velocity must be determined using a 30-second averaging period spanning the 10 dB-down time interval. Maximum wind velocity 33 ft (10 m) above ground is not to exceed 15 knots and the crosswind velocity is not to exceed 10 knots during the 10 dB-down time interval;

(f) No anomalous meteorological or wind conditions that would significantly affect the measured noise levels when the noise is recorded at the measuring points specified by the FAA; and

(g) Meteorological measurements must be obtained within 30 minutes of each noise test measurement; meteorological data must be interpolated to actual times of each noise measurement.

A36.2.2.3 When a multiple layering calculation is required by section A36.2.2.2(c) or A36.2.2.2(d) the atmosphere between the airplane and 33 ft (10 m) above the ground must be divided into layers of equal depth. The depth of the layers must be set to not more than the depth of the narrowest layer across which the variation in the atmospheric absorption coefficient of the 3150 Hz one-third octave band is not greater than ±1.6 dB/1000 ft (±0.5 dB/100m), with a minimum layer depth of 100 ft (30 m). This requirement must be met for the propagation path at PNLTM. The mean of the values of the atmospheric absorption coefficients at the top and bottom of each layer may be used to characterize the absorption properties of each layer.

A36.2.2.4 The airport control tower or another facility must be aproved by the FAA for use as the central location at which measurements of atmospheric parameters are representative of those conditions existing over the geographical area in which noise measurements are made.

A36.2.3 *Flight path measurement.*

A36.2.3.1 The airplane height and lateral position relative to the flight track must be determined by a method independent of normal flight instrumentation such as radar tracking, theodolite triangulation, or photographic scaling techniques, to be approved by the FAA.

A36.2.3.2 The airplane position along the flight path must be related to the noise recorded at the noise measurement locations by means of synchronizing signals over a distance sufficient to assure adequate data during the period that the noise is within 10 dB of the maximum value of PNLT.

A36.2.3.3 Position and performance data required to make the adjustments referred to in section A36.9 of this appendix must be automatically recorded at an approved sampling rate. Measuring equipment must be approved by the FAA.

*Section A36.3 Measurement of Airplane Noise Received on the Ground*

A36.3.1 *Definitions.*

For the purposes of section A36.3 the following definitions apply:

A36.3.1.1 *Measurement system* means the combination of instruments used for the measurement of sound pressure levels, including a sound calibrator, windscreen, microphone system, signal recording and conditioning devices, and one-third octave band analysis system.

**Note:** Practical installations may include a number of microphone systems, the outputs from which are recorded simultaneously by a multi-channel recording/analysis device via signal conditioners, as appropriate. For the purpose of this section, each complete measurement channel is considered to be a measurement system to which the requirements apply accordingly.

A36.3.1.2 *Microphone system* means the components of the measurement system which produce an electrical output signal in response to a sound pressure input signal, and which generally include a microphone, a preamplifier, extension cables, and other devices as necessary.

A36.3.1.3 *Sound incidence angle* means in degrees, an angle between the principal axis of the microphone, as defined in IEC 61094–3 and IEC 61094–4, as amended and a line from the sound source to the center of the diaphragm of the microphone.

**Note:** When the sound incidence angle is 0°, the sound is said to be received at the microphone at ''normal (perpendicular) incidence;'' when the sound incidence angle is 90°, the sound is said to be received at ''grazing incidence.''

A36.3.1.4 *Reference direction* means, in degrees, the direction of sound incidence specified by the manufacturer of the microphone, relative to a sound incidence angle of 0°, for which the free-field sensitivity level of the microphone system is within specified tolerance limits.

A36.3.1.5 *Free-field sensitivity of a microphone system* means, in volts per Pascal, for a sinusoidal plane progressive sound wave of specified frequency, at a specified sound incidence angle, the quotient of the root means square voltage at the output of a microphone system and the root mean square sound pressure that would exist at the position of the microphone in its absence.

A36.3.1.6 *Free-field sensitivity level of a microphone system* means, in decibels, twenty times the logarithm to the base ten of the ratio of the free-field sensitivity of a microphone system and the reference sensitivity of one volt per Pascal.

**Note:** The free-field sensitivity level of a microphone system may be determined by subtracting the sound pressure level (in decibels re 20 μPa) of the sound incident on the microphone from the voltage level (in decibels re 1 V) at the output of the microphone system, and adding 93.98 dB to the result.

A36.3.1.7 *Time-average band sound pressure level* means in decibels, ten times the logarithm to the base ten, of the ratio of the time mean square of the instantaneous sound pressure during a stated time interval and in a specified one-third octave band, to the square of the reference sound pressure of 20 μPa.

A36.3.1.8 *Level range* means, in decibels, an operating range determined by the setting of the controls that are provided in a measurement system for the recording and one-third octave band analysis of a sound pressure signal. The upper boundary associated with any particular level range must be rounded to the nearest decibel.

A36.3.1.9 *Calibration sound pressure level* means, in decibels, the sound pressure level produced, under reference environmental conditions, in the cavity of the coupler of the sound calibrator that is used to determine the overall acoustical sensitivity of a measurement system.

A36.3.1.10 *Reference level range* means, in decibels, the level range for determining the acoustical sensitivity of the measurement system and containing the calibration sound pressure level.

A36.3.1.11 *Calibration check frequency* means, in hertz, the nominal frequency of the sinusoidal sound pressure signal produced by the sound calibrator.

A36.3.1.12 *Level difference* means, in decibels, for any nominal one-third octave midband frequency, the output signal level measured on any level range minus the level of the corresponding electrical input signal.

A36.3.1.13 *Reference level difference* means, in decibels, for a stated frequency, the level difference measured on a level range for an electrical input signal corresponding to the calibration sound pressure level, adjusted as appropriate, for the level range.

A36.3.1.14 *Level non-linearity* means, in decibels, the level difference measured on any level range, at a stated one-third octave nominal midband frequency, minus the corresponding reference level difference, all input and output signals being relative to the same reference quantity.

A36.3.1.15 *Linear operating range* means, in decibels, for a stated level range and frequency, the range of levels of steady sinusoidal electrical signals applied to the input of the entire measurement system, exclusive of the microphone but including the microphone preamplifier and any other signal-conditioning elements that are considered to be part of the microphone system, extending from a lower to an upper boundary, over which the level non-linearity is within specified tolerance limits.

**Note:** Microphone extension cables as configured in the field need not be included for the linear operating range determination.

A36.3.1.16 *Windscreen insertion loss* means, in decibels, at a stated nominal one-third octave midband frequency, and for a stated sound incidence angel on the inserted microphone, the indicated sound pressure level without the windscreen installed around the microphone minus the sound pressure level with the windscreen installed.

A36.3.2 *Reference environmental conditions.*

A36.3.2.1 The reference environmental conditions for specifying the performance of a measurement system are:

(a) Air temperature 73.4°F (23°C);

(b) Static air pressure 101.325 kPa; and

(c) Relative humidity 50%.

A36.3.3. *General.*

**Note:** Measurements of aircraft noise that are made using instruments that conform to the specifications of this section will yield one-third octave band sound pressure levels as a function of time. These one-third octave band levels are to be used for the calculation of effective perceived noise level as described in section A36.4.

A36.3.3.1 The measurement system must consist of equipment approved by the FAA and equivalent to the following:

(a) A windscreen (See A36.3.4.);

(b) A microphone system (See A36.3.5):

(c) A recording and reproducing system to store the measured aircraft noise signals for subsequent analysis (see A36.3.6);

(d) A one-third octave band analysis system (see A36.3.7); and

(e) Calibration systems to maintain the acoustical sensitivity of the above systems within specified tolerance limits (see A36.3.8).

A36.3.3.2. For any component of the measurement system that converts an analog signal to digital form, such conversion must be performed so that the levels of any possible aliases or artifacts of the digitization process will be less than the upper boundary of the linear operating range by at least 50 dB at any frequency less than 12.5 kHz. The sampling rate must be at least 28 kHz. An anti-aliasing filter must be included before the digitization process.

A36.3.4 *Windscreen.*

A36.3.4.1 In the absence of wind and for sinusoidal sounds at grazing incidence, insertion loss caused by the windscreen of a stated type installed around the microphone must not exceed ±1.5 dB at nominal one-third octave midband frequencies from 50 Hz to 10 kHz inclusive.

A36.3.5 *Microphone system.*

A36.3.5.1 The microphone system must meet the specifications in sections A36.3.5.2 to A36.3.5.4. Various microphone systems may be approved by the FAA on the basic of demonstrated equivalent overall electroacoustical performance. Where two or more microphone systems of the same type are used, demonstration that at least one system conforms to the specifications in full is sufficient to demonstrate conformance.

**Note:** An applicant must still calibrate and check each system as required in section A36.3.9.

A36.3.5.2 The microphone must be mounted with the sensing element 4 ft (1.2 m) above the local ground surface and must be oriented for grazing incidence, i.e., with the sensing element substantially in the plane defined by the predicted reference flight path of the aircraft and the measuring station. The microphone mounting arrangement must minimize the interference of the supports with the sound to be measured. Figure A36–1 illustrates sound incidence angles on a microphone.

A36.3.5.3 The free-field sensitivity level of the microphone and preamplifier in the reference direction, at frequencies over at least the range of one-third-octave nominal midband frequencies from 50 Hz to 5 kHz inclusive, must be within ±1.0 dB of that at the calibration check frequency, and within ±2.0 dB for nominal midband frequencies of 6.3 kHz, 8 kHz and 10 kHz.

A36.3.5.4 For sinusoidal sound waves at each one-third octave nominal midband frequency over the range from 50 Hz to 10 kHz inclusive, the free-field sensitivity levels of the microphone system at sound incidence angles of 30°, 60°, 90°, 120° and 150°, must not differ from the free-field sensitivity level at a sound incidence angle of 0° (''normal incidence'') by more than the values shown in Table A36–1. The free-field sensitivity level differences at sound incidence angles between any two adjacent sound incidence angles in Table A36–1 must not exceed the tolerance limit for the greater angle.

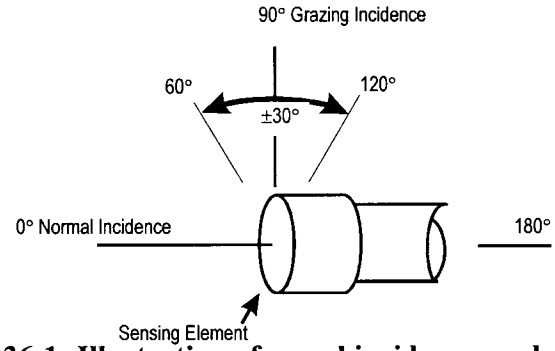



**Figure A36-1: Illustration of sound incidence angles on a microphone**

| Nominal midband frequency kHz | Maximum difference between the free-field sensitivity level of a microphone system at normal incidence and the free-field sensitivity level at specified sound incidence angles dB Sound Incidence angle degrees | | | | |
|---|---|---|---|---|---|
| | 30 | 60 | 90 | 120 | 150 |
| 0.05 to 1.6 | 0.5 | 0.5 | 1.0 | 1.0 | 1.0 |
| 2.0 | 0.5 | 0.5 | 1.0 | 1.0 | 1.0 |
| 2.5 | 0.5 | 0.5 | 1.0 | 1.5 | 1.5 |
| 3.15 | 0.5 | 1.0 | 1.5 | 2.0 | 2.0 |
| 4.0 | 0.5 | 1.0 | 2.0 | 2.5 | 2.5 |
| 5.0 | 0.5 | 1.5 | 2.5 | 3.0 | 3.0 |
| 6.3 | 1.0 | 2.0 | 3.0 | 4.0 | 4.0 |
| 8.0 | 1.5 | 2.5 | 4.0 | 5.5 | 5.5 |
| 10.0 | 2.0 | 3.5 | 5.5 | 6.5 | 7.5 |

**Table A36-1 Microphone Directional Response Requirements**

A36.3.6 *Recording and reproducing systems.*

A36.3.6.1 A recording and reproducing system, such as a digital or analog magnetic tape recorder, a computer-based system or other permanent data storage device, must be used to store sound pressure signals for subsequent analysis. The sound produced by the aircraft must be recorded in such away that a record of the complete acoustical signal is retained. The recording and reproducing systems must meet the specifications in sections A36.3.6.2 to A36.3.6.9 at the recording speeds and/or data sampling rates used for the noise certification tests. Conformance must be demonstrated for the frequency bandwidths and recording channels selected for the tests.

A36.3.6.2 The recording and reproducing systems must be calibrated as described in section A36.3.9.

(a) For aircraft noise signals for which the high frequency spectral levels decrease rapidly with increasing frequency, appropriate pre-emphasis and complementary de-emphasis networks may be included in the measurement system. If pre-emphasis is included, over the range of nominal one-third octave midband frequencies from 800 Hz to 10 kHz inclusive, the electrical gain provided by the pre-emphasis network must not exceed 20 dB relative to the gain at 800 Hz.

A36.3.6.3 For steady sinusoidal electrical signals applied to the input of the entire measurement system including all parts of the microphone system except the microphone at a selected signal level within 5 dB of that corresponding to the calibration sound pressure level on the reference level range, the time-average signal level indicated by the readout device at any one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be within ±1.5 dB of that at the calibration check frequency. The Frequency response of a measurement system, which includes components that convert analog signals to digital form, must be within ±0.3 dB of the response at 10 kHz over the frequency range from 10 kHz to 11.2 kHz.

**Note:** Microphone extension cables as configured in the field need not be included for the frequency response determination. This allowance does not eliminate the requirement of including microphone extension cables when performing the pink noise recording in section A36.3.9.5.

A36.3.6.4 For analog tape recordings, the amplitude fluctuations of a 1 kHz sinusoidal signal recorded within 5 dB of the level corresponding to the calibration sound pressure level must not vary by more than ±0.5 dB throughout any reel of the type of magnetic tape used. Conformance to this requirement must be demonstrated using a device that has time-averaging properties equivalent to those of the spectrum analyzer.

A36.3.6.5 For all appropriate level ranges and for steady sinusoidal electrical signals applied to the input of the measurement system, including all parts of the microphone

system except the microphone, at one-third-octave nominal midband frequencies of 50 Hz, 1 kHz and 10 kHz, and the calibration check frequency, if it is not one of these frequencies, the level non-linearity must not exceed ±0.5 dB for a linear operating range of at least 50 dB below the upper boundary of the level range.

**Note 1:** Level linearity of measurement system components may be tested according to the methods described in IEC 61265 as amended.

**Note 2:** Microphone extension cables configured in the field need not be included for the level linearity determination.

A36.3.6.6 On the calibration sound pressure level must be at least 5 dB, but no more than 30 dB less than the upper boundary of the level range.

A36.3.6.7 The linear operating ranges on adjacent level ranges must overlap by at least 50 dB minus the change in attenuation introduced by a change in the level range controls.

**Note:** It is possible for a measurement system to have level range controls that permit attenuation changes of either 10 dB or 1 dB, for example. With 10 dB steps, the minimum overlap required would be 40 dB, and with 1 dB steps the minimum overlap would be 49 dB.

A36.3.6.8 An overload indicator must be included in the recording and reproducing systems so that an overload indication will occur during an overload condition on any relevant level range.

A36.3.6.9 Attenuators included in the measurement system to permit range changes must operate in known intervals of decibel steps.

A36.3.6.7 Analysis systems.

A36.3.7.1 The analysis system must conform to the specifications in sections A36.3.7.2 to A36.3.7.7 for the frequency bandwidths, channel configurations and gain settings used for analysis.

A36.3.7.2 The output of the analysis system must consist of one-third octave band sound pressure levels as a function of time, obtained by processing the noise signals (preferably recorded) through an analysis system with the following characteristics:

(a) A set of 24 one-third octave band filters, or their equivalent, having nominal midband frequencies from 50 Hz to 10 kHz inclusive;

(b) Response and averaging properties in which, in principle, the output from any one-third octave filter band is squared, averaged and displayed or stored as time-averaged sound pressure levels;

(c) The interval between successive sound pressure level samples must be 500 ms ±5 milliseconds(ms) for spectral analysis with or without slow time-weighting, as defined in section A36.3.7.4;

(d) For those analysis systems that do not process the sound pressure signals during the period of time required for readout and/or resetting of the analyzer, the loss of data must not exceed a duration of 5 ms; and

(e) The analysis system must operate in real time from 50 Hz through at least 12 kHz inclusive. This requirement applies to all operating channels of a multi-channel spectral analysis system.

A36.3.7.3 The minimum standard for the one-third octave band analysis system is the class 2 electrical performance requirements of IEC 61260 as amended, over the range of one-third octave nominal midband frequencies from 50 Hz through 10 kHz inclusive.

**Note:** IEC 61260 specifies procedures for testing of one-third octave band analysis systems for relative attenuation, anti-aliasing filters, real time operation, level linearity, and filter integrated response (effective bandwidth).

A36.3.7.4 When slow time averaging is performed in the analyzer, the response of the one-third octave band analysis system to a sudden onset or interruption of a constant sinusoidal signal at the respective one-third octave nominal midband frequency, must be measured at sampling instants 0.5, 1, 1.5 and 2 seconds(s) after the onset and 0.5 and is after interruption. The rising response must be −4 ±1 dB at 0.5s, −1.75 ±0.75 dB at 1s, −1 ±0.5 dB at 1.5s and −0.5 ±0.5 dB at 2s relative to the steady-state level. The failing response must be such that the sum of the output signal levels, relative to the initial steady-state level, and the corresponding rising response reading is −6.5 ±1 dB, at both 0.5 and 1s. At subsequent times the sum of the rising and failing responses must be −7.5 dB or less. This equates to an exponential averaging process (slow time-weighting) with a nominal 1s time constant (*i.e.,* 2s averaging time).

A36.3.7.5 When the one-third octave band sound pressure levels are determined from the output of the analyzer without slow time-weighting, slow time-weighting must be simulated in the subsequent processing. Simulated slow time-weighted sound pressure levels can be obtained using a continuous exponential averaging process by the following equation:

$$L_s\,(i,k) = 10 \log\,[(0.60653)\,10^{0.1\,Ls[i,\,(k-1)]} + (0.39347)\,10^{0.1\,L\,(i,\,k)}]$$

where $L_s(i,k)$ is the simulated slow time-weighted sound pressure level and $L(i,k)$ is the as-measured 0.5s time average sound press level determined from the output of the analyzer for the k-th instant of time and i-th one-third octave band. For k=1, the slow time-weighted sound pressure $L_s[i, (k-1=0)]$ on the right hand side should be set to 0 dB. An approximation of the continuous exponential averaging is represented by the following equation for a four sample averaging process for $k \geq 4$:

$$L_s\,(i,k) = 10 \log\,[(0.13)\,10^{0.1L[i,(k-3)]} + (0.21)\,10^{0.1\,L[i,\,(k-2)]} + (0.27)\,10^{0.1\,L[i,\,(k-1)]} + (0.39)\,10^{0.1\,L[i,\,k]}]$$

where $L_s\,(i, k)$ is the simulated slow time-weighted sound pressure level and $L\,(i, k)$ is the as measured 0.5s time average sound pressure level determined from the output of the analyzer for the k-th instant of time and the i-th one-third octave band.

The sum of the weighting factors is 1.0 in the two equations. Sound pressure levels calculated by means of either equation are valid for the sixth and subsequent 0.5s data samples, or for times greater than 2.5s after initiation of data analysis.

**Note:** The coefficients in the two equations were calculated for use in determining equivalent slow time-weighted sound pressure levels from samples of 0.5s time average sound pressure levels. The equations do not work with data samples where the averaging time differs from 0.5s.

A36.3.76 The instant in time by which a slow time-weighted sound pressure level is characterized must be 0.75s earlier than the actual readout time.

**Note:** The definition of this instant in time is needed to correlate the recorded noise with the aircraft position when the noise was emitted and takes into account the averaging period of the slow time-weighting. For each 0.5 second data record this instant in time may also be identified as 1.25 seconds after the start of the associated 2 second averaging period.

A36.3.7.7 The resolution of the sound pressure levels, both displayed and stored, must be 0.1 dB or finer.

A36.3.8 *Calibration systems.*

A36.3.8.1 The acoustical sensitivity of the measurement system must be determined using a sound calibrator generating a known sound pressure level at a known frequency. The minimum standard for the sound calibrator is the class 1L requirements of IEC 60942 as amended.

A36.3.9 *Calibration and checking of system.*

A36.3.9.1 Calibration and checking of the measurement system and its constituent components must be carried out to the satisfaction of the FAA by the methods specified in sections A36.3.9.2 through A36.3.9.10. The calibration adjustments, including those for environmental effects on sound calibrator output level, must be reported to the FAA and applied to the measured one-third-octave sound pressure levels determined from the output of the analyzer. Data collected during an overload indication are invalid and may not be used. If the overload condition occurred during recording, the associated test data are invalid, whereas if the overload occurred during analysis, the analysis must be repeated with reduced sensitivity to eliminate the overload.

A36.3.9.2 The free-field frequency response of the microphone system may be determined by use of an electrostatic actuator in combination with manufacturer's data or by tests in an anechoic free-field facility. The correction for frequency response must be determined within 90 days of each test series. The correction for non-uniform frequency response of the microphone system must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.3 When the angles of incidence of sound emitted from the aircraft are within ±30° of razing incidence at the microphone (see Figure A36–1), a single set of free-field corrections based on grazing incidence is considered sufficient for correction of directional response effects. For other cases, the angle of incidence for each 0.5 second sample must be determined and applied for the correction of incidence effects.

A36.3.9.4 For analog magnetic tape recorders, each reel of magnetic tape must carry at least 30 seconds of pink random or pseudo-random noise at its beginning and

end. Data obtained from analog tape-recorded signals will be accepted as reliable only if level differences in the 10 kHz one-third-octave-band are not more than 0.75 dB for the signals recorded at the beginning and end.

A36.3.9.5 The frequency response of the entire measurement system while deployed in the field during the test series, exclusive of the microphone, must be determined at a level within 5 dB of the level corresponding to the calibration sound pressure level on the level range used during the tests for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive, utilizing pink random or pseudo-random noise. Within six months of each test series the output of the noise generator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or to an equivalent national standards laboratory as determined by the FAA. Changes in the relative output from the previous calibration at each one-third octave band may not exceed 0.2 dB. The correction for frequency response must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

A36.3.9.6 The performance of switched attenuators in the equipment used during noise certification measurements and calibration must be checked within six months of each test series to ensure that the maximum error does not exceed 0.1 dB.

A36.3.9.7 The sound pressure level produced in the cavity of the coupler of the sound calibrator must be calculated for the test environmental conditions using the manufacturer's supplied information on the influence of atmospheric air pressure and temperature. This sound pressure level is used to establish the acoustical sensitivity of the measurement system. Within six months of each test series the output of the sound calibrator must be determined by a method traceable to the U.S. National Institute of Standards and Technology or to an equivalent national standards laboratory as determined by the FAA. Changes in output from the previous calibration must not exceed 0.2 dB.

A36.3.9.8 Sufficient sound pressure level calibrations must be made during each test day to ensure that the acoustical sensitivity of the measurement system is know at the prevailing environmental conditions corresponding with each test series. The differences between the acoustical sensitivity levels recorded immediately before and immediately after each test series on each day may not exceed 0.5 dB. The 0.5 dB limit applies after any atmospheric pressure corrections have been determined for the calibrator output level. The arithmetic mean of the before and after measurements must be used to represent the acoustical sensitivity level of the measurement system for that test series. The calibration corrections must be reported to the FAA and applied to the measured one-third octave band sound pressure levels determined from the output of the analyzer.

A36.3.9.9 Each recording medium, such as a reel, cartridge, cassette, or diskette, must carry a sound pressure level calibration of at least 10 seconds duration at its beginning and end.

A36.3.9.10 The free-field insertion loss of the windscreen for each one-third octave nominal midband frequency from 50 Hz to 10 kHz inclusive must be determined with sinusoidal sound signals at the incidence angles determined to be applicable for correction of directional response effects per section A36.3.9.3. The interval between angles tested must not exceed 30 degrees. For a windscreen that is undamaged and uncontaminated, the insertion loss may be taken from manufacturer's data. Alternatively, within six months of each test series the insertion loss of the windscreen may be determined by a method traceable to the U.S. National Institute of Standards and Technology or an equivalent national standards laboratory as determined by the FAA. Changes in the insertion loss from the previous calibration at each one-third-octave frequency band must note exceed 0.4 dB. The correction for the free-field insertion loss of the windscreen must be reported to the FAA and applied to the measured one-third octave sound pressure levels determined from the output of the analyzer.

*A36.3.10 Adjustments for ambient noise.*

A36.3.10.1 Ambient noise, including both a acoustical background and electrical noise of the measurement system, must be recorded for at least 10 seconds at the measurement points with the system gain set at the levels used for the aircraft noise measurements. Ambient noise must be representative of the acoustical background that exists during the flyover test run. The recorded aircraft noise data is acceptable only if the ambient noise levels, when analyzed in the same way, and quoted in PNL (see A36.4.1.3 (a)), are at least 20 dB below the maximum PNL of the aircraft.

A36.3.10.2 Aircraft sound pressure levels within the 10 dB-down points (see A36.4.5.1) must exceed the mean ambient noise levels determined in section A36.3.10.1 by at least 3 dB in each one-third octave band, or must be adjusted using a method approved by the FAA; one method is described in the current advisory circular for this part.

**Section A36.4 Calculation of Effective Perceived Noise Level From Measured Data**

A36.4.1 *General.*

A36.4.1.1 The basic element for noise certification criteria is the noise evaluation measure known as effective perceived noise level, EPNL, in units of EPNdB, which is a single number evaluator of the subjective effects of airplane noise on human beings. EPNL consists of instantaneous perceived noise level, PNL, corrected for spectral irregularities, and for duration. The spectral irregularity correction, called ''tone correction factor'', is made at each time increment for only the maximum tone.

A36.4.1.2 Three basic physical properties of sound pressure must be measured: level, frequency distribution, and time variation. To determine EPNL, the instantaneous sound pressure level in each of the 24 one-third octave bands is required for each 0.5 second increment of time during the airplane noise measurement.

A36.4.1.3 The calculation procedure that uses physical measurements of noise to derive the EPNL evaluation measure of subjective response consists of the following five steps:

(a) The 24 one-third octave bands of sound pressure level are converted to perceived noisiness (noy) using the method described in section A36.4.2.1 (a). The noy values are combined and then converted to instantaneous perceived noise levels, PNL(k).

(b) A tone correction factor C(k) is calculated for each spectrum to account for the subjective response to the presence of spectral irregularities.

(c) The tone correction factor is added to the perceived noise level to obtain tone-corrected perceived noise levels PNLT(k), at each one-half second increment:

PNLT(k) = PNL(k) + C(k)

The instantaneous values of tone-corrected perceived noise level are derived and the maximum value, PNLTM, is determined.

(d) A duration correction factor, D, is computed by integration under the curve of tone-corrected perceived noise level versus time.

(e) Effective perceived noise level, EPNL, is determined by the algebraic sum of the maximum tone-corrected perceived noise level and the duration correction factor:

EPNL = PNLTM + D

A36.4.2 *Perceived noise level.*

A36.4.2.1 Instantaneous perceived noise levels, PNL(k), must be calculated from instantaneous one-third octave band sound pressure levels, SPL(i, k) as follows:

(a) Step 1: For each one-third octave band from 50 through 10,000 Hz, convert SPL(i, k) to perceived noisiness n(i, k), by using the mathematical formulation of the noy table given in section A36.4.7.

(b) Step 2: Combine the perceived noisiness values, n(i, k), determined in step 1 by using the following formula:

$$N(k) = n(k) + 0.15\left\{\left[\sum_{i=1}^{24} n(i,k)\right] - n(k)\right\}$$

$$= 0.85\, n(k) + 0.15\sum_{i=1}^{24} n(i,k)$$

where n(k) is the largest of the 24 values of n(i, k) and N(k) is the total perceived noisiness.

(c) Step 3: Convert the total perceived noisiness, N(k), determined in Step 2 into perceived noise level, PNL(k), using the following formula:

$$PNL(k) = 40.0 + \frac{10}{\log 2}\log N(k)$$

**Note:** PNL(k) is plotted in the current advisory circular for this part.

A36.4.3 *Correction for spectral irregularities.*

A36.4.3.1 Noise having pronounced spectral irregularities (for example, the maximum discrete frequency components or tones) must be adjusted by the correction factor C(k) calculated as follows:

(a) Step 1: After applying the corrections specified under section A36.3.9, start with the sound pressure level in the 80 Hz one-third octave band (band number 3), calculate

the changes in sound pressure level (or ''slopes'') in the remainder of the one-third octave bands as follows:

$s(3,k)$=no value

$s(4,k)=SPL(4,k)-SPL(3,k)$

•

•

$s(i,k)=SPL(i,k)-SPL(i-1,k)$

•

•

$s(24,k)=SPL(24,k)-SPL(23,k)$

(b) Step 2: Encircle the value of the slope, s(i, k), where the absolute value of the change in slope is greater than five; that is where:

$|\Delta(i,k)|=|s(i,k)-s(i-1,k)|>5$

(c) Step 3:

(1) If the encircled value of the slope s(i, k) is positive and algebraically greater than the slope s(i − 1, k) encircle SPL(i, k).

(2) If the encircled value of the slope s(i, k) is zero or negative and the slope s(i − 1, k) is positive, encircle SPL(i − 1, k).

(3) For all other cases, no sound pressure level value is to be encircled.

(d) Step 4: Compute new adjusted sound pressure levels SPL′(i, k) as follows:

(1) For non-encircled sound pressure levels, set the new sound pressure levels equal to the original sound pressure levels, SPL′(i, k) = SPL(i, k).

(2) For encircled sound pressure levels in bands 1 through 23 inclusive, set the new sound pressure level equal to the arithmetic average of the preceding and following sound pressure levels as shown below:

$SPL'(i,k)=\frac{1}{2}[SPL(i-1,k)+SPL(i+1,k)]$

(3) If the sound pressure level in the highest frequency band (i = 24) is encircled, set the new sound pressure level in that band equal to:

$SPL'(24,k)=SPL(23,k)+s(23,k)$

(e) Step 5: Recompute new slope s′(i, k), including one for an imaginary 25th band, as follows:

$s'(3,k)=s'(4,k)$

$s'(4,k)=SPL'(4,k)-SPL'(3,k)$

•

•

$s'(i,k)=SPL'(i,k)-SPL'(i-1,k)$

•

•

$s'(24,k)=SPL'(24,k)-SPL'(23,k)$

$s'(25,k)=s'(24,k)$

(f) Step 6: For i, from 3 through 23, compute the arithmetic average of the three adjacent slopes as follows:

$\bar{s}(i,k)=\frac{1}{3}[s'(i,k)+s'(i+1,k)+s'(i+2,k)]$

(g) Step 7: Compute final one-third octave-band sound pressure levels, SPL″ (i,k), by beginning with band number 3 and proceeding to band number 24 as follows:

$SPL''(3,k)=SPL(3,k)$

$SPL''(4,k)=SPL''(3,k)+\bar{s}(3,k)$

•

•

$SPL''(i,k)=SPL''(i-1,k)+\bar{s}(i-1,k)$

•

•

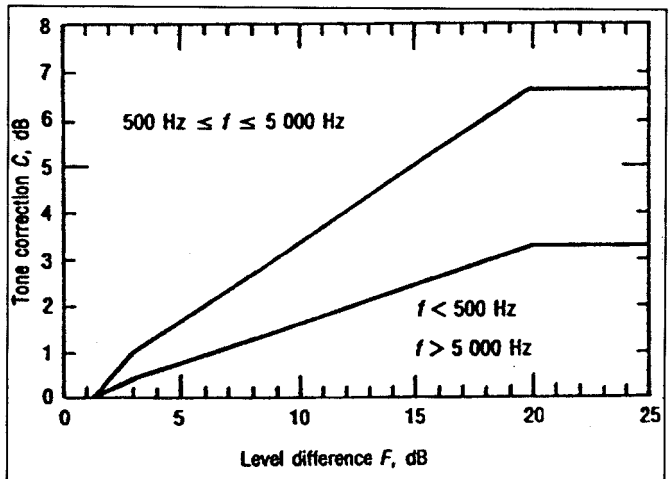
$SPL''(24,k)=SPL''(23,k)+\bar{s}(23,k)$

(h) Setp 8: Calculate the differences, F (i,k), between the original sound pressure level and the final background sound pressure level as follows:

$F(i,k)=SPL(i,k)-SPL''(i,k)$

and note only values equal to or greater than 1.5.

(i) Step 9: For each of the relevant one-third octave bands (3 through 24), determine tone correction factors from the sound pressure level differences F (i, k) and Table A36–2.




| Frequency $f$, Hz | Level difference $F$, dB | Tone correction $C$, dB |
|---|---|---|
| $50 \le f < 500$ | $1\frac{1}{2}^* \le F < 3$ | $F/3 - \frac{1}{2}$ |
| | $3 \le F < 20$ | $F/6$ |
| | $20 \le F$ | $3\frac{1}{3}$ |
| $500 \le f \le 5\,000$ | $1\frac{1}{2}^* \le F < 3$ | $2F/3 - 1$ |
| | $3 \le F < 20$ | $F/3$ |
| | $20 \le F$ | $6\frac{2}{3}$ |
| $5\,000 < f \le 10\,000$ | $1\frac{1}{2}^* \le F < 3$ | $F/3 - \frac{1}{2}$ |
| | $3 \le F < 20$ | $F/6$ |
| | $20 \le F$ | $3\frac{1}{3}$ |

* See Step 8, 4.3.1.

**Table A36-2. Tone correction factor**

(j) Step 10: Designate the largest of the tone correction factors, determined in Step 9, as C(k). (An example of the tone correction procedure is given in the current advisory circular for this part). Tone-corrected perceived noise levels PNLT(k) must be determined by adding the C(k) value to corresponding PNL(k) values, that is:

$$PNLT(k)=PNL(k)+C(k)$$

For any i-th one-third octave band, at any k-th increment of time, for which the tone correction factor is suspected to result from something other than (or in addition to) an actual tone (or any spectral irregularity other than airplane noise), an additional analysis may be made using a filter with a bandwidth narrower than one-third of an octave. If the narrow band analysis corroborates these suspicions, then a revised value for the background sound pressure level SPL″(i,k), may be determined from the narrow band analysis and used to compute a revised tone correction factor for that particular one-third octave band. Other methods of rejecting spurious tone corrections may be approved.

A36.4.3.2 The tone correction procedure will underestimate EPNL if an important tone is of a frequency such that it is recorded in two adjacent one-third octave bands. An applicant must demonstrate that either:

(a) No important tones are recorded in two adjacent one-third octave bands; or

(b) That if an important tone has occurred, the tone correction has been adjusted to the value it would have had if the tone had been recorded fully in a single one-third octave band.

A36.4.4 Maximum tone-corrected perceived noise level

A36.4.4.1 The maximum tone-corrected perceived noise level, PNLTM, must be the maximum calculated value of the tone-corrected perceived noise level PNLT(k). It must be calculated using the procedure of section A36.4.3. To obtain a satisfactory noise time history, measurements must be made at 0.5 second time intervals.

**Note 1:** Figure A36–2 is an example of a flyover noise time history where the maximum value is clearly indicated.

**Note 2:** In the absence of a tone correction factor, PNLTM would equal PNLM.

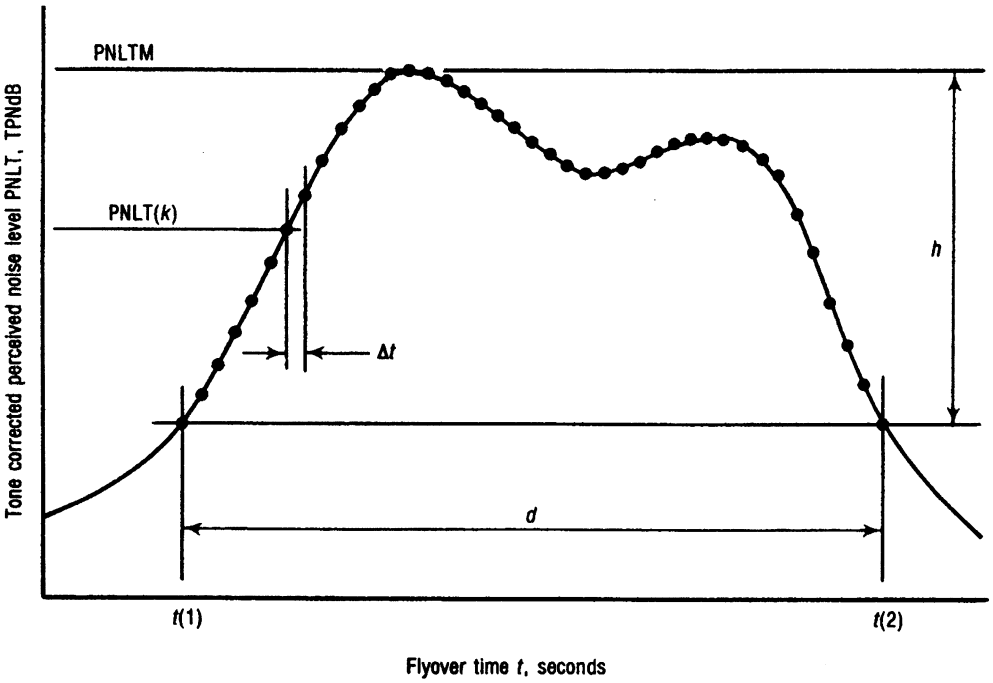



**Figure A36-2. Example of perceived noise level corrected for tones as a function of aircraft flyover time**

A36.4.4.2 After the value of PNLTM is obtained, the frequency band for the largest tone correction factor is identified for the two preceding and two succeeding 500 ms data samples. This is performed in order to identity the possibility of tone suppression at PNLTM by one-third octave band sharing of that tone. If the value of the tone correction factor C(k) for PNLTM is less than the average value of C(k) for the five consecutive time intervals, the average value of C(k) must be used to compute a new value for PNLTM.

A36.4.5 *Duration correction.*

A36.4.5.1 The duration correction factor D determined by the integration technique is defined by the expression:

$$D = 10 \log \left[ \left( \frac{1}{T} \right) \int_{t(1)}^{t(2)} \text{antilog} \frac{PNLT}{10} dt \right] - PNLTM$$

where T is a normalizing time constant, PNLTM is the maximum value of PNLT, t(1) is the first point of time after which PNLT becomes greater than PNLTM–10, and t(2) is the point of time after which PNLT remains constantly less than PNLTM–10.

A36.4.5.2 Since PNLT is calculated from measured values of sound pressure level (SPL), there is no obvious equation for PNLT as a function of time. Consequently, the equation is to be rewritten with a summation sign instead of an integral sign as follows:

$$D = 10 \log \left[ \left( \frac{1}{T} \right) \sum_{k=0}^{d/\Delta t} \Delta t . \text{antilog} \frac{PNLT(k)}{10} \right] - PNLTM$$

where Δt is the length of the equal increments of time for which PNLT(k) is calculated and d is the time interval to the nearest 0.5s during which PNLT(k) remains greater or equal to PNLTM–10.

A36.4.5.3 To obtain a satisfactory history of the perceived noise level use one of the following:

(a) Half-Second time intervals for Δt; or

(b) A shorter time interval with approved limits and constants.

A36.4.5.4 The following values for T and Δt must be used in calculating D in the equation given in section A36.4.5.2:

T = 10 s, and

Δt = 0.5s (or the approved sampling time interval).

Using these values, the equation for D becomes:

$$D = 10 \log \left[ \sum_{k=0}^{2d} \text{antilog} \frac{PNLT(k)}{10} \right] - PNLTM - 13$$

where d is the duration time defined by the points corresponding to the values PNLTM–10.

A36.4.5.5 If in using the procedures given in section A36.4.5.2, the limits of PNLTM–10 fall between the calculated PNLT(k) values (the usual case), the PNLT(k) values defining the limits of the duration interval must be chosen from the PNLT(k) values closest to PNLTM–10. For those cases with more than one peak value of PNLT(k), the applicable limits must be chosen to yield the largest possible value for the duration time.

A36.4.6 *Effective perceived noise level.*

The total subjective effect of an airplane noise event, designated effective perceived noise level, EPNL, is equal to the algebraic sum of the maximum value of the tone-corrected perceived noise level, PNLTM, and the duration correction D. That is:

EPNL = PNLTM + D

where PNLTM and D are calculated using the procedures given in sections A36.4.2, A36.4.3, A36.4.4. and A36.4.5.

A36.4.7 *Mathematical formulation of noy tables.*

A36.4.7.1 The relationship between sound pressure level (SPL) and the logarithm of perceived noisiness is illustrated in Figure A36–3 and Table A36–3.

A36.4.7.2 The bases of the mathematical formulation are:

(a) The slopes (M(b), M(c), M(d) and M(e)) of the straight lines;

(b) The intercepts (SPL(b) and SPL(c)) of the lines on the SPL axis; and

(c) The coordinates of the discontinuities, SPL(a) and log n(a); SPL(d) and log n = −1.0; and SPL(e) and log n = log (0.3).

A36.4.7.3 Calculate noy values using the following equations:

(a)

SPL ≥ SPL (a)

n = antilog {M(c)[SPL − SPL(c)]}

(b)

SPL(b) ≤ SPL < SPL(a)

n = antilog {M(b)[SPL − SPL(b)]}

(c)

SPL(e) ≤ SPL < SPL(b)

n = 0.3 antilog {M(e)[SPL − SPL(e)]}

(d)

SPL(d) ≤ SPL < SPL(e)

n = 0.1 antilog {M(d)[SPL − SPL(d)]}

A36.4.7.4 Table A36–3 lists the values of the constants necessary to calculate perceived noisiness as a function of sound pressure level.

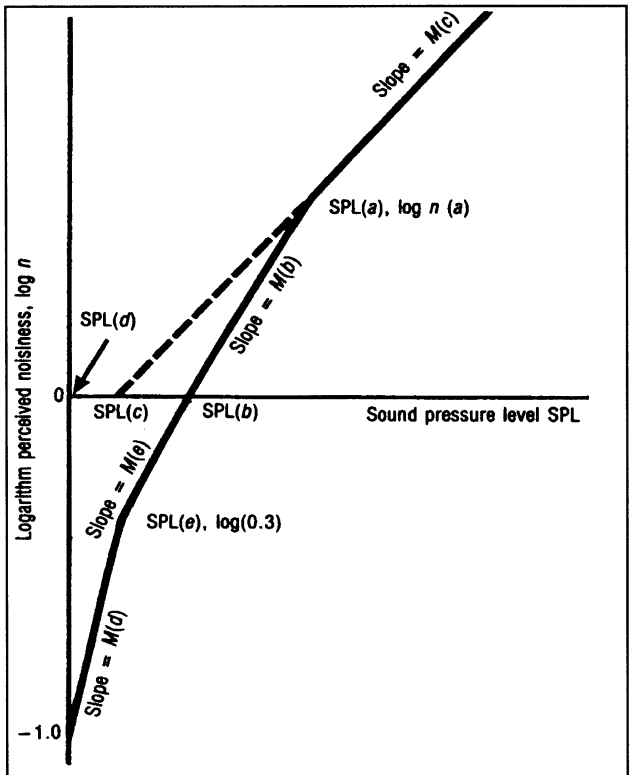



**Figure A36-3. Perceived noisiness as a function of sound pressure level**

| BAND (*i*) | *f* HZ | SPL (*a*) | SPL (*b*) | SPL (*c*) | SPL (*d*) | SPL (*e*) | *M*(*b*) | *M*(*c*) | *M*(*d*) | *M*(*e*) |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 50 | 91.0 | 64 | 52 | 49 | 55 | 0.043478 | 0.030103 | 0.079520 | 0.058098 |
| 2 | 63 | 85.9 | 60 | 51 | 44 | 51 | 0.040570 | | 0.068160 | " |
| 3 | 80 | 87.3 | 56 | 49 | 39 | 46 | 0.036831 | | " | 0.052288 |
| 4 | 100 | 79.9 | 53 | 47 | 34 | 42 | " | | 0.059640 | 0.047534 |
| 5 | 125 | 79.8 | 51 | 46 | 30 | 39 | 0.035336 | | 0.053013 | 0.043573 |
| 6 | 160 | 76.0 | 48 | 45 | 27 | 36 | 0.033333 | | | " |
| 7 | 200 | 74.0 | 46 | 43 | 24 | 33 | " | | | 0.040221 |
| 8 | 250 | 74.9 | 44 | 42 | 21 | 30 | 0.032051 | | | 0.037349 |
| 9 | 315 | 94.6 | 42 | 41 | 18 | 27 | 0.030675 | 0.030103 | | 0.034859 |
| 10 | 400 | ∞ | 40 | 40 | 16 | 25 | 0.030103 | | | |
| 11 | 500 | | 40 | 40 | 16 | 25 | | | | |
| 12 | 630 | | 40 | 40 | 16 | 25 | | | | |
| 13 | 800 | | 40 | 40 | 16 | 25 | | | | |
| 14 | 1 000 | | 40 | 40 | 16 | 25 | | | 0.053013 | |
| 15 | 1 250 | | 38 | 38 | 15 | 23 | 0.030103 | | 0.059640 | 0.034859 |
| 16 | 1 600 | | 34 | 34 | 12 | 21 | 0.029960 | | 0.053013 | 0.040221 |
| 17 | 2 000 | | 32 | 32 | 9 | 18 | | | " | 0.037349 |
| 18 | 2 500 | | 30 | 30 | 5 | 15 | | | 0.047712 | 0.034859 |
| 19 | 3 150 | | 29 | 29 | 4 | 14 | | | " | |
| 20 | 4 000 | | 29 | 29 | 5 | 14 | | | 0.053013 | |
| 21 | 5 000 | | 30 | 30 | 6 | 15 | | | " | 0.034859 |
| 22 | 6 300 | ∞ | 31 | 31 | 10 | 17 | 0.029960 | | 0.068160 | 0.037349 |
| 23 | 8 000 | 44.3 | 37 | 34 | 17 | 23 | 0.042285 | 0.029960 | 0.079520 | " |
| 24 | 10 000 | 50.7 | 41 | 37 | 21 | 29 | " | " | 0.059640 | 0.043573 |

NOT APPLICABLE

**Table A36-3. Constants for mathematically formulated noy values**

*Section A36.5 Reporting of Data to the FAA*

A36.5.1 *General.*

A36.5.1.1 Data representing physical measurements and data used to make corrections to physical measurements must be recorded in an approved permanent form and appended to the record.

A36.5.1.2 All corrections must be reported to and approved by the FAA, including corrections to measurements for equipment response deviations.

A36.5.1.3 Applicants may be required to submit estimates of the individual errors inherent in each of the operations employed in obtaining the final data.

A36.5.2 *Data reporting.*

An applicant is required to submit a noise certification compliance report that includes the following.

A36.5.2.1 The applicant must present measured and corrected sound pressure levels in one-third octave band levels that are obtained with equipment conforming to the standards described in section A36.3 of this appendix.

A36.5.2.2 The applicant must report the make and model of equipment used for measurement and analysis of all acoustic performance and meteorological data.

A36.5.2.3 The applicant must report the following atmospheric environmental data, as measured immediately before, after, or during each test at the observation points prescribed in section A36.2 of this appendix.

(a) Air temperature and relative humidity;

(b) Maximum, minimum and average wind velocities; and

(c) Atmospheric pressure.

A36.5.2.4 The applicant must report conditions of local topography, ground cover, and events that might interfere with sound recordings.

A36.5.2.5 The applicant must report the following:

(a) Type, model and serial numbers (if any) of airplane, engine(s), or propeller(s) (as applicable);

(b) Gross dimensions of airplane and location of engines;

(c) Airplane gross weight for each test run and center of gravity range for each series of test runs;

(d) Airplane configuration such as flap, airbrakes and landing gear positions for each test run;

(e) Whether auxiliary power units (APU), when fitted, are operating for each test run;

(f) Status of pneumatic engine bleeds and engine power take-offs for each test run;

(g) Indicated airspeed in knots or kilometers per hour for each test run;

(h) Engine performance data:

(1) For jet airplanes: engine performance in terms of net thrust, engine pressure ratios, jet exhaust temperatures and fan or compressor shaft rotational speeds as determined from airplane instruments and manufacturer's data for each test run;

(2) For propeller-driven airplanes: engine performance in terms of brake horsepower and residual thrust; or equivalent shaft horsepower; or engine torque and propeller rotational speed; as determined from airplane instruments and manufacturer's data for each test run;

(i) Airplane flight path and ground speed during each test run; and

(j) The applicant must report whether the airplane has any modifications or non-standard equipment likely to affect the noise characteristics of the airplane. The FAA must approve any such modifications or non-standard equipment.

A36.5.3 *Reporting of noise certification reference conditions.*

A36.5.3.1 Airplane position and performance data and the noise measurements must be corrected to the noise certification reference conditions specified in the relevant sections of appendix B of this part. The applicant must report these conditions, including reference parameters, procedures and configurations.

A36.5.4 *Validity of results.*

A36.5.4.1 Three average reference EPNL values and their 90 percent confidence limits must be produced from the test results and reported, each such value being the arithmetical average of the adjusted acoustical measurements for all valid test runs at each measurement point (flyover, lateral, or approach). If more than one acoustic measurement system is used at any single measurement location, the resulting data for each test run must be averaged as a single measurement. The calculation must be performed by:

(a) Computing the arithmetic average for each flight phase using the values from each microphone point; and

(b) Computing the overall arithmetic average for each reference condition (flyover, lateral or approach) using the values in paragraph (a) of this section and the related 90 percent confidence limits.

A36.5.4.2 For each of the three certification measuring points, the minimum sample size is six. The sample size must be large enough to establish statistically for each of the three average noise certification levels a 90 percent confidence limit not exceeding ±1.5 EPNdB. No test result may be omitted from the averaging process unless approved by the FAA.

**Note:** Permitted methods for calculating the 90 percent confidence interval are shown in the current advisory circular for this part.

A36.5.4.3 The average EPNL figures obtained by the process described in section A36.5.4.1 must be those by which the noise performance of the airplane is assessed against the noise certification criteria.

## SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS

| Symbol | Unit | Meaning |
|---|---|---|
| antilog | | Antilogarithm to the base 10. |
| C(k) | dB | *Tone correction factor.* The factor to be added to PNL(k) to account for the presence of spectral irregularities such as tones at the k-th increment of time. |
| d | s | *Duration time.* The time interval between the limits of t(1) and t(2) to the nearest 0.5 second. |
| D | dB | *Duration correction.* The factor to be added to PNLTM to account for the duration of the noise. |
| EPNL | EPNdB | *Effective perceived noise level.* The value of PNL adjusted for both spectral irregularities and duration of the noise. (The unit EPNdB is used instead of the unit dB). |
| $EPNL_r$ | EPNdB | Effective perceived noise level adjusted for reference conditions. |
| f(i) | Hz | *Frequency.* The geometrical mean frequency for the i-th one-third octave band. |
| F (i, k) | dB | *Delta-dB.* The difference between the original sound pressure level and the final background sound pressure level in the i-th one-third octave band at the k-th interval of time. In this case, background sound pressure level means the broadband noise level that would be present in the one-third octave band in the absence of the tone. |
| h | dB | *dB-down.* The value to be subtracted from PNLTM that defines the duration of the noise. |
| H | Percent | *Relative humidity.* The ambient atmospheric relative humidity. |
| i | | *Frequency band index.* The numerical indicator that denotes any one of the 24 one-third octave bands with geometrical mean frequencies from 50 to 10,000 Hz. |
| k | | *Time increment index.* The numerical indicator that denotes the number of equal time increments that have elapsed from a reference zero. |
| Log | | Logarithm to the base 10. |
| log n(a) | | *Noy discontinuity coordinate.* The log n value of the intersection point of the straight lines representing the variation of SPL with log n. |
| M(b), M(c), etc | | *Noy inverse slope.* The reciprocals of the slopes of straight lines representing the variation of SPL with log n. |
| n | noy | The perceived noisiness at the k-th instant of time that occurs in the i-th one-third octave band. |
| n(k) | noy | *Maximum perceived noisiness.* The maximum value of all of the 24 values of n(i) that occurs at the k-th instant of time. |
| N(k) | noy | *Total perceived noisiness.* The total perceived noisiness at the k-th instant of time calculated from the 24-instantaneous values of n (i, k). |
| p(b), p(c), etc | | *Noy slope.* The slopes of straight lines representing the variation of SPL with log n. |
| PNL | PNdB | The perceived noise level at any instant of time. (The unit PNdB is used instead of the unit dB). |

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

| Symbol | Unit | Meaning |
|---|---|---|
| PNL(k) | PNdB | The perceived noise level calculated from the 24 values of SPL (i, k), at the k-th increment of time. (The unit PNdB is used instead of the unit dB). |
| PNLM | PNdB | *Maximum perceived noise level.* The maximum value of PNL(k). (The unit PNdB is used instead of the unit dB). |
| PNLT | TPNdB | *Tone-corrected perceived noise level.* The value of PNL adjusted for the spectral irregularities that occur at any instant of time. (The unit TPNdB is used instead of the unit dB). |
| PNLT(k) | TPNdB | The tone-corrected perceived noise level that occurs at the k-th increment of time. PNLT(k) for the spectral irregularities that occur at the k-th increment of time. (The unit TPNdB is used instead of the unit dB). |
| PNLTM | TPNdB | *Maximum tone-corrected perceived noise level.* The maximum value of PNLT(k). (The unit TPNdB is used instead of the unit dB). |
| $PNLT_r$ | TPNdB | Tone-corrected perceived noise level adjusted for reference conditions. |
| s (i, k) | dB | *Slope of sound pressure level.* The change in level between adjacent one-third octave band sound pressure levels at the i-th band for the k-th instant of time. |
| Δs (i, k) | dB | Change in slope of sound pressure level. |
| s′ (i, k) | dB | Adjusted slope of sound pressure level. The change in level between adjacent adjusted one-third octave band sound pressure levels at the i-th band for the k-th instant of time. |
| $\bar{s}$ (i, k) | dB | Average slope of sound pressure level. |
| SPL | dB re 20 μPa | *Sound pressure level.* The sound pressure level that occurs in a specified frequency range at any instant of time. |
| SPL(a) | dB re 20 μPa | *Noy discontinuity coordinate.* The SPL value of the intersection point of the straight lines representing the variation of SPL with log n. |
| SPL(b)<br>SPL (c) | dB re 20 μPa | *Noy intercept.* The intercepts on the SPL-axis of the straight lines representing the variation of SPL with log n. |
| SPL (i, k) | dB re 20 μPa | The sound pressure level at the k-th instant of time that occurs in the i-th one-third octave band. |
| SPL′ (i, k) | dB re 20 μPa | *Adjusted sound pressure level.* The first approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time. |
| SPL(i) | dB re 20 μPa | *Maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM. |
| $SPL(i)_r$ | dB re 20 μPa | *Corrected maximum sound pressure level.* The sound pressure level that occurs in the i-th one-third octave band of the spectrum for PNLTM corrected for atmospheric sound absorption. |
| SPL″ (i, k) | dB re 20 μPa | *Final background sound pressure level.* The second and final approximation to background sound pressure level in the i-th one-third octave band for the k-th instant of time. |
| t | s | *Elapsed time.* The length of time measured from a reference zero. |
| t(1), t(2) | s | *Time limit.* The beginning and end, respectively, of the noise time history defined by h. |
| Δt | s | *Time increment.* The equal increments of time for which PNL(k) and PNLT(k) are calculated. |
| T | s | *Normalizing time constant.* The length of time used as a reference in the integration method for computing duration corrections, where T=10s. |
| t(°F) (°C) | °F, °C | *Temperature.* The ambient air temperature. |
| α(i) | dB/1000ft db/100m | *Reference atmospheric absorption.* The atmospheric attenuation of sound that occurs in the i-th one-third octave band at the measured air temperature and relative humidity. |
| $\alpha(i)_o$ | dB/1000ft db/100m | *Reference atmospheric absorption.* The atmospheric attenuation of sound. |
| $A_1$ | Degrees | First constant climb angle (Gear up, speed of at least $V_2$+10 kt ($V_2$+19 km/h), takeoff thrust). |
| $A_2$ | Degrees | Second constant climb angle (Gear up, speed of at least $V_2$+10 kt ($V_2$+19 km/h), after cut-back). |
| δ<br>ε | Degrees | *Thrust cutback angles.* The angles defining the points on the takeoff flight path at which thrust reduction is started and ended respectively. |
| η | Degrees | Approach angle. |
| $\eta_r$ | Degrees | Reference approach angle. |
| θ | Degrees | *Noise angle (relative to flight path).* The angle between the flight path and noise path. It is identical for both measured and corrected flight paths. |
| ψ | Degrees | *Noise angle (relative to ground).* The angle between the noise path and the ground. It is identical for both measured and corrected flight paths. |

SECTION A36.6 NOMENCLATURE: SYMBOLS AND UNITS—Continued

| Symbol | Unit | Meaning |
|---|---|---|
| $\mu$ | | Engine noise emission parameter. |
| $\mu_r$ | | Reference engine noise emission parameter. |
| $\Delta_1$ | EPNdB | *PNLT correction.* The correction to be added to the EPNL calculated from measured data to account for noise level changes due to differences in atmospheric absorption and noise path length between reference and test conditions. |
| $\Delta_2$ | EPNdB | *Adjustment to duration correction.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to the noise duration between reference and test conditions. |
| $\Delta_3$ | EPNdB | *Source noise adjustment.* The adjustment to be made to the EPNL calculated from measured data to account for noise level changes due to differences between reference and test engine operating conditions. |

*Section A36.7 Sound Attenuation in Air*

A36.7.1 The atmospheric attenuation of sound must be determined in accordance with the procedure presented in section A36.7.2.

A36.7.2 The relationship between sound attenuation, frequency, temperature, and humidity is expressed by the following equations.

A36.7.2(a) For calculations using the English System of Units:

$$\alpha(\mathrm{i}) = 10^{\left[2.05\log\left(f_0/1000\right)+6.33\times10^{-4}\theta-1.45325\right]} + \eta(\delta)\times10^{\left[\log\left(f_0\right)+4.6833\times10^{-3}\theta-2.4215\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f(0)}}\,10^{\left(\log \mathrm{H}-1.97274664+2.288074\times10^{-2}\theta\right)} \times10^{\left(-9.589\times10^{-5}\theta^2+3.0\times10^{-7}\theta^3\right)}$$

where

$\eta(\delta)$ is listed in Table A36–4 and $f_0$ in Table A36–5;
$\alpha(\mathrm{i})$ is the attenuation coefficient in dB/1000 ft;
$\theta$ is the temperature in °F; and
H is the relative humidity, expressed as a percentage.

A36.7.2(b) For calculations using the International System of Units (SI):

$$\alpha(\mathrm{i}) = 10^{\left[2.05\log\left(f_0/1000\right)+1.1394\times10^{-3}\theta-1.916984\right]} + \eta(\delta)\times10^{\left[\log\left(f_0\right)+8.42994\times10^{-3}\theta-2.755624\right]}$$

and

$$\delta = \sqrt{\frac{1010}{f_0}}\,10^{\left(\log \mathrm{H}-1.328924+3.179768\times10^{-2}\theta\right)} \times10^{\left(-2.173716\times10^{-4}\theta^2+1.7496\times10^{-6}\theta^3\right)}$$

where

$\eta(\delta)$ is listed in Table A36–4 and $f_0$ in Table A36–5;
$\alpha(\mathrm{i})$ is the attenuation coefficient in dB/100 m;
$\theta$ is the temperature in °C; and
H is the relative humidity, expressed as a percentage.

A36.7.3 The values listed in table A36–4 are to be used when calculating the equations listed in section A36.7.2. A term of quadratic interpolation is to be used where necessary.

*Section A36.8 [Reserved]*

Table A36-4. Values of $\eta(\delta)$

| $\delta$ | $\eta(\delta)$ | $\delta$ | $\eta(\delta)$ |
|---|---|---|---|
| 0.00 | 0.000 | 2.50 | 0.450 |
| 0.25 | 0.315 | 2.80 | 0.400 |
| 0.50 | 0.700 | 3.00 | 0.370 |
| 0.60 | 0.840 | 3.30 | 0.330 |
| 0.70 | 0.930 | 3.60 | 0.300 |
| 0.80 | 0.975 | 4.15 | 0.260 |
| 0.90 | 0.996 | 4.45 | 0.245 |
| 1.00 | 1.000 | 4.80 | 0.230 |
| 1.10 | 0.970 | 5.25 | 0.220 |
| 1.20 | 0.900 | 5.70 | 0.210 |
| 1.30 | 0.840 | 6.05 | 0.205 |
| 1.50 | 0.750 | 6.50 | 0.200 |
| 1.70 | 0.670 | 7.00 | 0.200 |
| 2.00 | 0.570 | 10.00 | 0.200 |
| 2.30 | 0.495 | | |

Table A36-5. Values of $f_0$

| one-third octave center frequency | $f_0$ (Hz) | one-third octave center frequency | $f_0$ (Hz) |
|---|---|---|---|
| 50 | 50 | 800 | 800 |
| 63 | 63 | 1000 | 1000 |
| 80 | 80 | 1250 | 1250 |
| 100 | 100 | 1600 | 1600 |
| 125 | 125 | 2000 | 2000 |
| 160 | 160 | 2500 | 2500 |
| 200 | 200 | 3150 | 3150 |
| 250 | 250 | 4000 | 4000 |
| 315 | 315 | 5000 | 4500 |
| 400 | 400 | 6300 | 5600 |
| 500 | 500 | 8000 | 7100 |
| 630 | 630 | 10000 | 9000 |

*Section A36.9 Adjustment of airplane flight test results.*

A36.9.1 When certification test conditions are not identical to reference conditions, appropriate adjustments must be made to the measured noise data using the methods described in this section.

A36.9.1.1 Adjustments to the measured noise values must be made using one of the methods described in sections A36.9.3 and A36.9.4 for differences in the following:

(a) Attenuation of the noise along its path as affected by ''inverse square'' and atmospheric attenuation

(b) Duration of the noise as affected by the distance and the speed of the airplane relative to the measuring point

(c) Source noise emitted by the engine as affected by the differences between test and reference engine operating conditions

(d) Airplane/engine source noise as affected by differences between test and reference airspeeds. In addition to the effect on duration, the effects of airspeed on component noise sources must be accounted for as follows: for conventional airplane configurations, when differences between test and reference airspeeds exceed 15 knots (28 km/h) true airspeed, test data and/or analysis approved by the FAA must be used to qualify the effects of the airspeed adjustment on resulting certification noise levels.

A36.9.1.2 The ''integrated'' method of adjustment, described in section A36.9.4, must be used on takeoff or approach under the following conditions:

(a) When the amount of the adjustment (using the ''simplified'' method) is greater than 8 dB on flyover, or 4 dB on approach; or

(b) When the resulting final EPNL value on flyover or approach (using the simplified method) is within 1 dB of the limiting noise levels as prescribed in section B36.5 of this part.

A36.9.2 *Flight profiles.*

As described below, flight profiles for both test and reference conditions are defined by their geometry relative to the ground, together with the associated airplane speed relative to the ground, and the associated engine control parameter(s) used for determining the noise emission of the airplane.

A36.9.2.1 *Takeoff Profile.*

**Note:** Figure A36–4 illustrates a typical takeoff profile.

(a) The airplane begins the takeoff roll at point A, lifts off at point B and begins its first climb at a constant angle at point C. Where thrust or power (as appropriate) cut-back is used, it is started at point D and completed at point E. From here, the airplane begins a second climb at a constant angle up to point F, the end of the noise certification takeoff flight path.

(b) Position $K_1$ is the takeoff noise measuring station and $AK_1$ is the distance from start of roll to the flyover measuring point. Position $K_2$ is the lateral noise measuring station, which is located on a line parallel to, and the specified distance from, the runway center line where the noise level during takeoff is greatest.

(c) The distance AF is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

A36.9.2.2 *Approach Profile.*

**Note:** Figure A36–5 illustrates a typical approach profile.

(a) The airplane begins its noise certification approach flight path at point G and touches down on the runway at point J, at a distance OJ from the runway threshold.

(b) Position $K_3$ is the approach noise measuring station and $K_3O$ is the distance from the approach noise measurement point to the runway threshold.

(c) The distance GI is the distance over which the airplane position is measured and synchronized with the noise measurements, as required by section A36.2.3.2 of this part.

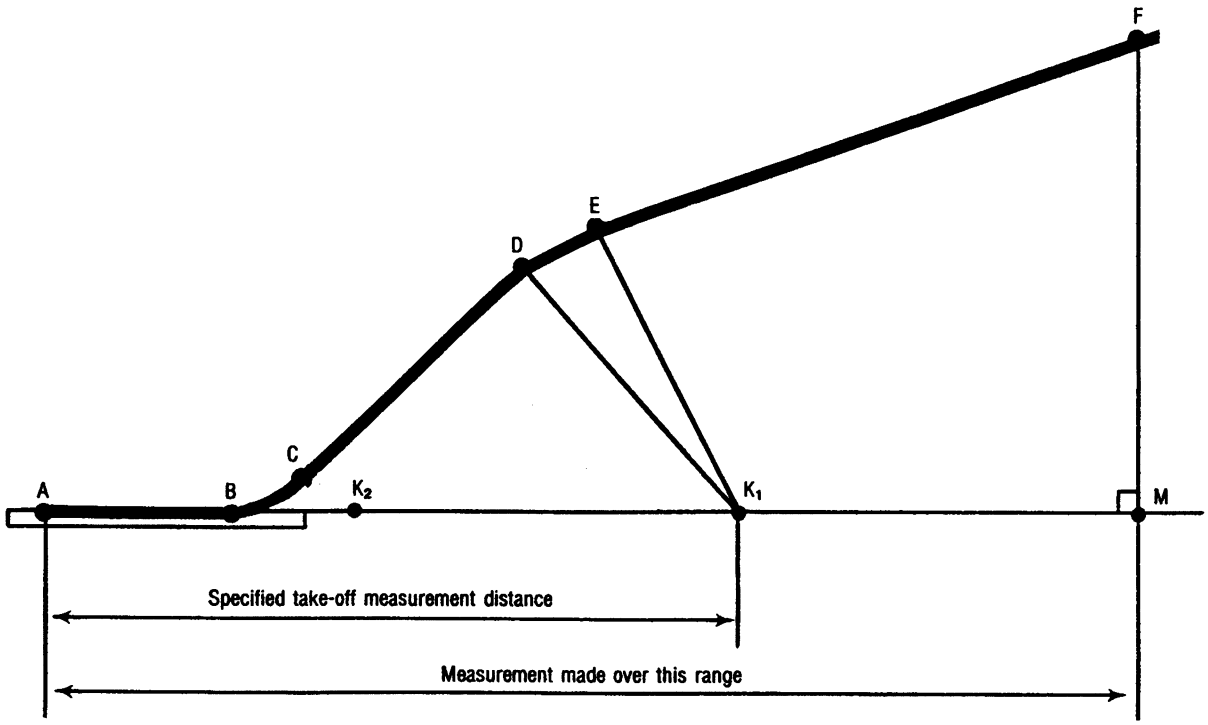



**Figure A36-4. Typical Takeoff profile**

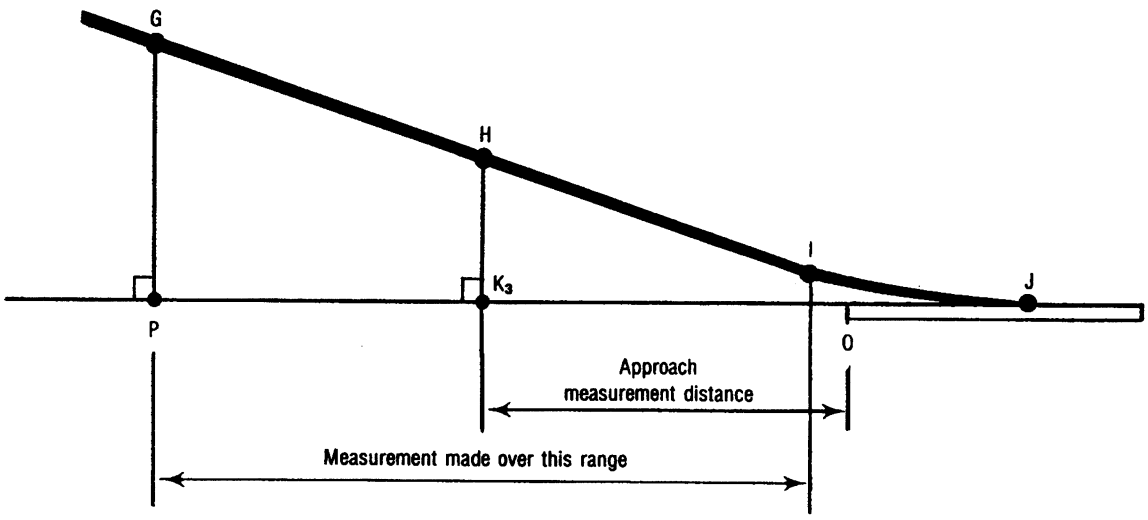



**Figure A36-5. Typical Approach profile**

The airplane reference point for approach measurements is the instrument landing system (ILS) antenna. If no ILS antenna is installed an alternative reference point must be approved by the FAA.

A36.9.3 *Simplified method of adjustment.*

A36.9.3.1 *General.* As described below, the simplified adjustment method consists of applying adjustments (to the EPNL, which is calculated from the measured data) for the differences between measured and reference conditions at the moment of PNLTM.

A36.9.3.2 *Adjustments to PNL and PNLT.*

(a) The portion of the test flight path and the reference flight path described below, and illustrated in Figure A36–6, include the

noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–6:

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; $X_rY_r$ represents the corresponding portion of the reference flight path.

(2) Q represents the airplane's position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. $Q_r$ is the corresponding position on the reference flight path, and $K_r$ the reference measuring station. QK and $Q_rK_r$ are, respectively, the measured

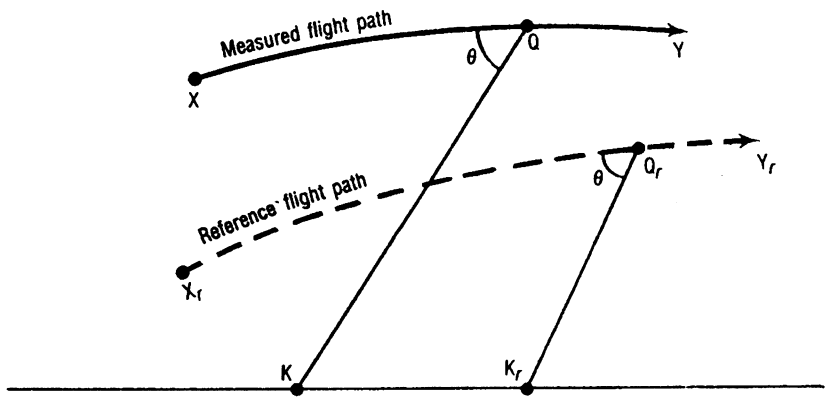



**Figure A36-6. Profile characteristics influencing sound level**

and reference noise propagation paths, $Q_r$ being determined from the assumption that QK and $Q_rK_r$ form the same angle with their respective flight paths.

(b) The portions of the test flight path and the reference flight path described in paragraph (b)(1) and (2), and illustrated in Figure A36–7(a) and (b), include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–7(a), XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of lateral EPNL; in figure AQ36–7(b), $X_rY_r$ represents the corresponding portion of the reference flight path.

(2) Q represents the airplane position on the measured flight path at which the noise was emitted and observed as PNLTM at the noise measuring station K. $Q_r$ is the corresponding position on the reference flight path, and $K_r$ the reference measuring station. QK and $Q_rK_r$ are, respectively, the measured and reference noise propagation paths. In this case $K_r$ is only specified as being on a particular Lateral line; $K_r$ and $Q_r$ are therefore determined from the assumption that QK and $Q_rK_r$:

(i) Form the same angle θ with their respective flight paths; and

(ii) Form the same angle ψ with the ground.

**Note:** For the lateral noise measurement, sound propagation is affected not only by inverse square and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle ψ.

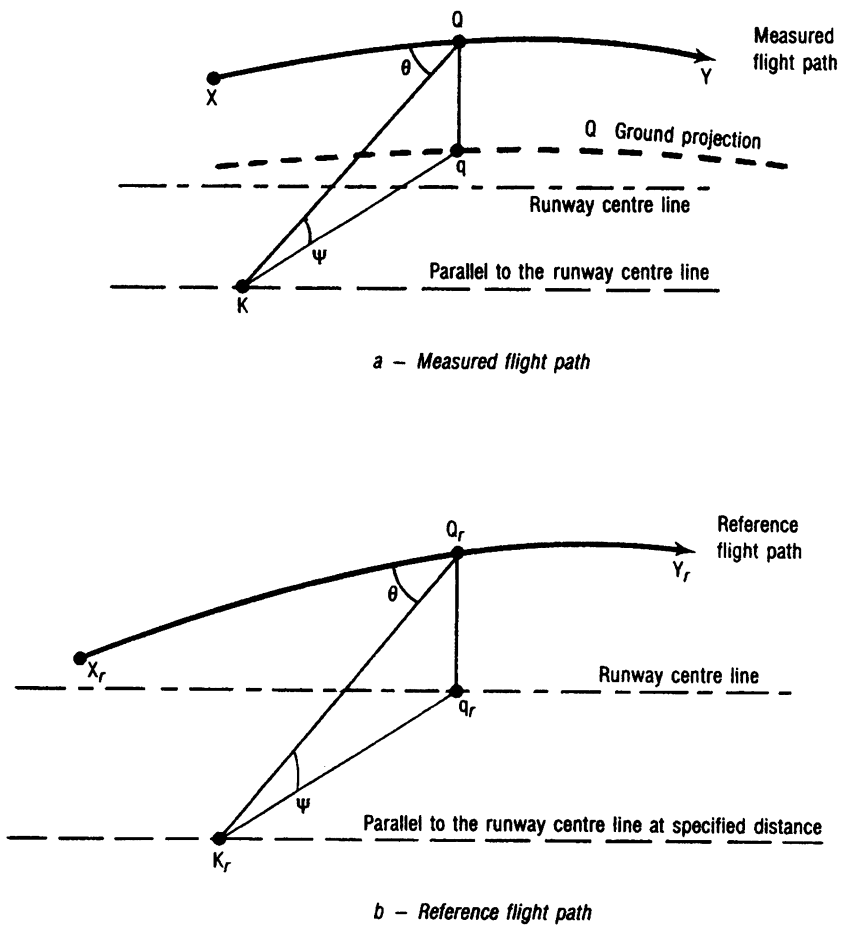



**Figure A36-7. Lateral measurement - determination of reference station**

A36.9.3.2.1 The one-third octave band levels SPL(i) comprising PNL (the PNL at the moment of PNLTM observed at K) must be adjusted to reference levels $SPL(i)_r$ as follows:

A36.9.3.2.1(a) For calculations using the English System of Units:

$$SPL(i)_r = SPL(i) + 0.001[\alpha(i) - \alpha(i)_0]QK + 0.0001\alpha(i)_0(QK - Q_rK_r) + 20\log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.001[\alpha(i) - \alpha(i)_0]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_0$ are the coefficients for the test and reference atmosphere conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.001\alpha(i)_0(QK - Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20 \log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the ''inverse square'' law;

(4) QK and $Q_rK_r$ are measured in feet and $\alpha(i)$ and $\alpha(i)_0$ are expressed in dB/1000 ft.

A36.9.3.2.1(b) For calculations using the International System of Units:

$$SPL(i)_r = SPL(i) + 0.01[\alpha(i) - \alpha(i)_0]QK + 0.01\alpha(i)_0 (QK - Q_rK_r) + 20 \log(QK/Q_rK_r)$$

In this expression,

(1) The term $0.01[\alpha(i) - \alpha(i)_0]QK$ is the adjustment for the effect of the change in sound attenuation coefficient, and $\alpha(i)$ and $\alpha(i)_0$ are the coefficients for the test and reference atmospheric conditions respectively, determined under section A36.7 of this appendix;

(2) The term $0.01\alpha(i)_0(QK - Q_rK_r)$ is the adjustment for the effect of the change in the noise path length on the sound attenuation;

(3) The term $20 \log(QK/Q_rK_r)$ is the adjustment for the effect of the change in the noise path length due to the inverse square law;

(4) QK and $Q_rK_r$ are measured in meters and $\alpha(i)$ and $\alpha(i)_0$ are expressed in dB/100 m.

A36.9.3.2.1.1 *PNLT Correction.*

(a) Convert the corrected values, $SPL(i)_r$, to $PNLT_r$;

(b) Calculate the correction term $\Delta_1$ using the following equation:

$$\Delta_1 = PNT_r - PNLTM$$

A36.9.3.2.1.2 Add $\Delta_1$ arithmetically to the EPNL calculated from the measured data.

A36.9.3.2.2 If, during a test flight, several peak values of PNLT that are within 2 dB of PNLTM are observed, the procedure defined in section A36.9.3.2.1 must be applied at each peak, and the adjustment term, calculated according to section A36.9.3.2.1, must be added to each peak to give corresponding adjusted peak values of PNLT. If these peak values exceed the value at the moment of PNLTM, the maximum value of such exceedance must be added as a further adjustment to the EPNL calculated from the measured data.

A36.9.3.3 *Adjustments to duration correction.*

A36.9.3.3.1 Whenever the measured flight paths and/or the ground velocities of the test conditions differ from the reference flight paths and/or the ground velocities of the reference conditions, duration adjustments must be applied to the EPNL values calculated from the measured data. The adjustments must be calculated as described below.

A36.9.3.3.2 For the flight path shown in Figure A36–6, the adjustment term is calculated as follows:

$\Delta_2 = -7.5 \log(QK/Q_rK_r) + 10 \log(V/V_r)$

(a) Add $\Delta_2$ arithmetically to the EPNL calculated from the measured data.

A36.9.3.4 *Source noise adjustments.*

A36.9.3.4.1 To account for differences between the parameters affecting engine noise as measured in the certification flight tests, and those calculated or specified in the reference conditions, the source noise adjustment must be calculated and applied. The adjustment is determined from the manufacturer's data approved by the FAA. Typical data used for this adjustment are illustrated in Figure A36–8 that shows a curve of EPNL versus the engine control parameter $\mu$, with the EPNL data being corrected to all the other relevant reference conditions (airplane mass, speed and altitude, air temperature) and for the difference in noise between the test engine and the average engine (as defined in section B36.7(b)(7)). A sufficient number of data points over a range of values of $\mu_r$ is required to calculate the source noise adjustments for lateral, flyover and approach noise measurements.

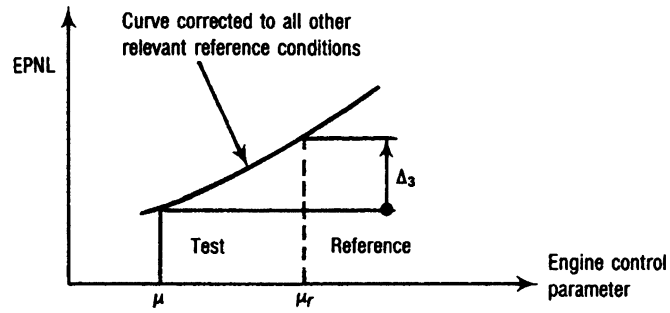



**Figure A36-8. Noise thrust correction**

A36.9.3.4.2 Calculate adjustment term $\Delta_3$ by subtracting the EPNL value corresponding to the parameter $\mu$ from the EPNL value corresponding to the parameter $\mu_r$. Add $\Delta_3$ arithmetically to the EPNL value calculated from the measured data.

A36.9.3.5 *Symmetry adjustments.*

A36.9.3.5.1 A symmetry adjustment to each lateral noise value (determined at the section B36.4(b) measurement points), is to be made as follows:

(a) If the symmetrical measurement point is opposite the point where the highest noise level is obtained on the main lateral measurement line, the certification noise level is the arithmetic mean of the noise levels measured at these two points (see Figure A36–9(a));

(b) If the condition described in paragraph (a) of this section is not met, then it is assumed that the variation of noise with the altitude of the airplane is the same on both sides, there is a constant difference between the lines of noise versus altitude on both sides (see figure A36–9(b)). The certification noise level is the maximum value of the mean between these lines.

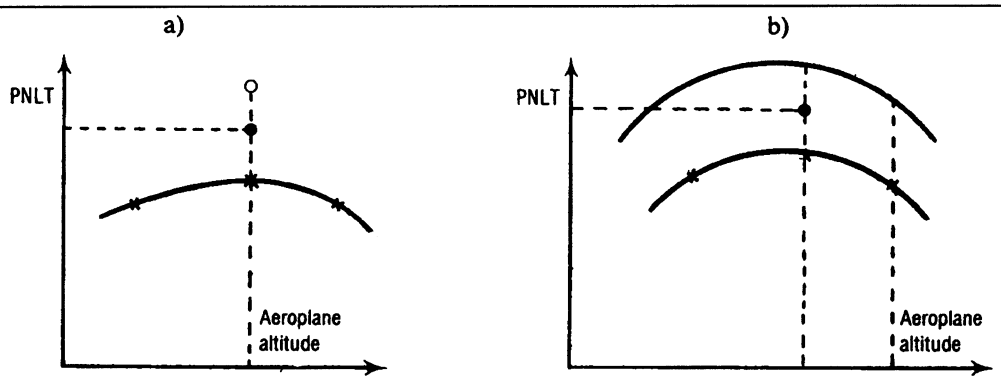



**Figure A36-9. Symmetry correction**

A36.9.4 *Integrated method of adjustment*

A36.9.4.1 *General.* As described in this section, the integrated adjustment method consists of recomputing under reference conditions points on the PNLT time history corresponding to measured points obtained during the tests, and computing EPNL directly for the new time history obtained in this way. The main principles are described in sections A36.9.4.2 through A36.9.4.4.1.

A36.9.4.2 *PNLT computations.*

(a) The portions of the test flight path and the reference flight path described in paragraph (a)(1) and (2), and illustrated in Figure A36–10, include the noise time history that is relevant to the calculation of flyover and approach EPNL. In figure A36–10:

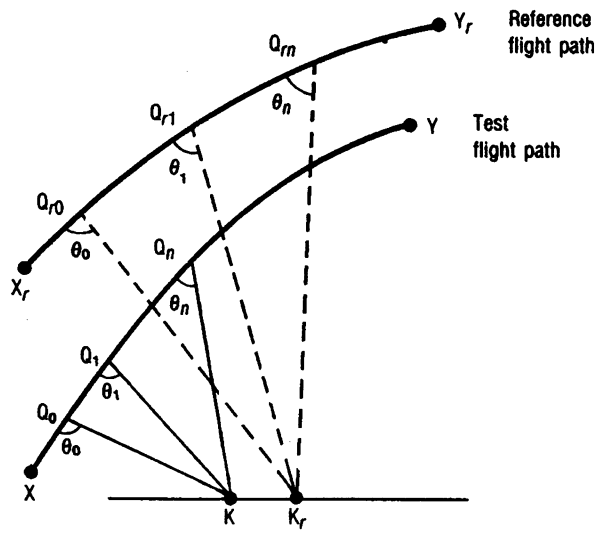



**Figure A36-10. Correspondence between measured and reference flight paths for the application of the integrated method of adjustment**

(1) XY represents the portion of the measured flight path that includes the noise time history relevant to the calculation of flyover and approach EPNL; $X_rY_r$ represents the corresponding reference flight path.

(2) The points $Q_0$, $Q_1$, $Q_n$ represent airplane positions on the measured flight path at time $t_0$, $t_1$ and $t_n$ respectively. Point $Q_1$ is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at a time $t_1$. Point $Q_{r1}$ represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the reference measuring station $K_r$ at time $t_{r1}$. $Q_1K$ and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths, which in each case form the angle $\theta_1$ with their respective flight paths. $Q_{r0}$ and $Q_{rn}$ are similarly the points on the reference flight path corresponding to $Q_0$ and $Q_n$ on the measured flight path. $Q_0$ and $Q_n$ are chosen so that between $Q_{r0}$ and $Q_{rn}$ all values of $PNLT_r$ (computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included.

(b) The portions of the test flight path and the reference flight path described in paragraph (b)(1) and (2), and illustrated *in Figure A36–11(a) and (b),* include the noise time history that is relevant to the calculation of lateral EPNL.

(1) In figure A36–11(a) XY represents the portion of the measured flight path that includes the noise time history that is relevant to the calculation of lateral EPNL; in figure A36–11(b), $X_rY_r$ represents the corresponding portion of the reference flight path.

(2) The points $Q_0$, $Q_1$ and $Q_n$ represent airplane positions on the measured flight path at time $t_0$, $t_1$ and $t_n$ respectively. Point $Q_1$ is the point at which the noise was emitted and observed as one-third octave values $SPL(i)_1$ at the noise measuring station K at time $t_1$. The point $Q_{r1}$ represents the corresponding position on the reference flight path for noise observed as $SPL(i)_{r1}$ at the measuring station $K_r$ at time $t_{r1}$. $Q_1K$ and $Q_{r1}K_r$ are respectively the measured and reference noise propagation paths $Q_{r0}$ and $Q_{rn}$ are similarly the points on the reference flight path corresponding to $Q_0$ and $Q_n$ on the measured flight path.

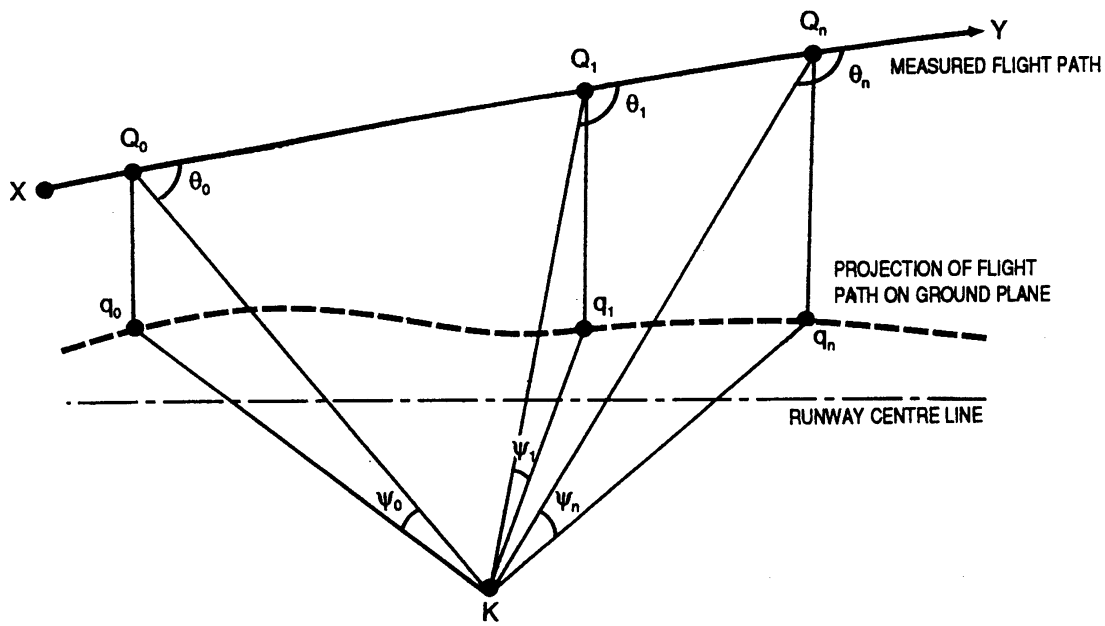



**Figure A36-11(a). Measured flight path**

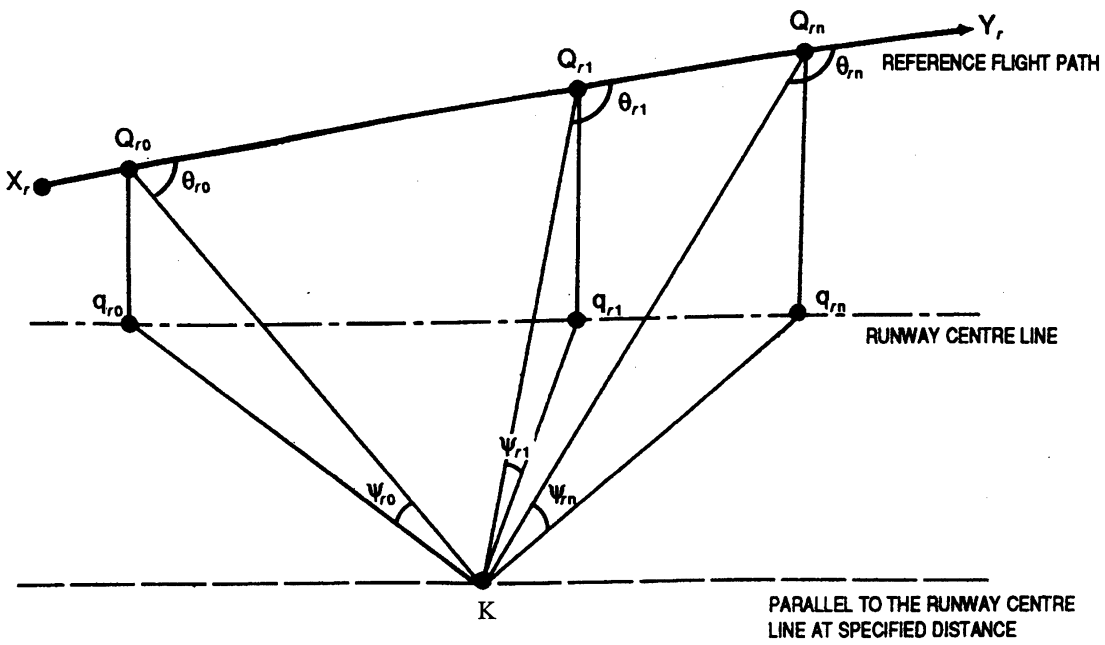



**Figure A36-11(b). Reference flight path**

$Q_0$ and $Q_n$ are chosen to that between $Q_{ro}$ and $Q_{rn}$ all values of $PNLT_r$ computed as described in paragraphs A36.9.4.2.2 and A36.9.4.2.3) within 10 dB of the peak value are included. In this case $K_r$ is only specified as being on a particular lateral line. The

position of $K_r$ and $Q_{r1}$ are determined from the following requirements.

(i) $Q_1K$ and $Q_{r1}K_r$ form the same angle $\theta_1$ with their respective flight paths; and

(ii) The differences between the angles $\mathbf{\Psi}_1$ and $\mathbf{\Psi}_{r1}$ must be minimized using a method, approved by the FAA. The differences between the angles are minimized since, for geometrical reasons, it is generally not possible to choose $K_r$ so that the condition described in paragraph A36.9.4.2(b)(2)(i) is met while at the same time keeping $\mathbf{\Psi}_1$ and $\mathbf{\Psi}_{r1}$ equal.

**Note:** For the lateral noise measurement, sound propagation is affected not only by ''inverse square'' and atmospheric attenuation, but also by ground absorption and reflection effects which depend mainly on the angle $\mathbf{\Psi}$.

A36.9.4.2.1 In paragraphs A36.9.4.2(a)(2) and (b)(2) the time $t_{r1}$ is later (for $Q_{r1}K_r > Q_1K$) separate amounts:

(1) The time taken for the airplane to travel the distance $Q_{r1}Q_{r0}$ at a speed $V_r$ less the time taken for it to travel $Q_1Q_0$ at V;

(2) The time taken for sound to travel the distance $Q_{r1}K_r$–$Q_1K$.

**Note:** For the flight paths described in paragraphs A36.9.4.2(a) and (b), the use of thrust or power cut-back will result in test and reference flight paths at full thrust or power and at cut-back thrust or power. Where the transient region between these thrust or power levels affects the final result, an interpolation must be made between them by an approved method such as that given in the current advisory circular for this part.

A36.9.4.2.2 The measured values of $SPL(i)_1$ must be adjusted to the reference values $SPL(i)_{r1}$ to account for the differences between measured and reference noise path lengths and between measured and reference atmospheric conditions, using the methods of section A36.9.3.2.1 of this appendix. A corresponding value of $PNL_{r1}$ must be computed according to the method in section A36.4.2 Values of $PNL_r$ must be computed for times $t_0$ through $t_n$.

A36.9.4.2.3 For each value of $PNL_{r1}$, a tone correction factor $C_1$ must be determined by analyzing the reference values $SPL(i)_r$ using the methods of section A36.4.3 of this appendix, and added to $PNL_{r1}$ to yield $PNLT_{r1}$. Using the process described in this paragraph, values of $PNLT_r$ must be computed for times $t_0$ through $t_n$.

A36.9.4.3 *Duration correction.*

A36.9.4.3.1 The values of $PNLT_r$ corresponding to those of PNLT at each one-half second interval must be plotted against time ($PNLT_{r1}$ at time $t_{r1}$. The duration correction must then be determined using the method of section A36.4.5.1 of this appendix, to yield $EPNL_r$.

A36.9.4.4 *Source Noise Adjustment.*

A36.9.4.4.1 A source noise adjustment, $\Delta_3$, must be determined using the methods of section A36.9.3.4 of this appendix.

## A37.9.5 Flight Path Identification Positions

| Position | Description |
|---|---|
| A | Start of Takeoff roll. |
| B | Lift-off. |
| C | Start of first constant climb. |
| D | Start of thurst reduction. |
| E | Start of second constant climb. |
| F | End of noise certification Takeoff flight path. |
| G | Start of noise certification Approach flight path. |
| H | Position on Approach path directly above noise measuring station. |
| I | Start of level-off. |
| J | Touchdown. |
| K | Noise measurement point. |
| $K_r$ | Reference measurement point. |
| $K_1$ | Flyover noise measurement point. |
| $K_2$ | Lateral noise measurement point. |
| $K_3$ | Approach noise measurement point. |
| M | End of noise certification Takeoff flight track. |
| O | Threshold of Approach end of runway. |
| P | Start of noise certification Approach flight track. |
| Q | Position on measured Takeoff flight path corresponding to apparent PNLTM at station K See section A36.9.3.2. |
| $Q_r$ | Position on corrected Takeoff flight path corresponding to PNLTM at station K. See section A36.9.3.2. |
| V | Airplane test speed. |
| $V_r$ | Airplane reference speed. |

## A36.9.6 Flight Path Distances

| Distance | Unit | Meaning |
|---|---|---|
| AB | Feet (meters) | Length of takeoff roll. The distance along the runway between the start of takeoff roll and lift off. |
| AK | Feet (meters) | Takeoff measurement distance. The distance from the start of roll to the takeoff noise measurement station along the extended center line of the runway. |
| AM | Feet (meters) | Takeoff flight track distance. The distance from the start of roll to the takeoff flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded. |
| QK | Feet (meters) | Measured noise path. The distance from the measured airplane position Q to station K. |
| $Q_rK_r$ | Feet (meters) | Reference noise path. The distance from the reference airplane position $Q_r$ to station $K_r$. |
| $K_3H$ | Feet (meters) | Airplane approach height. The height of the airplane above the approach measuring station. |
| $OK_3$ | Feet (meters) | Approach measurement distance. The distance from the runway threshold to the approach measurement station along the extended center line of the runway. |

A36.9.6 FLIGHT PATH DISTANCES—Continued

| Distance | Unit | Meaning |
|---|---|---|
| OP | Feet (meters) | Approach flight track distance. The distance from the runway threshold to the approach flight track position along the extended center line of the runway after which the position of the airplane need no longer be recorded. |

16. Appendix B of part 36 is revised to read as follows:

## Appendix B to Part 36—Noise Levels for Transport Category and Jet Airplanes Under § 36.103

Sec.
B36.1 Noise measurement and evaluation.
B36.2 Noise evaluation metric.
B36.3 Reference noise measurement points.
B36.4 Test noise measurement points.
B36.5 Maximum noise levels.
B36.6 Trade-offs.
B36.7 Noise certification reference procedures and conditions.
B36.8 Noise certification test procedures.

*Section B36.1 Noise Measurement and Evaluation*

Compliance with this appendix must be shown with noise levels measured and evaluated using the procedures of appendix A of this part, or under approved equivalent procedures.

*Section B36.2 Noise Evaluation Metric*

The noise evaluation metric is the effective perceived noise level expressed in EPNdB, as calculated using the procedures of appendix A of this part.

*Section B36.3 Reference Noise Measurement Points*

When tested using the procedures of this part, except as provided in section B36.6, an airplane may not exceed the noise levels specified in section B36.5 at the following points on level terrain:

(a) Lateral full-power reference noise measurement point:

(1) For jet airplanes: The point on a line parallel to an 1,476 feet (450 m) from the runway centerline, or extended centerline, where the noise level after lift-off is at a maximum during takeoff. For the purpose of showing compliance with Stage 1 or Stage 2 noise limits for an airplane powered by more than three jet engines, the distance from the runway centerline must be 0.35 nautical miles (648 m). For jet airplanes, when approved by the FAA, the maximum lateral noise at takeoff thrust may be assumed to occur at the point (or its approved equivalent) along the extended centerline of the runway where the airplane reaches 985 feet (300 meters) altitude above ground level. A height of 1427 feet (435 meters) may be assumed for State 1 or Stage 2 four engine airplanes. The altitude of the airplane as it passes the noise measurement points must be within +328 to −164 feet (+100 to −50 meters) of the target altitude. For airplanes powered by other than jet engines, the altitude for maximum lateral noise must be determined experimentally.

(2) For propeller-driven airplanes: The point on the extended centerline of the runway above which the airplane, at full takeoff power, reaches a height of 2,133 feet (650 meters). For tests conducted before [the effective date of this final rule], an applicant may use the measurement point specified in section B36.3(a)(1) as an alternative.

(b) Flyover reference noise measurement point: The point on the extended centerline of the runway that is 21,325 feet (6,500 m) from the start of the takeoff roll;

(c) Approach reference noise measurement point: The point on the extended centerline of the runway that is 6,562 feet (2,000 m) from the runway threshold. On level ground, this corresponds to a position that is 394 feet (120 m) vertically below the 3° descent path, which originates at a point on the runway 984 feet (300 m) beyond the threshold.

**Section B36.4 Test noise measurement points.**

(a) If the test noise measurement points are not located at the reference noise measurement points, any corrections for the difference in position are to be made using the same adjustment procedures as for the differences between test and reference flight paths.

(b) The applicant must use a sufficient number of lateral test noise measurement points to demonstrate to the FAA that the maximum noise level on the appropriate lateral line has been determined. For jet airplanes, simultaneous measurements must be made at one test noise measurement point at its symmetrical point on the other side of the runway. Propeller-driven airplanes have an inherent asymmetry in lateral noise. Therefore, simultaneous measurements must be made at each and every test noise measurement point at its symmetrical position on the opposite side of the runway. The measurement points are considered to be symmetrical if they are longitudinally within 33 feet (±10 meters) of each other.

*Section B36.5 Maximum Noise Levels*

Except as provided in section B36.6 of this appendix, maximum noise levels, when determined in accordance with the noise evaluation methods of appendix A of this part, may not exceed the following:

(a) For acoustical changes to Stage 1 airplanes, regardless of the number of engines, the noise levels prescribed under § 36.7(c) of this part.

(b) For any Stage 2 airplane regardless of the number of engines:

(1) Flyover: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 5 EPNdB; the limit is 93 EPNdB for a maximum weight of 75,000 pounds or less.

(2) Lateral and approach: 108 EPNdB for maximum weight of 600,000 pounds or more; for each halving of maximum weight (from 600,000 pounds), reduce the limit by 2 EPNdB; the limit is 102 EPNdB for a maximum weight of 75,000 pounds or less.

(c) For any Stage 3 airplane:

(1) Flyover.

(i) For airplanes with more than 3 engines: 106 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 44,673 pounds or less;

(ii) For airplanes with 3 engines: 104 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 63,177 pounds or less; and

(iii) For airplanes with fewer than 3 engines; 101 EPNdB for maximum weight of 850,000 pounds or more; for each halving of maximum weight (from 850,000 pounds), reduce the limit by 4 EPNdB; reduce the limit by 4 EPNdB; the limit is 89 EPNdB for a maximum weight of 106,250 pounds or less.

(2) Lateral, regardless of the number of engines: 103 EPNdB for maximum weight of 882,000 pounds or more; for each halving of maximum weight (from 882,000 pounds), reduce the limit by 2.56 EPNdB; the limit is 94 EPNdB for a maximum weight of 77,200 pounds or less.

(3) Approach, regardless of the number of engines: 105 EPNdB for maximum weight of 617,300 pounds or more; for each halving of maximum weight (from 617,300 pounds), reduce the limit by 2.33 EPNdB; the limit is 98 EPNdB for a maximum weight of 77,200 pounds or less.

*Section B36.6 Trade-Offs*

Except when prohibited by sections 36.7(c)(1) and 36.7(d)(1)(ii), if the maximum noise levels are exceeded at any one or two measurement points, the following conditions must be met:

(a) The sum of the exceedance(s) may not be greater than 3 EPNdB;

(b) Any exceedance at any single point may not be greater than 2 EPNdB, and

(c) Any exceedance(s) must be offset by a corresponding amount at another point or points.

*Section B36.7 Noise Certification Reference Procedures and Conditions*

(a) General conditions:

(1) All reference procedures must meet the requirements of section 36.3 of this part.

(2) Calculations of airplane performance and flight path must be made using the reference procedures and must be approved by the FAA.

(3) Applicants must use the takeoff and approach reference procedures prescribed in paragraphs (b) and (c) of this section.

(4) [Reserved]

(5) The reference procedures must be determined for the following reference conditions. The reference atmosphere is homogeneous in terms of temperature and relative humidity when used for the calculation of atmospheric absorption coefficients.

(i) Sea level atmospheric pressure of 2116 pounds per square foot (psf) (1013.25 hPa);

(ii) Ambient sea-level air temperature of 77 °F (25 °C, i.e. ISA+10 °C);

(iii) Relative humidity of 70 per cent;

(iv) Zero wind.

(v) In defining the reference takeoff flight path(s) for the takeoff and lateral noise measurements, the runway gradient is zero.

(b) Takeoff reference procedure:

The takeoff reference flight path is to be calculated using the following:

(1) Average engine takeoff thrust or power must be used from the state of takeoff to the point where at least the following height above runway level is reached. The takeoff thrust/power used must be the maximum available for normal operations given in the performance section of the airplane flight manual under the reference atmospheric conditions given in section B36.7(a)(5).

(i) For Stage 1 airplanes and for Stage 2 airplanes that do not have jet engines with a bypass ratio of 2 or more, the following apply:

(A): For airplanes with more than three jet engines—700 feet (214 meters).

(B): For all other airplanes—1,000 feet (305 meters).

(ii) For Stage 2 airplanes that have jet engines with a bypass ratio of 2 or more and for Stage 3 airplanes, the following apply:

(A): For airplanes with more than three engines—689 feet (210 meters).

(B): For airplanes with three engines—853 feet (260 meters).

(C): For airplanes with fewer than three engines—984 feet (300 meters).

(2) Upon reaching the height specified in paragraph (b)(1) of this section, airplane thrust or power must not be reduced below that required to maintain either of the following, whichever is greater:

(i) A climb gradient of 4 per cent; or

(ii) In the case of multi-engine airplanes, level flight with one engine inoperative.

(3) For the purpose of determining the lateral noise level, the reference flight path must be calculated using full takeoff power throughout the test run without a reduction in thrust or power. For tests conducted before [the effective date of this final rule], a single reference flight path that includes thrust cutback in accordance with paragraph (b)(2) of this section, is an acceptable alternative in determining the lateral noise level.

(4) The takeoff reference speed is the all-engine operating takeoff climb speed selected by the applicant for use in normal operation; this speed must be at least V2+10kt (V2+19km/h) but may not be greater than V2+20kt (V2+37km/h). This speed must be attained as soon as practicable after lift-off and be maintained throughout the takeoff noise certification test. For Concord airplanes, the test day speeds and the acoustic day reference speed are the minimum approved value of V2+35 knots, or the all-engines-operating speed at 35 feet, whichever speed is greater as determined under the regulations constituting the type certification basis of the airplane; this reference speed may not exceed 250 knots. For all airplanes, noise values measured at the test day speeds must be corrected to the acoustic day reference speed.

(5) The takeoff configuration selected by the applicant must be maintained constantly throughout the takeoff reference procedure, except that the landing gear may be retracted. Configuration means the center of gravity position, and the status of the airplane systems that can affect airplane performance or noise. Examples include, the position of lift augmentation devices, whether the APU is operating, and whether air bleeds and engines power take-offs are operating;

(6) The weight of the airplane at the brake release must be the maximum takeoff weight at which the noise certification is requested, which may result in an operating limitation as specified in § 36.1581(d); and

(7) The average engine is defined as the average of all the certification compliant engines used during the airplane flight tests, up to and during certification, when operating within the limitations and according to the procedures given in the Flight Manual. This will determine the relationship of thrust/power to control parameters (e.g., $N_1$ or EPR). Noise measurements made during certification tests must be corrected using this relationship.

(c) Approach reference procedure:

The approach reference flight path must be calculated using the following:

(1) The airplane is stabilized and following a 3° glide path;

(2) For subsonic airplanes, a steady approach speed of $V_{ref}$ + 10 kts ($V_{ref}$ + 19 km/h) with thrust and power stabilized must be established and maintained over the approach measuring points. $V_{ref}$ is the reference landing speed, which is defined as the speed of the airplanes, in a specified landing configuration, at the point where it descends through the landing screen height in the determination of the landing distance for manual landings. For Concorde airplanes, a steady approach speed that is either the landing reference speed + 10 knots or the speed used in establishing the approved landing distance under the airworthiness regulations constituting the type certification basis of the airplane, whichever speed is greater. This speed must be established and maintained over the approach measuring point.

(3) The constant approach configuration used in the airworthiness certification tests, but with the landing gear down, must be maintained throughout the approach reference procedure;

(4) The weight of the airplane at touchdown must be the maximum landing weight permitted in the approach configuration defined in paragraph (c)(3) of this section at which noise certification is requested, except as provided in § 36.1581(d) of this part; and

(5) The most critical configuration must be used; this configuration is defined as that which produces the highest noise level with normal deployment of aerodynamic control surfaces including lift and drag producing devices. at the weight at which certification is requested. This configuration includes all those items listed in section A36.5.2.5 of appendix A of this part that contribute to the noisiest continuous state at the maximum landing weight in normal operation.

*Section B36.8 Noise Certification Test Procedures*

(a) All test procedures must be approved by the FAA.

(b) The test procedures and noise measurements must be conducted and processed in an approved manner to yield the noise evaluation metric EPNL, in units of EPNdB, as described in appendix A of this part.

(c) Acoustic data must be adjusted to the reference conditions specified in this appendix using the methods described in appendix A of this part. Adjustments for speed and thrust must be made as described in section A36.9 of this part.

(d) If the airplane's weight during the test is different from the weight at which noise certification is requested, the required EPNL adjustment may not exceed 2 EPNdB for each takeoff and 1 EPNdB for each approach. Data approved by the FAA must be used to determine the variation of EPNL with weight for both takeoff and approach test conditions. The necessary EPNL adjustment for variations in approach flight path from the reference flight path must not exceed 2 EPNdB.

(e) For approach, a steady glide path angle of 3° ± 0.5° is acceptable.

(f) If equivalent test procedures different from the reference procedures are used, the test procedures and all methods for adjusting the results to the reference procedures must be approved by the FAA. The adjustments may not exceed 16 EPNdB on takeoff and 8 EPNdB on approach. If the adjustment is more than 8 EPNdB on takeoff, or more than 4 EPNdB on approach, the resulting numbers must be more than 2 EPNdB below the limit noise levels specified in section B36.5.

(g) During takeoff, lateral, and approach tests, the airplane variation in instantaneous indicated airspeed must be maintained within ±3% of the average airspeed between the 10 dB-down points. This airspeed is determined by the pilot's airspeed indicator. However, if the instantaneous indicated airspeed exceeds ±3 kt (±5.5 km/h) of the average airspeed over the 10 dB-down points, and is determined by the FAA representative on the flight deck to be due to atmospheric turbulence, then the flight so affected must be rejected for noise certification purposes.

**Note:** Guidance material on the use of equivalent procedures is provided in the current advisory circular for this part.

17. Remove and reserve appendix C of part 36.

## Appendix G [Amended]

18. In appendix G, amend paragraph (f) of section G36.105 by removing the reference ''paragraph A36.3(e) of Appendix A'' and adding ''paragraphs

A36.3.8 and A36.3.9 of Appendix A'' in its place.

**Appendix H [Amended]**

19. Amend appendix H as follows:

a. In paragraph (d)(1) of section H36.101 by removing the reference to ''appendix B'' and adding ''appendix A'' in its place;

b. Amend paragraph (c)(3) of section H36.111 of appendix H by removing the reference ''A36.3(f)(3)'' and adding ''A36.3.10.1'' in its place.

c. Amend section H36.201 of appendix H in paragraph (a) introductory text by removing the references to ''appendix B'' and adding ''appendix A'' in its place; and in paragraph (b) by removing the reference to ''B36.5(a)'' and adding ''A36.4.3.1(a)'' in its place.

## PART 91—GENERAL OPERATING AND FLIGHT RULES

20. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

**§ 91.801 [Amended]**

21. In paragraphs (a)(1) introductory text, (a)(2), (c), and (d) remove the word ''turbojet'' and add the words ''jet (turbojet)'' in its place.

**§ 91.851 [Amended]**

22. In the definitions of ''Fleet'', ''Stage 2 airplane'', and ''Stage 3 airplane'' remove the word ''turbojet'' and add the words ''jet (turbojet)'' in its place.

Issued in Washington, DC, on June 18, 2002.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 02–15835 Filed 7–5–02; 8:45 am]

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Federal Register

Monday,
July 8, 2002

# Part III

# Library of Congress

## Copyright Office

**37 CFR Part 261**

**Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings; Final Rule**

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 261**

**[Docket No. 2000–9 CARP DTRA 1&2]**

# Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings

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

**ACTION:** Final rule and order.

**SUMMARY:** The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing the determination of the reasonable rates and terms for two compulsory licenses, permitting certain digital performances of sound recordings and the making of ephemeral recordings.

**EFFECTIVE DATE:** July 8, 2002.

**ADDRESSES:** The full text of the public version of the Copyright Arbitration Royalty Panel's report to the Librarian of Congress is available for inspection and copying during normal working hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540. The report is also posted on the Copyright Office website at *http://www.copyright.gov/carp/webcasting_rates.html.*

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 707–8366.

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## I. Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act (''DPRA''), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly their sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions. 17 U.S.C. 114(f).

The scope of this license was expanded in 1998 upon passage of the Digital Millennium Copyright Act of 1998 (''DMCA'' or ''Act''), Public Law 105–304, in order to allow a nonexempt eligible nonsubscription transmission [1] (the ''webcasting license'') and a nonexempt transmission by a preexisting satellite digital audio radio service to perform publicly a sound recording in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(a). In addition to expanding the section 114 license, the DMCA also created a new statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations (the ''ephemeral recording license''). 17 U.S.C. 112(e). The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord permitted under the exemption set forth in section 112(a). 7 U.S.C. 112(e).

The statutory scheme for establishing reasonable terms and rates is the same for both of the new licenses. The terms and rates for the two new statutory licenses may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act.

In this case, interested parties were unable to negotiate an industry-wide agreement. Therefore, a Copyright Arbitration Royalty Panel (''CARP'') was convened to consider proposals from interested parties and, based upon the written record created during this process, to recommend rates and terms for both the webcasting license and the ephemeral recording license.

[1] An ''eligible nonsubscription transmission'' is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made a part of a service that provides audio programming consisting in a whole or in part of performances of sound recordings; the purpose of which is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services.

## II. The CARP Proceeding to Set Reasonable Rates and Terms

These proceedings began on November 27, 1998, when the Copyright Office announced a six-month voluntary negotiation period to set rates and terms for the webcasting license and the ephemeral recording license for the first license period covering October 28, 1998–December 31, 2000. 63 FR 6555 (November 27, 1998). During this period, the parties negotiated a number of private agreements in the marketplace, but no industry-wide agreement was reached. Consequently, in accordance with the procedural requirements, the Recording Industry Association of America, Inc. (''RIAA'') petitioned the Copyright Office on July 23, 1999, to commence a CARP proceeding to set the rates and terms for these licenses. The Office responded by setting a schedule for the CARP proceeding. See 64 FR 52107 (Sept. 27, 1999).

However, the schedule proved unworkable for the parties. RIAA filed a motion with the Copyright Office on November 23, 1999, requesting a postponement of the date for filing direct cases. It argued that the Office should provide more time for the parties to prepare their cases in light of the complexity of the issues and the record number of new participants. The Office granted this request and held a meeting to clarify the procedural aspects of the proceeding, especially for the new participants, and to discuss a new schedule for the arbitration phase of the process. Order in Docket No. 99–6 CARP DTRA (dated December 22, 1999). In the meantime, the Office commenced the six-month negotiation period for the second license period, covering January 1, 2001–December 31, 2002. 66 FR 2194 (January 13, 2000). Ultimately, the Copyright Office consolidated these two proceedings into a single proceeding in which one CARP would set rates and terms for the two license periods for both the webcasting license and the ephemeral recording license. See Order in Docket Nos. 99–6 CARP DTRA and 2000–3 CARP DTRA 2 (December 4, 2000). The 180-day period for the consolidated proceeding began on July 30, 2001, and on February 20, 2002, the panel submitted its report (the ''CARP Report'' or ''Report''), in which it proposed rates and terms to the Copyright Office. It is the decision of this Panel that is the basis for the Librarian's decision today.[2]

### A. The Parties

The parties [3] to this proceeding are: (i) The Webcasters,[4] namely, BET.com, Comedy Central, Echo Networks, Inc., Listen.com, Live365.com, MTVi Group, LLC, Myplay, Inc., NetRadio Corporation, Radio Active Media Partners, Inc.; RadioWave.com, Inc., Spinner Networks Inc. and XACT Radio Network LLC; (ii) the FCC-licensed radio Broadcasters,[5] namely, Susquehanna Radio Corporation, Clear Channel Communications Inc., Entercom Communications Corporation, Infinity Broadcasting Corporation, and National Religious Broadcasters Music License Committee (collectively ''the Broadcasters''); (iii) the Business Establishment Services,[6] namely, DMX/AEI Music Inc. (also referred to as ''Background Music Services''); (iv) American Federation of Television and Radio Artists (''AFTRA'');[7] (v) American Federation of Musicians of the United States and Canada (''AFM'');[8] (vi) Association For Independent Music (''AFIM'');[9] and (vii) Recording Industry Association of America, Inc. (''RIAA'').[10] Music Choice, a Business Establishment Service, was initially a party to this proceeding, but on March 26, 2001, it filed a motion to withdraw from the proceeding. Its motion was unopposed and, on May 9, 2001, its motion to withdraw was granted.

### *B. The Position of the Parties at the Commencement of the Proceeding*

1. Rates Proposed by Copyright Owners

RIAA proposed rates derived from an analysis of 26 voluntarily negotiated agreements between itself and individual webcasters. RIAA claims that these agreements ''involve the same buyer, the same seller, the same right, the same copyrighted works, the same time period and the same medium as those in the marketplace that the CARP must replicate.'' CARP Report at 26, citing RIAA PFFCL [11] (Introduction at 8). Based upon these agreements, RIAA proposed the following rates for DMCA compliant webcasting services:

(i) For basic ''business to consumer'' (B2C) webcasting services:

0.4c for each transmission of a sound recording to a single listener, or 15% of the service's gross revenues.

(ii) For ''business to business'' (B2B) webcasting services, where transmissions are made as part of a service that is syndicated to third-party websites:

0.5c for each transmission of a sound recording to a single listener

(iii) For ''listener-influenced'' webcasting services:

0.6c for each transmission of a sound recording to a single listener

(iv) Minimum fee (subject to certain qualifications): $5,000 per webcasting service

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[2] Section 802 (e) of the Copyright Act requires the CARP to report its determination concerning the royalty fee to the Librarian of Congress 180 days after the initiation of a proceeding. In this particular instance, the Panel submitted its report approximately three weeks later than anticipated under this provision due to a suspension of the proceedings during the period November 9, 2001, through December 2, 2001. The Copyright Office granted the suspension at the parties' request in order to allow them to engage in further settlement discussions. At the same time, the Office granted the Panel an additional period of time, commensurate with the suspension period, for hearing evidence and preparing its report. See Order, Docket No. 2000–9 CARP DTRA 1&2 (November 9, 2001). Additional details concerning the earlier procedural aspects of this proceeding are set forth in the CARP Report at pp. 10–18.

[3] At the outset of the proceeding, Webcaster parties also included Coollink Broadcast Network, Everstream, Inc., Incanta, Inc., Launch Media, Inc., MusicMatch, Inc., Univision Online, and Westwind Media.com, Inc., which have since withdrawn or been dismissed from the proceeding. Late in the proceeding, National Public Radio (''NPR'') reached a private settlement with RIAA and withdrew prior to the conclusion of the 180-day hearing period. Because RIAA, AFTRA, AFM, and AFIM propose the same rates and take similar positions on most issues, they are sometimes referred to collectively as ''RIAA'' or ''Copyright Owners and Performers'' for convenience. Similarly, Webcasters, Broadcasters, and the Business Establishment Services are sometimes referred to collectively as ''the Services.''

[4] The Webcasters are *Internet* services that each employ a technology known as ''streaming,'' but comprise a range of different business models and music programming.

[5] The Broadcasters are commercial AM or FM radio stations that are licensed by the Federal Communications Commission (''FCC'').

[6] The Business Establishment Services, DMX/AEI Music, deliver sound recordings to business establishments for the enjoyment of the establishments' customers. See Knittel W.D.T. 4. DMX/AEI Music is the successor company resulting from a merger between AEI Music Network, Inc. (''AEI'') and DMX Music, Inc. (''DMX'').

[7] AFTRA, the American Federation of Television and Radio Artists, is a national labor organization representing performers and newspersons. See Tr. 2830 (Himelfarb).

[8] AFM, the American Federation of Musicians, is a labor organization representing professional musicians. See Bradley W.D.T. 1.

[9] AFIM, the Association For Independent Music, is a trade association representing independent record companies, wholesalers, distributors and retailers. See Tr. 2830 (Himelfarb)

[10] RIAA is a trade association representing record companies, including the five ''majors'' and numerous ''independent'' labels.

[11] Hereinafter, references to proposed findings of fact and conclusions of law shall be cited as ''OFFCK'' preceded by the name of the party that submitted the filing followed by the paragraph number. References to written direct testimony shall be cited as ''W.D.T.'' preceded by the last name of the witness and followed by a page number. References 9to written rebuttal testimony shall be cited as ''W.R.T.'' preceded by the last name of the witness and followed by a page number. References to the transcript shall be cited asd ''TR.'' followed by the page number and the last name of the witness.

(v) Ephemeral license fee:

10% of each service's performance royalty fee payable under (i), (ii), or (iii).

For the section 112 license applicable to the business establishment services, the copyright owners proposed a rate set at 10% of gross revenues with a minimum fee of $50,000 a year.

2. Rates Proposed by Services

Webcasters proposed per-performance and per-hour sound recording performance fees, based upon an economic model, that considered the aggregate fees paid to the three performance rights organizations (ASCAP, BMI, and SESAC) that license the public performances of musical works for radio programs that are broadcast over-the-air by FCC-licensed broadcasters, by 872 radio stations during 2000. From this model, the webcasters derived a per-song and a per-listener hour base rate of 0.02¢ per song and 0.3¢ per hour, respectively. These figures were then adjusted to account for a number of factors, including the promotional value gained by the record companies from the performance of their works. This adjustment resulted in a fee proposal of 0.014¢ per performance or 0.21¢ per hour.

At the end of the proceeding, Webcasters suggested in their proposed findings of fact and conclusions of law an alternative method for calculating royalty fees, namely, a percentage-of-revenue fee structure. Specifically, Webcasters proposed a fee of 3% of a webcaster's gross revenues for all services. The alternative proposal was made with the understanding that the service would be able to elect either option.

Webcasters proposed no additional fee for the making of ephemeral recordings and a minimum fee of $250 per annum for each service operating under the section 114 license.

The Business Establishment Services who need only an ephemeral recording license proposed a flat rate of $10,000 per year for each company.

*C. The Panel's Determination of Reasonable Rates and a Minimum Fees*

In this proceeding, the Panel had to establish rates and terms of payment for digital transmissions of sound recordings made by noninteractive, nonsubscription services and rates for the making of ephemeral phonorecords made pursuant to the section 112(e) license; either to facilitate those transmissions made or by business establishments which are otherwise exempt from the digital performance right.

The proposed rates are set forth in Appendix A of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_a.pdf.*

The proposed terms of payment may be found in Appendix B of the CARP Report, which is posted on the Copyright Office website at: *http://www.copyright.gov/carp/webcasting_rates_b.pdf.*

**III. The Librarian's Scope of Review of the Panel's Report**

The Copyright Royalty Tribunal Reform Act of 1993 (the Reform Act), Pub. L. No. 103–198, 107 Stat. 2304, created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review that result in final orders: one by the Librarian of Congress (Librarian) and a second by the United States Court of Appeals for the District of Columbia Circuit. Section 802(f) of title 17 directs the Librarian on the recommendation of the Register of Copyrights either to accept the decision of the CARP, or to reject it. If the Librarian rejects it, he must substitute his own determination ''after full examination of the record created in the arbitration proceeding.'' 17 U.S.C. 802(f). If the Librarian accepts it, then the determination of the CARP becomes the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that will be subject to review by the Court of Appeals. 17 U.S.C. 802(g).

The review process has been thoroughly discussed in prior recommendations of the Register of Copyrights (Register) concerning rate adjustments and royalty distribution proceedings. See, e.g., Distribution of 1990, 1991, and 1992 Cable Royalties, 61 FR 55653 (1996); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (October 28, 1997). Nevertheless, the discussion merits repetition because of its importance in reviewing each CARP decision.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP, ''unless the Librarian finds that the determination is arbitrary or contrary to the applicable provisions of this title.'' Neither the Reform Act nor its legislative history indicates what is meant specifically by ''arbitrary,'' but there is no reason to conclude that the use of the term is any different from the ''arbitrary'' standard described in the Administrative Procedure Act (APA), 5 U.S.C. 706(2)(A).

Review of the case law applying the APA ''arbitrary'' standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency action is generally considered to be arbitrary when:

1. It relies on factors that Congress did not intend it to consider;

2. It fails to consider entirely an important aspect of the problem that it was solving;

3. It offers an explanation for its decision that runs counter to the evidence presented before it;

4. It issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;

5. It fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; and

6. Its action entails the unexplained discrimination or disparate treatment of similarly situated parties.

*Motor Vehicle Mfrs. Ass'n. State Farm Mutual Auto. Insurance Co.,* 463 U.S. 29 (1983); *Celcom Communications Corp.* v. *FCC,* 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp.* v. *FAA,* 758 F.2d 685 (D.C. Cir. 1985).

In reviewing the CARP's decision, the Librarian has been guided by these principles and the prior decisions of the District of Columbia Circuit in which the court applied the ''arbitrary and capricious'' standard of 5 U.S.C. 706(2)(A) to the determinations of the former Copyright Royalty Tribunal (hereinafter ''CRT or Tribunal''). See, e.g, *National Cable Tele. Ass'n* v. *CRT,* 724 F.2d 176 (D.C. Cir. 1983) (applying the Administrative Procedure Act's standard authorizing courts to set aside agency action found to be arbitrary, capricious, and abuse of discretion, or otherwise in accordance with law.''); see also, *Recording Industry Ass'n of America* v. *CRT,* 662 F.2d 1, 7–9 (D.C. Cir. 1981); *Amusement and Music Operators Ass'n* v. *CRT*, 676 F.2d 1144, 1149–52 (7th Cir.), cert denied, 459 U.S. 907 (1982); *National Ass'n of Broadcasters* v. *CRT*, 675 F.2d 367, 375 n. 8 (D.C. Cir. 1982).

Review of judicial decisions regarding Tribunal actions reveals a consistent theme; while the Tribunal was granted a relatively wide ''zone of reasonableness,'' it was required to articulate clearly the rationale for its award of royalties to each claimant. See *National Ass'n of Broadcasters* v. *CRT*, 772 F.2d 922 (D.C. Cir. 1985), cert. denied, 475 U.S. 1035 (1986) *(NAB* v. *CRT)*; *Christian Broadcasting Network* v.

*CRT*, 720 F.2d 1295 (D.C. Cir. 1983) *(Christian Broadcasting* v. *CRT)*; *National Cable Television Ass'n* v. *CRT*, 689 F.2d 1077 (D.C. Cir. 1982) *(NCTA* v. *CRT)*; *Recording Indus. Ass'n of America* v. *CRT*, 662 F.2d 1 (D.C. Cir. 1981) (*RIAA* v. *CRT*). As the D.C. Circuit succinctly noted:

> We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully. * * *

*Christian Broadcasting* v. *CRT*, 720 F.2d at 1319 (D.C. Cir. 1983), quoting *NCTA* v. *CRT*, 689 F.2d at 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same ''arbitrary'' standard used by the courts to review the Tribunal, he must be presented by the CARP with a rational analysis of its decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history of the Reform Act which notes that a ''clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress.'' H.R. Rep. No. 103–286, at 13 (1993). This goal cannot be reached by ''attempt[ing] to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record.'' *Christian Broadcasting* v. *CRT*, 720 F.2d at 1319.

It is the task of the Register to review the report and make her recommendation to the Librarian as to whether it is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination. 17 U.S.C. 802(f).

## IV. The CARP Report: Review and Recommendation of the Register of Copyrights

The law gives the Register the responsibility to review the CARP report and make recommendations to the Librarian whether to adopt or reject the Panel's determination. In doing so, she reviews the Panel's report, the parties' post-panel submissions, and the record evidence.

After carefully considering the Panel's report and the record in this proceeding, the Register has concluded that the rates proposed by the Panel for use of the webcasting license do not reflect the rates that a willing buyer and willing seller would agree upon in the marketplace. Therefore, the Register has made a recommendation that the Librarian reject the proposed rates ($0.14 per performance for Internet-only transmissions and $0.07 per performance for radio retransmissions) for the section 114 license and substitute his own determination (0.07c per performance for both types of transmissions), based upon the Panel's analysis of the hypothetical marketplace, and its reliance upon contractual agreements negotiated in the marketplace.

These changes necessitate an adjustment to the proposed rates for non-CPB, noncommercial broadcasters [12] for Internet-only transmissions as well. The adjusted rate for archived programming subsequently transmitted over the Internet, substituted programming and up to two side channels is 0.02¢, reflecting a downward adjustment from the 0.05¢ rate proposed by the Panel. The new rate for all other transmissions made by non-CPB, noncommercial broadcasters is 0.07¢ per performance per listener. Using this methodology, the Register recommends that the Librarian also reject the Panel's determination of a rate for the making of ephemeral recordings by those Licensees operating under the webcasting license. Because the Panel had made an earlier determination not to consider 25 of the 26 contracts submitted by RIAA for the purpose of setting a rate for the webcasting license, it was arbitrary for the Panel to use these same rejected licenses to set the Ephemeral License Fee. See section IV.13 herein for discussion. Consequently, the Register proposes a downward adjustment—from 9% of the performance royalties paid to 8.8%—to the Ephemeral License Fee to remove the effect of the discarded licenses.

In determining the Ephemeral License Fee for Business Establishment Services operating under an exemption to the digital performance right, the CARP considered separate licenses negotiated in the marketplace between individual record companies and these services. Its reliance on these agreements as an adequate benchmark for purposes of setting the rate for the section 112 license was well-founded and supported by the record. Therefore, the Register recommends adopting the Panel's proposal of setting the Ephemeral License Fee for Business Establishment Services at 10% of the service's gross proceeds. However, the Register cannot support the Panel's recommendation to set the minimum fee applicable to these services for its use of the ephemeral license at $500 when clear evidence exists in the contractual agreements to establish a much higher range of values for setting the minimum fee. Consequently, the Register evaluated the contracts and proposed a minimum fee consistent with the record evidence. The result is a minimum fee of $10,000 per license pro rated on a monthly basis.

Section 802(f) states that ''[i]f the Librarian rejects the determination of the arbitration panel, the Librarian shall, before the end of that 90-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting the royalty fee or distribution of fees, as the case may be.'' During that 90-day period, the Register reviewed the Panel's report and made a recommendation to the Librarian to accept in part and reject in part the Panel's report, for the reasons cited herein. The Librarian accepted this recommendation and, on May 21, 2002, he issued an order rejecting the Panel's determination proposing rates and terms for the webcasting license and the ephemeral recording license. See Order, Docket No. 2000–9 CARP DTRA 1&2 (dated May 21, 2002).

The full review of the Register and her corresponding recommendations are presented herein. Within the limited scope of the Librarian's review of this proceeding, ''the Librarian will not second guess a CARP's balance and consideration of the evidence, unless its decision runs completely counter to the evidence presented to it.'' Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55757 (1997), citing 61 FR 55663 (October 28, 1996) (Distribution of 1990, 1991 and 1992 Cable Royalties). Accordingly, the Register accepts the Panel's weighing of the evidence and will not question findings and conclusions which proceed directly from the arbitrators' consideration of factual evidence. The Register, however, may reject a finding of the Panel where it is clear that its determination is not supported by the evidence in the record.

### *A. Establishing Appropriate Rates*

#### 1. The ''Willing Buyer/Willing Seller Standard''

Sections 112(e)(4) and 114(f)(2)(B), of title 17 of the U.S.C., provide that ''the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller,'' and enumerate two factors that the panel shall consider in making its decisions: (1) The effect of

[12] A non-CPB, noncommercial broadcaster is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

the use of the sound recordings on the sale of phonorecords, and (2) the relative contributions made by both industries in bringing these works to the public. In applying this standard, the Panel determined that it was to consider the enumerated factors along with all other relevant factors identified by the parties, but that it was not to accord the listed factors special consideration. Report at 21; see also Final Rule and Order, Rate Adjustment for the Satellite Carrier Compulsory License, Docket No. 96–3 CARP SRA, 62 FR 55742, 55746 (October 28, 1997).

Nevertheless, when the Panel considered the record evidence offered to establish a marketplace rate, it paid close attention to the two factors set forth in the statute. In analyzing the first factor, which focuses on the interplay between webcasting and sales of phonorecords, the panel found that the evidence offered during the proceeding was insufficient to demonstrate whether webcasting promoted or displaced sales of sound recordings. RIAA's evidence to demonstrate that performances of their sound recordings over the Internet displace record sales consisted of unsupported opinion testimony and consequently, the Panel afforded it no weight. Report at 33. Similarly, the Panel rejected the Webcasters' contention that webcasting promoted sales, affording little weight to its empirical studies. It concluded that the Sounddata survey [13] was not useful for purposes of this proceeding because it focused on the promotional value of traditional radio broadcasts and not the promotional value of webcasting. Id. Likewise, the Panel rejected a study by Professor Michael Mazis [14] because the response rates in the survey study fell below generally acceptable standards. All in all, the evidence on either side was not persuasive. Consequently, the Panel concluded that, for the time period under consideration, ''the net impact of Internet webcasting on record sales [was] indeterminate.'' Id. at 34.

Broadcasters, however, disagree with the Panel's conclusions. They argue that the Panel should have made an adjustment for the promotional value of the transmissions, noting that the statute singled out this factor for consideration when setting the rates. Broadcasters Petition at 38. They further contend that the record demonstrates that ''the promotional value of radio play should be far and away the most significant factor in determining the fair market value of broadcasters simulcast rates.'' Id. at 39–40. But all the evidence cited in the record references the interrelationship between radio stations and record companies in the analog world. As noted above, the Panel considered the evidence but did not find it persuasive.

Where the Panel makes a decision based upon its weighing of the evidence, the Register will not disturb its findings and conclusions that proceed directly from the Panel's consideration of the factual evidence. Thus, the Register accepts the Panel's conclusion that performances of sound recordings over the Internet did not significantly stimulate record sales. More importantly, though, the Panel correctly found that promotional value is a factor to be considered in determining rates under the willing buyer/willing seller model, and does not constitute an additional standard or policy consideration to be used after rates are set to adjust a base rate upwards or downwards. Report at 21. Therefore, the effect of any promotional value attributable to a radio retransmission would already be reflected in the rates for these transmissions reached through arms-length negotiations in the marketplace.

As for the second factor, the Panel found that both copyright owners and licensees made significant creative, technological and financial contributions. It concluded, however, that it was not necessary to gauge with specificity the value of these contributions in the case where actual agreements voluntarily negotiated in the marketplace existed, since such considerations, including any significant promotional value of the transmissions, would already have been factored into the agreed upon price. Id. at 35–36. This is not a contested finding.

It is also important at the outset of this review to distinguish the willing buyer/willing seller standard to be used in this proceeding from the standard that applies when setting rates for subscription services that operated under the section 114 license. They are not the same. Section 114(f)(1)(B), governing subscription services, requires a CARP to consider the objectives set forth in section 801(b)(1), as well as rates and terms for comparable types of digital audio transmission services established through voluntary negotiations. See Final Rule and Order, 63 FR 25394, 25399 (May 8, 1998). This standard for setting rates for the subscription services is policy-driven, whereas the standard for setting rates for nonsubscription services set forth in section 114(f)(2)(B) is strictly fair market value—willing buyer/willing seller. Thus, any argument that the two rates should be equal as a matter of law is without merit. See, e.g., Webcasters Petition at 4 (comparing rates set for preexisting subscription services under the policy driven standard with the proposed marketplace rates for nonsubscription services and inferring that the rates should be similar).

2. Hypothetical Marketplace/Actual Marketplace

To set rates based on a willing buyer/willing seller standard, the CARP first had to define the relevant marketplace in which such rates would be set. It determined, and the parties agreed, that the rates should be those that a willing buyer and willing seller would have agreed upon in a hypothetical marketplace that was not constrained by a compulsory license. The CARP then had to define the parameters of the marketplace: the buyers, the sellers, and the product.

In this configuration of the marketplace, the willing buyers are the services which may operate under the webcasting license (DMCA-compliant services), the willing sellers are record companies, and the product consists of a blanket license from each record company which allows use of that company's complete repertoire of sound recordings. Report at 24. Because of the diversity among the buyers and the sellers, the CARP noted that one would expect ''a range of negotiated rates,'' and so interpreted the statutory standard as ''the rates to which, absent special circumstances, most willing buyers and

[13] Michael Fine is an expert witness for the Webcasters and Broadcasters. He was the chief executive officer to Soundata, SoundScan and Broadcast Data Systems until December 31, 2000, and is now a management consultant to the firms operating these services. He analyzed data collected by these services to determine the promotional effect upon record sales from radio retransmissions and Internet-only transmissions and the displacement effect of record sales due to copying of sound recordings from Internet transmissions. Fine's W.D.T. at 1.

[14] Professor Mazis is a Professor in the Kogod School of Business, American University, who testified on behalf of the Webcasters and Broadcasters. He designed a survey study to analyze usage patterns of people who listen to simulcast of a radio station's over-the-air broadcast programming and transmissions made by services transmitting solely over the Internet. Specifically, the study was designed to measure:

a. The effect listening to transmissions over the Internet had on a listener's music purchases;

b. the extent to which listeners to radio retransmissions are either listeners from the broadcaster's local market or non-local listeners;

c. the amount of time spent listening to programming on the Internet and the proportion of that time spent listening to music programming versus non-music programming; and

d. the reasons why people visit radio station websites and the activities they engage in when they visit these sites. Mazis' W.D.T. at 1–2.

willing sellers would agree'' in a competitive marketplace.[15] Id. at 25.

The Services take issue with the Panel's analysis of the hypothetical marketplace. They argue that the willing sellers should be considered as a group of hypothetical ''competing collectives each offering access to the range of sound recordings required by the Services,'' and not, as the Panel contends, viewed as individual record companies. Broadcasters Petition at 9; Webcasters Petition at 9–10. It is hard to see, however, how competition would be stimulated in a marketplace where every seller offers the exact same product and where more likely than not, the sellers would act in concert to extract monopolistic prices. Possibly sellers would choose to undercut each other, but at some point the price would stabilize. In any event, the Services failed to explain how such collectives would operate in a competitive marketplace. Consequently, the Register rejects the Webcasters' challenge to the Panel's definition on this point and adopts the Panel's characterization of the relevant marketplace, recognizing that for purposes of this proceeding, the major record companies are represented by a single entity, the RIAA.

Turning next to the actual marketplace in which RIAA negotiated agreements with individual services, the Services voice a number of objections to the Panel's decision to rely on the 26 voluntary agreements offered into evidence by RIAA. Specifically, the Services object to the use of the voluntary agreements because they fail to exhibit a range of negotiated rates among diverse buyers and sellers. Broadcasters Petition at 10; Webcasters Petition at 10. They also question the validity of relying on agreements negotiated during the early stages of a newly emerging industry, noting the Panel's admonition to approach such agreements with caution. Report at 47. The reason for the warning was Dr. Jaffe's [16] stated concern that such licenses ''may not reflect fully educated assessments of the nascent businesses'' long-term prospects.''

The Services also argue that the existence of the antitrust exemption in the statutory license gave RIAA an unfair bargaining advantage over the Services because RIAA represented the five major record companies who together owned most of the works. They contend that RIAA used its superior market power to negotiate supra-competitive prices with Services who could not match either RIAA's power in the marketplace or its sophistication in negotiating contracts. Moreover, they utterly reject the Panel's determination that RIAA's perceived market power was tempered by the existence of the statutory license, which, for purposes of negotiating a fair rate for use of sound recordings, leveled the playing field. Webcasters Petition at 12.

Not surprisingly, RIAA agrees with the Panel on this issue. It maintains that the statutory license offers the Services two clear advantages which more than offset any perceived advantage the RIAA may have had in negotiating a voluntary agreement. First, the license eliminates the usual transaction costs associated with negotiating separate licenses with each of the copyright owners. Second, services may avoid litigation costs associated with setting the rates for a statutory license provided they choose not to participate in the CARP process. RIAA reply at 12.

In essence, both sides articulate valid positions which are supported by the record. RIAA is clearly an established market force with extensive resources and sophistication. In fact, the Panel found that when RIAA negotiated with less sophisticated buyers who could not wait for the outcome of this proceeding, the rates were above-market value, and therefore, not considered by this CARP. Report at 54–56. Nevertheless, it would make no sense for RIAA to take any other position in a marketplace negotiation. Sellers expect to make a profit and will extract from the market what they can, just as buyers will do everything in their power to get the product at the lowest possible price. These are the fundamental principles guiding marketplace negotiations.

Such negotiations, however, were few. For the most part, webcasters chose not to enter into negotiations for voluntary agreements, knowing that they could continue to operate and wait for the CARP to establish a rate. Such actions on the part of the users clearly impeded serious negotiations in the marketplace and support the CARP's observation that the statutory license had a countervailing effect on the negotiation process and limited the ability of RIAA to exert undue marketplace power. See Tr. 9075–77, 9490–94 (Marks) (explaining the difficulties of bringing webcasters to the negotiating table due to the statutory license). Thus, the CARP could only consider negotiated rates for the rights covered by the statutory license that were contained in an agreement between RIAA and a Service with comparable resources and market power.

The only agreement that met these criteria was the Yahoo![17] agreement. The Panel found that both parties to that agreement entered into negotiations in good faith and on equal footing. Moreover, RIAA's negotiating advantage disappeared. RIAA could not extract super-competitive rates because Yahoo! brought comparable resources, sophistication, and market power to the negotiating table.

Moreover, Yahoo! could have continued to operate under the license and wait for the outcome of this proceeding. Yet, Yahoo!, unlike most of the other Services, did not take this course of action. It wanted a negotiated agreement so that it could fully develop its business model based on certainty as to the costs of the use of the sound recordings. Consequently, it had every incentive to negotiate a rate that reflected its perception of the value of the digital performance right in light of its needs and position in the marketplace. Had RIAA insisted upon a super competitive rate, Yahoo! could have walked away and waited for the CARP to set the rates. RIAA Reply at 13. Thus, it was not arbitrary for the Panel to consider the negotiated agreement between Yahoo! and RIAA. It met all the criteria identified by the CARP (discussed above) that characterized the hypothetical marketplace: Yahoo! was a DMCA-compliant Service; RIAA represented the interests of five independent record companies, and the license granted the same rights as those offered under the webcasting and the ephemeral recording licenses.

The Webcasters make one final argument concerning use of licenses negotiated in the marketplace. They fault the Panel for its reliance on a contract for which there was no prior marketplace precedent for setting a rate. Webcasters Petition at 15. Yet, that alone cannot be a reason to reject

[15] The panel used the same analysis for setting the rates for the ephemeral recording license because the statutory language defining the standard for setting rates for the ephemeral recording license is nearly identical to the standard set forth in section 114.

[16] Adam Jaffe is a Professor of Economics at Brandeis University. He is also the Chair of the Department of Economics and the Chair of the University Intellectual Property Policy Committee. He testified on behalf of the Webcasters and the Broadcasters.

[17] Yahoo! is a streaming service which provides a retransmissions of AM/FM radio stations and programming from other webcaster sites. Report at 61. Yahoo! is also a global Internet communications, commerce and media company, offering comprehensive services to more than 200 million users each month. Content for its features like Yahoo! Finance, Yahoo! News, and Yahoo! Sports, are typically licensed from third parties. Mandelbrot W.D.T. ¶ 3–5.

The Panel was well aware of the many faces of Yahoo! Nevertheless, it found no reason to reject the Yahoo! agreement merely because it offered other business services. See Report at 76, in 53.

consideration of agreements negotiated in the marketplace, albeit at an early stage in the development of the industry. At some point, rates must be set. Such rates then become the baseline for future market negotiations. RIAA recognized an opportunity to participate in this initial phase and moved forward to negotiate contracts with users with the intention of using these contracts to indicate what a willing buyer would pay in the marketplace. However, that was easier said than done. As discussed above, most Webcasters chose not to enter into marketplace agreements, preferring to wait for the outcome of the CARP proceeding in the hope of getting a low rate. Clearly, such resistance to enter into good faith negotiations made it difficult for the copyright owners to gauge the market accurately and find out just what a willing buyer would be willing to pay for the right to transmit a sound recording over the Internet.

3. Benchmarks for Setting Market Rates: Voluntary Agreements vs. Musical Works Fees

The parties offer two very different methods for setting the webcasting rates. RIAA argued that the best evidence of the value of the digital performance right is the actual rates individual services agreed to pay for the right to transmit sound recordings over the Internet. In support of its position, it offered into evidence 26 separate agreements it had negotiated in the marketplace prior to the initiation of the CARP proceeding. The Services take a different approach. They dispute the validity of the contracts as a bases for marketplace rates and offer in their place a theoretical model (the ''Jaffe model'') predicated on the fees commercial broadcasters pay to use musical works in their over-the-air AM/FM broadcast programs.

The Jaffe model builds on the premise that in the hypothetical marketplace, copyright owners would license their digital performance rights and ephemeral recording rights at a rate no higher than the rates music publishers currently charge over-the-air radio broadcasters for the right to publicly perform their musical works.[18] Report at 28, citing Webcasters PFFCL ¶¶ 276–78; Jaffe W.D.T. 16–19. To find the rate copyright owners would charge under this model, Webcasters calculated a per performance and a per hour rate by using the aggregate fees that 872 over-the-air radio stations paid in 2000 to the performing rights organizations BMI, ASCAP, and SESAC.[19] It combined the fee data with data on listening audiences obtained from Arbitron to generate an average fee paid by an over-the-air broadcaster per ''listening hour.'' From this value, Webcasters calculated a per performance fee by dividing the ''listener hour'' fee by the average number of songs played per hour by music-intensive format stations. Id. These calculations yielded a per song fee of 0.02¢ or, in the alternative, a per listener hour fee of 0.22¢. For purposes of webcasting, these values were adjusted upward to reflect the fact that, on average, webcasters play 15 songs per hour, as compared to the 11 per-hour played on over-the-air radio. The webcaster per hour rate works out to be 0.3 instead of 0.2¢ per hour.

After carefully considering both approaches, the Panel chose to focus on the RIAA agreements. In rejecting Dr. Jaffe's theoretical model, the panel cited three reasons for its conclusion. First, the Panel expressed strong concern regarding the construct of the model, including: 1. The difficulty in identifying all the factors that must be considered in setting a price, and 2. The inherent error associated with predicating a prediction on a ''string of assumptions,'' especially where the level of confidence in many of the assumptions is not high. Second, the Panel was wary of analogizing the market for the performance of musical works with the market for the performance of sound recordings, finding instead that the two marketplaces are distinct based upon the difference in cost and demand characteristics. And finally, the Panel determined that the Jaffe model was basically unreliable. It could not be used to predict accurately the amount of royalty fees owed to the performing rights societies by a particular radio station. It came to this conclusion after using the model to predict the royalty fees owed by a particular station and comparing that figure to the amount the radio station actually paid. For some radio stations, the model severely underestimated the amount owed to the performing rights societies, thus, drawing into serious question the reliability of the model. Report at 42.

a. *Fees paid for use of musical works.* The Broadcasters and the Webcasters fault the Panel for disregarding the fees paid for musical works as a viable benchmark. Webcasters Petition at 15, 47. They maintain that Dr. Jaffe's analysis proves that the value of the performance of the sound recording is no higher than the value of the performance of the musical work. Webcasters argue that the fees for musical works constitute a valid benchmark because these rates are the result of transactions between willing buyers and willing sellers over a long period of time, in a marketplace that shares economic characteristics with the marketplace for sound recordings. Webcasters Petition at 48. The Broadcasters agree. They maintain that even under the willing buyer/willing seller standard, ''the over-the-air musical works license experience * * * has resulted in fees 'to which most willing buyers and willing sellers [have] agree[d]' and constitute 'comparable agreements negotiated over a longer period, which ha[ve] withstood 'the test of time.' '' Broadcasters Petition at 45–46, citing Report at 25, 47.

Broadcasters and Webcasters also object to the Panel's characterization of its proposed benchmark as merely a theoretical model. Webcasters Petition at 51. They maintain that Dr. Jaffe's model was much more than a theoretical model because it used actual data from the musical works marketplace to calculate an analogous rate for use of sound recordings in the digital marketplace. Consequently, these Services contend that the Panel gave inadequate consideration to their proposed benchmark and rejected the model out of hand because it was purported to be only a theoretical model based upon a number of untested assumptions. Broadcasters Petition at 18–19; Webcasters Petition at 18–20, 52.

Finally, the Services argue that the statute does not compel the Panel to consider only negotiated agreements. They also contend, that the reliance on the fees paid for use of the musical works in a prior CARP proceeding to establish rates for subscription services operating under the same license required the panel to give more consideration to the musical works benchmark. Broadcaster's Petition at 1–2; Webcasters Petition at 1–2, 15, 17, 47. Webcasters find support for this last argument in an Order of the Copyright Office issued in this proceeding, dated July 18, 2001.

In that order, the Office acknowledged that in 1998 it had adopted the rates paid for musical works fees as a relevant benchmark for setting rates for

[18] A ''musical work'' is a musical composition, including any words accompanying the music. A ''sound recording'' is a work that results from the fixation of a series of musical, spoken, or other sounds, other than those accompanying a motion picture or other audiovisual work.

[19] BMI, Inc., American Society for Composers, Authors and Publishers, and SESAC, Inc. are performing rights organizations that represent songwriters, composers and music publisehrs in all genres of music. These societies offer licenses and collect and distribute royalty fees for the non-dramatic public performances of the copyrighted works of their members.

subscription services. It stated, however, that the evidence in that case did not support a conclusion that the value of the sound recording exceeded the value of the musical work. Moreover, and directly to the point, the Register's recommendation in the earlier proceeding concurred with the earlier Panel's determination that the musical works benchmark is NOT determinative of the marketplace value of the performance right in sound recordings. The relevant passage states: ''The question, however, is whether this reference point (the musical works benchmark) is determinative of the marketplace value of the performance in sound recordings; and, as the Panel determined, the answer is no.'' 63 FR 25394, 25404 (May 8, 1998).

The July 18 Order went on to note that in the subscription service proceeding, ''[h]ad there been record evidence to support the opposite conclusion, [namely, that the value of sound recordings exceeds the value of musical works], the outcome might have been different.'' This statement was an invitation to the parties to provide whatever evidence they could adduce in this proceeding to establish the value of the sound recording. It was not to be read as an absolute determination, that the value of the sound recording in a marketplace unconstrained by a compulsory license is less than the value of the underlying musical work. Instead, the Order stated that ''the musical work fees benchmark identified in a previous rate adjustment proceeding as the upper limit on the value of the performance of a sound recording may or may not be adopted as the outer boundary of the ''zone of reasonableness'' in this proceeding. This is a factual determination to be made by the CARP based upon its analysis of the record evidence in this proceeding.''

It is also important to note that in the prior proceeding, the only reason the Register and the Librarian focused on the musical works benchmark was because it was the only evidence that remained probative after an analysis of the Panel's decision. Each of the other benchmarks possessed at least one fatal deficiency and, consequently, each was rejected as a reliable indicator of the value of the performance of a sound recording by a subscription service. Of equal importance is the fact that the musical works benchmark had never been fully developed in the record, nor had any party relied on it to any great extent in making its case to that Panel. Consequently, it was not arbitrary for the Panel to reject the Services' invitation to anchor its decision for setting rates for nonsubscription services on the prior decision setting rates for preexisting subscription services.

Moreover, the Panel is not required to justify why the rates it ultimately recommended here are greater than the rates preexisting subscription services pay for use of the musical works. That is merely the result of the analysis of the written record before this Panel, and its decision flows naturally from its reliance upon contractual agreements negotiated in the relevant marketplace for the right at issue. This difference in the rates is also attributable to the different standards that govern each rate setting proceeding. As discussed previously in section IV.1, the standard for setting rates for subscription services is policy based and not dependent upon market rates. Consequently, it is more likely that the rates set under the different standards will vary markedly, especially when rates are being set for a new right in a nascent industry.

Nevertheless, the Register agrees with the Services on a number of theoretical points. Certainly, the Panel could have utilized Dr. Jaffe's model in making its decision, either alone or in conjunction with the voluntary agreements, provided that it considered the model's deficiencies, and made appropriate adjustments for the fact that the model required reliance on a string of assumptions to perform the conversion of a rate for the public performance of a musical work in an analog environment, into a comparable rate for the public performance of a sound recording in a digital format. *See AMOA* v. *CRT,* 676 F2d 1144 (7th Cir. 1982). But the fact remains that it was not required by law to do so. The Panel was free to choose any of the benchmarks offered into the record or to rely on each of them to the degree they aided the Panel in reaching its decision. *See, e.g.,* Use of Certain Copyrighted Works in Connection with Noncommercial Broadcasting, 43 FR 25068–69 (CRT found voluntary license between BMI, Inc., and the public broadcasters, Public Broadcasting System and National Public Radio, of no assistance in setting rates for use of ASCAP repertoire).

The Register also rejects the Services' contentions that the Panel failed to consider fully Dr. Jaffe's model. *See* Webcasters Petition at 20, 52. The Panel did consider Jaffe's model and concluded that it need not consider alternative benchmarks that are at best analogous when it had actual evidence of marketplace value of the performance of the sound recordings in the record. Report at 42. It also rejected the offer to utilize the model because the underlying assumptions were in many instances questionable. For example, the Panel did not accept the assumptions that a percentage of revenue model could be converted accurately to a per performance metric, or that the buyers and sellers in the two marketplaces are analogous.

Broadcasters assert that they had established that the value of the musical work is higher than the comparable right for sound recording based on the fees paid for use of these works in movies and television programs. Broadcasters Petition at 24. In addition, they offered a study of the fees paid for these rights in twelve foreign countries where the Services claim these rights are valued more or less equally. *Id.* at 24, 49. Because the Panel failed to analyze this information, the Services argue, the Panel's rejection of the musical benchmark was arbitrary.

RIAA responds that the information offered on the fees paid for the public performance of sound recordings fails to establish that in these countries sound recordings are valued according to a ''willing buyer/willing seller'' standard. RIAA Reply at 20, fn 36. In fact, many of the countries surveyed evidently use an ''equitable remuneration'' standard, which courts have held not to be equivalent to a fair market value. Because it is not possible to ascertain whether any of the rates offered in the survey of foreign countries represented a fair market rate, or that the rights in these countries are equivalent to the rights under U.S. law, the Panel was not arbitrary in its decision to disregard this evidence. The Register also concludes that the Panel's decision not to consider master use and synchronization licenses for use of musical works and sound recordings in motion pictures and television was not arbitrary. At best, these licenses offered potential benchmarks for evaluating the digital performance right for sound recordings, and they may well have been useful had not actual evidence of marketplace value of the sound recordings existed. In any event, they did not represent better evidence than the voluntary agreements negotiated in the marketplace for the sound recording digital performance right.

b. *Voluntary agreements.* On the other hand, the Panel articulated two affirmative reasons for its focus on the negotiated agreements. First, the statute invites the CARP to consider rates and terms negotiated in the marketplace. Second, the Panel accepted the premise that the existence of actual marketplace agreements pertaining to the same rights for comparable services offers the best evidence of the going rate. Report at 43, citing Jaffe Tr. at 6618.

But in choosing this approach, the Panel did not accept the 26 voluntary agreements at face value. It evaluated the relative bargaining power of the buyers and sellers, scrutinized the negotiating strategy of the parties, considered the timing of the agreements, discounted any agreement that was not implemented, eliminated those where the Service paid little or no royalties or the Service went out of business, and evaluated the effect of a Service's immediate need for the license on the negotiated rate. See Report at 45–59.[20] Ultimately, it gave little weight to 25 of the 26 agreements for these reasons and because the record demonstrated that the rates in these licenses reflect above-marketplace rates due to the superior bargaining position of RIAA or the licensee's immediate need for a license due to unique circumstances. At best, the Panel concluded that the rates included in these agreements establish an upper limit on the price of the digital performance right, and where included, the right to make ephemeral copies. Report at 59.

RIAA objects to the Panel's decision to reject 25 of the 26 agreements on the grounds that the Panel's criticisms were overbroad. RIAA Petition at 34. Specifically, it claims that the Panel mischaracterized its agreement with *www.com/OnAir* (''OnAir''), arguing that this Licensee paid substantial royalties and its decision to enter into the agreement was not motivated by special circumstances as the CARP claimed. Id. at 31. This observation, however, is not sufficient to overcome the Panel's conclusion in regard to this agreement, especially in light of the testimony of RIAA's own expert witness, Dr. Nagle, who testified the Panel should give no consideration to any agreement with a licensee who cannot survive in the marketplace. Report at 24. Had OnAir continued to operate in the marketplace and renew its license with RIAA, the Panel might have given it more serious consideration. But again, it was not required to do so, especially when the Panel found more probative evidence in the record upon which to rely.

Likewise, RIAA objected to the Panel's decision not to give any weight to the MusicMusicMusic (''MMM'') agreement, arguing in this case that the Panel assumed MMM had renewed its agreement in 2001 for the same reasons that led it to accept a higher than market value rate in 1999. RIAA Petition at 32. Webcasters respond that RIAA misrepresents the facts of the renewal. They maintain that MMM renewed the agreement in 2001 based on ''many of the same motivating factors'' that led to the initial agreement, including its concerns about its long-term relationship with RIAA in other areas. Webcasters Reply at 29. Because the evidence supports a rationale for MMM to accept a higher than marketplace rate, it was not arbitrary for the Panel to decide not to adopt it as an adequate benchmark. The Panel need not rely on the MMM agreement when it had another agreement negotiated in the marketplace that did not suffer from the same perceived shortcomings.

Specifically, the Panel gave significant weight to the one remaining agreement negotiated—the RIAA-Yahoo! agreement—and used it as a starting point for setting the rates for the webcasting license and the ephemeral recordings license. The Panel found this agreement particularly reliable and probative because: (1) Yahoo! was a successful and sophisticated business which, to date, had made well over half of all DMCA-compliant performances; (2) it had comparable resources and bargaining power to those RIAA brought to the table; and (3) the agreement provided for different rates for different types of transmissions. See Report at 64–67; 70. While the first two reasons offer strong support for the Panel's decision to rely upon the Yahoo! agreement, the third reason is questionable in the context of the Yahoo! agreement because the different rates do not actually represent the parties' understanding of the value of the performance right for these types of transmissions. See discussion infra, section IV.5.

Webcasters, however, argue that the Panel's reliance on the Yahoo! agreement was fatal because it selected a single term out of a multifaceted contract. Webcasters at 22–23. Specifically, they maintain that the webcasting rate did not reflect merely the value of the sound recording, but an abundance of trade-offs that met the needs of RIAA and Yahoo!. Id. at 24. Webcasters make this argument because, in a prior CARP proceeding, the Register had refused to adopt a complicated partnership agreement that purportedly included a rate for the digital performance right as a benchmark for setting the statutory rate. See, Rate Setting Proceeding for Subscription Services, 63 FR 25394 (May 8, 1998). Specifically, the Register concluded that ''it was arbitrary for the Panel to rely on a single provision extracted from a complex agreement where the evidence demonstrates that the [rate] provision would not exist but for the entire agreement.'' Id. at 25402.

The two agreements, however, are not analogous. The primary purpose of the Yahoo! agreement was to set a rate for use of sound recordings over the Internet. Thus, the noted trade-offs in this agreement were all directly tied to considerations relating to the value of the performance right, and did not affect its validity as a benchmark. Such was not the case with the subscription services agreement offered into evidence in the prior proceeding, where the performance right component was merely ''one of eleven interdependent co-equal agreements which together constituted the partnership agreement between [Digital Cable Radio Associates (''DCR'')] and the record companies.'' Id.

Along these same lines, the Services challenge the Panel's dependence upon a single contract negotiated between a single seller (RIAA) and a single buyer (Yahoo!), especially in light of the Panel's construct of the hypothetical marketplace. Broadcasters Petition at 14; Live365 Petition at 5; Webcasters Petition at 9, 14. These parties argue that under 17 U.S.C. 114(f)(2)(B), the Panel had discretion to consider negotiated agreements only when the agreements were for comparable types of services in comparable circumstances. Webcasters, including Live365, maintain that Yahoo! had a unique position among webcasters and argue that it was manifestly arbitrary for the Panel to set rates based solely on the rates paid by this one webcaster which by its own admissions was not similarly situated with other webcasters. Live365 Petition at 11; Webcasters Petition at 27. Specifically, they contend that Yahoo! had little concern about getting a reasonable rate for Internet-only transmissions so long as the rate for RR transmissions was favorable and it could continue to grow in this arena. Webcasters note that Yahoo!'s main business was the retransmission of radio re-broadcasts, and that over 90% of all transmissions made by Yahoo! fall within this category. Id. at 28. Consequently, Webcasters maintain that the rates set for Internet-only transmissions in the Yahoo! agreement cannot be fairly applicable to Webcasters at large. Id. at 29.

Broadcasters have other complaints with the Panel's approach. First, they object to the use of the Yahoo! contract to set rates for broadcasters when the buyer in that case was not a broadcaster

[20] The Panel also considered, and ultimately rejected three offers of corroborating evidence made by RIAA in support of its position that all 26 agreements should be used in setting the royalty rates: (1) License agreements for making [material redacted subject to Protective Order]; (2) prior case law articulating a method for assessing damages in patent infringement cases; and (3) a pricing strategy analysis.

but a third-party aggregator—a completely different type of business. Second, they fault the Panel for its failure to follow its own dictate to proceed cautiously when viewing contracts negotiated in a nascent industry for newly created rights. Broadcaster Petition at 14. Similarly, Webcasters fault the Panel for relying exclusively on the Yahoo! agreement because it offers only a single, uniform rate for each type of transmission, in contrast to the ''range of rates,'' involving ''diverse buyers and sellers,'' that the Panel identified as the hallmark of a willing buyer/willing seller marketplace.'' Webcasters Petition at 14. Webcasters also contend that the Yahoo! agreement should not have been considered because it, like the Lomasoft-RIAA agreement, had not been renewed. Webcasters Petition at 41.

Moreover, Live365 questions the Panel's reliance on the Yahoo! contract when it had rejected use of a second similar agreement between MusicMatch (''MM'') and RIAA because MM had accepted higher than marketplace rates for nearly identical reasons to those that account for the inflation in the Yahoo! rates. MM had wished to settle litigation with RIAA and it received a benefit from the inclusion of a Most Favored Nations (MFN) clause in the contract. Yet, in spite of the similarities, the Panel relied on the Yahoo! agreement and disregarded the second one. Such disparate treatment of similarly situated services is arguably arbitrary. Live365 Petition at 13. A closer examination of the agreements, however, reveals a significant difference between the two contracts which allowed the Panel to disregard the MM agreement for further consideration. Most importantly, the MM agreement contained a MFN clause that [material redacted subject to a protective order]. The Panel reasoned that this provision undermined the usefulness of the agreement to establish a marketplace rate because [material redacted subject to a protective order]. Report at 56–57. Such was not the case with the Yahoo! agreement since the MFN clause only allowed Yahoo! to receive a partial benefit commensurate with [material redacted subject to a protective order]. Report at 62.

The Register concurs and agrees with the Panel's observation that it would be unsound to establish a rate for the statutory license using a rate that itself is subject to change based on the outcome of this proceeding.

The Register also finds the other arguments by the parties unavailing. In spite of their objections, the Services' own expert, Dr. Jaffe, agreed in principle with the Panel's approach. In his testimony, he acknowledged that voluntary agreements between a willing buyer and a willing seller would constitute the best evidence of reasonable marketplace value if such agreements were between parties comparable to those using the webcasting license. Tr. 6618 (Jaffe). The Services' argument, of course, is that the Yahoo! agreement is not a comparable agreement for purposes of setting rates for all webcasters, and this appears to be a valid point. Yahoo!'s business model is somewhat unique. Unlike webcasters that create their own programming, Yahoo! merely offers programming by AM/FM radio stations and other webcasters.

Nevertheless, RIAA offers record evidence that contradicts the Webcasters' assertion that Yahoo! is not a comparable service for purposes of this proceeding, noting that many webcasters affirmatively stated that Yahoo! is a competitor. Moreover, RIAA asserts that the number of the performances made by Yahoo! on its Internet-only channels is roughly equivalent to the number of performances made by the other webcasters in this proceeding and, therefore, Yahoo!'s interest in getting a reasonable rate for its Internet-only stations should be comparable to those of the Webcasters in this proceeding. RIAA reply at 33–34.

Because Yahoo! is engaged in both types of transmissions, it is reasonable to accept this agreement as a basis for setting rates for both types of transmissions. Yahoo! has developed a significant business presence in the marketplace for Internet-only transmissions and understands the marketing and business of Internet-only webcasters. Consequently, allegations that Yahoo! has only a de minimis interest in the webcasting field and is thus less interested in getting a reasonable rate for the right to make digital transmissions are without merit. The question, however, is whether each rate in the Yahoo! agreement reflects the actual value of the particular transmission or whether one must consider both rates in concert to understand the valuation process. For a more detailed discussion on this point, see section IV.5 infra.

4. Alternative Methodology: Percentage-of-Revenue

The Panel also carefully considered and rejected a percentage-of-revenue model for assessing fees and determined that a per performance metric was preferable to a percentage-of-revenue model. A key reason for rejecting the percentage-of-revenue approach was the Panel's determination that a per performance fee is directly tied to the right being licensed. The Panel also found that it was difficult to establish the proper percentage because business models varied widely in the industry, such that some services made extensive music offerings while others made minimal use of the sound recordings. Report at 37. The final reason and perhaps the most critical one for rejecting this model was the fact that many webcasters generate little revenue under their current business models. As the Panel noted, copyright owners should not be ''forced to allow extensive use of their property with little or no compensation.'' Id, citing H.R. Rep. 105–796, at 85–86. Thus, it seemed illogical to set a rate for the statutory license on a percentage-of-revenue basis when in fact a large proportion of the services admit they generate very little revenue, and, therefore, would generate meager royalties even for substantial uses of copyrighted works. Moreover, it is highly unlikely that a willing seller, who negotiates an agreement in the marketplace, would agree to a payment model which itself could not provide adequate compensation for the use of its sound recordings.

Nevertheless, Webcasters and Live365 assert that the Panel acted arbitrarily when it failed to provide a revenue-based royalty option. Webcasters at 54. They maintain that both sides advocated adoption of a percentage-of-revenue option, see RIAA PFFCL, Appendix C; Webcasters PFFCL ¶¶ 283–296, and that it was arbitrary for the Panel to refuse to adopt this approach. See Live365 Petition at 10; see also pg. 11, fn 6. Webcasters also assert that they had made clear that in the event the Panel rejected Jaffe's model, a revenue-based alternative license proposal would be necessary to avoid putting certain webcasters out of business. Webcasters Petition at 56, 60. Moreover, Webcasters reject the Panel's conclusion that the Services' revenue-based fee proposal was untimely. Id.. at 57–60. They maintain that under § 251.43(d) they were allowed to revise their claim or their requested rate ''at any time during the proceeding up to the filing of the proposed findings of fact and conclusions of law,'' and that the Panel had no authority to alter this provision by order under § 251.50.[21]

[21] Section 251.50 of the 37 CFR provides that:

In accordance with 5 U.S.C., subchapter II, a Copyright Arbitration Royalty Panel may issue rulings or orders, either on its own motion or that of an interested party, necessary to the resolution of issues contained in the proceeding before it; Provided, that no such rules or orders shall amend,

Continued

In reply, RIAA notes that the Webcasters cite no evidence for their assertion that they reasonably believed the Panel would offer a percentage-of-revenue option and counters their timeliness argument by setting forth the timeline regarding the parties's submissions concerning the rates. RIAA Reply at 62. Evidently at the request of the Webcasters, the Panel issued an order setting November 2 as the deadline for submitting revised or new rate proposals, so that parties were fully aware of each other's position and could style their findings of fact and conclusions of law accordingly. Consequently, the Panel found that the Services' later submission including a proposed rate based on percentage-of-revenue in their PFFCL was untimely. Report at 31, citing Order of November 3, 2001.

After considering the arguments now advanced by the Services concerning the Panel's authority to require final submissions on rates prior to the filing of the PFFCLs, the Register finds that the Panel acted in a lawful manner and within its authority. As RIAA points out in its reply, the Panel has authority pursuant to 37 CFR 251.42 to waive or suspend any procedural rule in this proceeding, including the time by which parties must make final submissions regarding proposed rates. What the Panel cannot do is engage in a rulemaking proceeding to amend, supplement, or supersede any of the rules and regulations governing the CARP procedures. See 37 CFR 251.7. Moreover, the language in § 251.43 is somewhat ambiguous as to when a party can make its final rate proposal, lending itself to two interpretations. For this reason alone, it was prudent for the Panel to issue an order clarifying the application of the rule for purposes of this proceeding. In fact, Webcasters had asked for this ruling and cannot be heard at the end of the process to argue against a ruling that they sought and to which they never objected. Consequently, the Panel was not arbitrary when it found the Webcasters' request for a percentage-of-revenue fee structure untimely.

Moreover, the Panel was not arbitrary for failing to adopt a percentage-of-revenues model merely because some parties voiced an expectation that the Panel would offer such a model as an alternative means of payment. This complaint of unmet expectations is not a substantive argument for finding the Panel's decision arbitrary and, consequently, it will not be considered further.

On the other hand, Live365 does make a substantive argument concerning the Panel's decision not to adopt a percentage-of-revenue model. It notes that the current marketplace uses two types of rate structures, a revenue based model and a performance rate structure, and that the revenue based model is better for start-up and smaller webcasters. Live365 Petition at 8. In fact, Live365 points out that many of the agreements that RIAA negotiated with webcasters incorporated this model. Moreover, Live365 maintains that it was arbitrary for the Panel to propose rates that ''had the effect of rendering sound recordings substantially more valuable than musical works, even though the CARP acknowledged that it was rendering no opinion on this issue.'' Live365 Petition at 5, 14–15. In its opinion, this result was arbitrary based upon Yahoo!'s stated perception that the value of the performance right for the musical work is comparable to the value of the performance right for the sound recording. Finally, Live365 argues that rates based upon mere perception, as those negotiated in the Yahoo! agreement, are by their very nature arbitrary and should be disregarded. Id. at 15.

RIAA refutes the Services' claim that the Panel was arbitrary because it failed to offer a percentage-of-revenue model. It argues that the record supports the Panel's conclusion that a percentage-of-revenue model would have been difficult to implement because Services use sound recordings to different degrees—a position taken by the Webcasters' own witness. Specifically, Jaffe questioned the appropriateness of using a percentage-of-revenue model where those percentages were based on the economics driving over-the-air broadcasts. RIAA Reply Petition at 52, citing Tr. 6487, 6488, 12582 (Jaffe). Jaffe also acknowledged that it was difficult to assess what the revenue base should be for such a model given the variation of the business models utilized by the webcasters. RIAA also notes that section 114(f)(2)(B) requires the Panel to consider the quantity and nature of the use of the sound recording and argues that a per performance metric automatically accounts for the amount of use by the various services. RIAA Reply at 59.

RIAA also argues that a basic percentage-of-revenue fee structure would frustrate the purpose of the law because it would deny copyright owners fair compensation for use of their works in those situations where a service generates little or no revenue. Certainly, the record contains evidence that a number of webcasters do not expect or intend to earn revenues from their webcasts, see Report at 37; see, e.g., Live365 Petition at 7, maintaining that their use is designed primarily to maintain their over-the-air audience. Because certain Services take this approach, when RIAA did consider using a percentage-of-revenue model, it included a substantial minimum fee proposal in conjunction with the percentage of fee proposal to address the problems associated with low revenue generating businesses. Specifically, the RIAA proposal required that a Service pay either 15% of revenues or $5,000 per $100,000 of a webcasters' operating costs, whichever is greater. RIAA Reply at 61. In this way, RIAA sought to avoid the anomaly of allowing a business unfettered use of the sound recordings without reasonable compensation to the copyright owners. Id. at 54, 61. This formulation, however, would not have given the webcasters the relief they seek through the adoption of a rate based on a percentage-of-revenues. In fact, under RIAA's percentage-of-revenue formulation, many webcasters, including Live365, would have paid more than they will under the Panel's per performance rate structure.

The Register finds that the Panel's decision not to set a percentage-of-revenue fee option was not arbitrary in light of the record evidence. First, it is clear that the Services' primary position was to seek adoption of a fee based upon performances and not a percentage-of-revenue. Indeed, Dr. Jaffe's model proposed a fee model based on listener hours or number of listener songs, and not a rate based upon percentage-of-revenues, because a royalty based upon actual performances would be directly tied to the nature of the right being licensed. Report at 37; Jaffe W.R.T. at 31. Moreover, because they took this position, Services argued for a low minimum rate that would only cover administrative costs and not the value of the performances themselves—an approach the CARP adopted in its Report.

Moreover, the statute does not require the CARP to offer alternative fee structures, and the Services should not have expected the Panel to do so, especially when the Webcasters never advanced a percentage-of-revenues option in their own case. In fact, there is no precedent in the statutory licensing scheme anywhere in the Copyright Act that would support alternative rates for the same right. Clearly, it cannot be arbitrary for the Panel to choose not to deviate from the

supplement or supersede the rules and regulations contained in this subchapter. See § 251.7.

longstanding practice of establishing only one rate schedule for a license.

5. The Yahoo! Rates—Evidence of a Unitary Marketplace Value

The starting point for setting the rates for the webcasting license is the Yahoo! agreement. In that agreement, rates were set for two different time periods. For the initial time period covering the first 1.5 billion performances, Yahoo! agreed to pay one lump sum of $1.25 million. From this information, the Panel calculated a ''blended,'' per performance rate of 0.083¢. This value represents the actual price that Yahoo! paid for each of the first 1.5 billion transmissions without regard to which type of service made the transmission. For the second time period, Yahoo! and RIAA agreed to a differential rate structure. One rate was set for performances in radio retransmissions (RR) (0.05¢ per performance) and another rate was set for transmissions in Internet-only (IO) programming (0.2¢ per performance). These rates were first used in early 2000 and do not apply to the first 1.5 billion performances.

However, the CARP did not accept these differentiated rates at face value. The Panel engaged in a far-ranging inquiry to determine how the parties established the negotiated rates. What it found was that Yahoo! agreed to a higher rate for the IO transmissions in exchange for a lower rate for the RR because this arrangement addressed specific concerns of both parties. In particular, RIAA wished to establish a marketplace precedent for IO transmissions in line with rates it had negotiated in earlier agreements, while Yahoo! sought to negotiate rates which, in the aggregate, yielded a rate it could accept. Consequently, the Panel found the rate for the IO transmissions to be artificially high and, conversely, the rates for the RR to be artificially low. For this reason, it made a downward adjustment to the IO rates and an upward adjustment to the RR rates.

Before making this adjustment, though, the Panel had to consider whether it was reasonable to establish separate rates for the two categories of transmissions. In reaching its decision, the Panel considered two facts, the fact that the Yahoo! agreement provided for two separate rates, and the fact that all parties agreed that performances of sound recordings in over-the-air radio broadcasts promote the sale of records. Report at 74. Based on this finding, the Panel concluded that a willing buyer and a willing seller would agree that the value of the performance right for RR would be considerably lower than for IO transmissions. Moreover, it attributed the existence of the rate differential in the Yahoo! agreement to the promotional value enjoyed by the copyright owners from the performance of the sound recordings by broadcasters in their over-the-air programs, and not to promotional value attributable to transmissions made over the Internet. Report at 74–75. Specifically, the Panel found that, ''to the extent that Internet simulcasting of over-the-air broadcasts reaches the same local audience with the same songs and the same DJ support, there is no record basis to conclude that the promotional effect is any less.'' Report at 75.

This finding, however, did not prompt the Panel to make any further adjustment for promotional value, finding instead that the differential rates in the Yahoo! agreement already reflect ''marketplace assessment of the various promotion and substitution effects, along with a myriad of other factors.'' Report at 87. Primary among these factors were the Most Favored Nations (MFN) clause [22] and the cost savings to Yahoo! in avoiding CARP litigation. The Panel reasoned that Yahoo! was willing to accept somewhat inflated royalty rates in exchange for the costs it saved by not participating in the CARP proceeding, and for the MFN clause which had some indeterminate value for Yahoo!.

RIAA disagrees with the Panel's analysis and these findings. As an initial matter, it maintains that there was no record evidence to support a separate rate for commercial broadcasters. RIAA Broadcaster PFOF 24–52. Second, it argues that the Panel adopted a two-tier rate structure for RR and IO transmissions based on the different rates in the Yahoo! agreement, and its mistaken view of the significance of an exemption in the law for a retransmission of a radio station's broadcast transmission within a 150 mile radius of the radio broadcast transmitter in setting the rate for radio retransmissions.[23] See 17 U.S.C. 114(d)(1)(B).

Although RIAA maintains that in its negotiations with Yahoo! it had argued that the value of the radio retransmission should not be based on the location of the original radio broadcast transmitter, it claims that it was nervous about the application of the 150-mile radius exemption to retransmissions made by third-party aggregators, like Yahoo!. Consequently, RIAA maintains that it agreed to a lower rate for radio retransmissions, knowing that its arguments for not exempting these transmissions were weak, and because Yahoo! agreed to pay for each transmission without regard to the exemption. The resulting adjustment for the 150-mile exemption consisted of a reduction to the base rate, 0.2¢, and reflects the fact that about 70% of all radio retransmissions fall within the 150-mile zone.[24] In addition, RIAA agreed to a further reduction to compensate Yahoo! for any ''competitive disadvantage'' it faced if commercial broadcasters were found to be totally exempt from the digital performance right under a separate exemption.[25]

The Panel, however, did not credit RIAA's explanation and concluded that this concern over the exemptions, especially the 150-mile exemption, had no bearing on Yahoo!'s negotiations. The Panel steadfastly maintained throughout its report that Yahoo!'s only aim in the negotiation process was to achieve a rate that translated into an acceptable overall level of payment, and that it did not concern itself with the legal consequences of the 150-mile exemption. Report at 66–67. Thus, the Panel characterized RIAA's arguments in regard to the 150-mile exemption to be nothing more than a ''red herring'' and without effect in the negotiation process. Id. at 85. Consequently, the Panel found that Yahoo! willingly granted RIAA's request for the ''whereas clause,'' relating to the transmissions within the 150-mile radius, because it

[22] The MFN clause in the Yahoo! agreement is discussed in detail in section IV.3, pg. 27.

[23] Section 114(d)(1)(B)(i) of the Copyright Act provides an exemption from the digital performance right for ''a retransmission of a nonsubscription broadcast transmission: Provided, That in the case of a retransmission of a radio station's broadcast transmission—(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter.''

[24] At the insistence of RIAA, the Yahoo! agreement includes a ''whereas'' clause which states that approximately 70 percent of Yahoo!'s radio retransmissions are within a 150-mile radius of the originating radio station.

[25] Section 114(d)(1)(A) exempts a ''nonsubscription broadcast transmission.'' Following a lengthy rulemaking proceeding to determine the scope of this exemption, the Copyright Office concluded that the exemption applies only to over-the-air broadcast transmissions and does not include radio retransmissions made over the Internet. 65 FR 77292, December 11, 2000. This decision was upheld when challenged in the United States District Court for the Eastern District of Pennsylvania. See Bonneville Int'l, et al. v. Peters, 153 Supp. 2d 763 (E.D. Pa. 2001). The case is now on appeal to the United States Court of Appeals, Third Circuit.

However, during the negotiation period and prior to the Copyright Office's rulemaking decision and the court's decision, Yahoo! had argued that it would be at a competitive disadvantage if the courts adopted the broadcasters interpretation of section 114(d)(1)(A) and found all transmissions made by FCC-licensed broadcasters (those made over-the-air and those made over the Internet) to be exempt from the digital performance right.

cost Yahoo! nothing. Yahoo!'s perception of the clause, however, did not alter the significance of the ''whereas clause'' to RIAA, who wanted the provision included in the agreement because it would allow RIAA to argue before this CARP that the 0.05¢ rate for radio retransmissions represents a real rate of 0.2¢, which was discounted to account for the legal uncertainties at the time of the negotiation. Report at 67.

Webcasters had problems with the Panel's analysis, too. It found fault with the Panel's approach to setting rates for webcasting based on the rates in the Yahoo! agreement. Webcasters object to the methodology used by the Panel in calculating the proposed rates, especially the use of an inflated rate as a starting point for setting the rates for IO transmissions. Moreover, they contest the use of any rate for IO transmissions contained in the Yahoo! agreement because Yahoo! had less interest in negotiating a favorable rate for these transmissions, which constituted only 10% of its business. Webcasters Petition at 30–40. Instead, Webcasters argue that Yahoo! agreed to the 0.2¢ rate for IO transmissions only because it obtained a significantly lower rate for its radio retransmissions, and that any number of possible combinations of rates could have been set to achieve Yahoo!'s targeted rate. Because of this, Webcasters argue that the endpoints settled upon in the agreement were patently arbitrary. The Register concurs with the Webcasters' analysis on this point and finds that the Panel's use of the IO rate was arbitrary because of the IO rate, which, in and of itself, did not reflect what the willing buyers and willing sellers had agreed to in the Yahoo! deal.

Another flaw in the Panel's reasoning, according to Webcasters, was its reliance on the 0.083¢ ''blended rate'' as the lower end of the acceptable range of IO rates. They argue that this rate should not even be considered because it was never negotiated as a performance rate at all. This observation, however, overlooks the fact that Yahoo! actually paid this rate for 1.5 billion performances without regard to the nature of the performances. The fact that the rate was not negotiated as a separate rate for Internet-only transmissions does not diminish its usefulness for purposes of this proceeding. As the Panel asserted throughout this proceeding, it is hard to find better evidence of marketplace value than the price actually paid by a willing buyer in the marketplace.

The question, however, is whether the rates in the Yahoo! agreement represent distinct valuations of Internet-only transmissions and radio retransmissions. Ultimately, the Register concludes that they do not and, therefore, the Panel's reliance on these specific rates for IO transmissions and radio retransmissions as a tool for setting the statutory rates is arbitrary. The fundamental flaw in the Panel's analysis, though, is not its acceptance of the Yahoo! agreement as a starting point. Rather, it is the Panel's determination that the differential rate structure reflects a true distinction in value between Internet-only transmissions and radio retransmissions based upon the promotional value to the record companies and performers due to airplay of their music by local radio stations. The Panel reached this conclusion in spite of the fact that nothing in the record indicates that the parties considered the promotional value of radio retransmissions over the Internet when they negotiated these rates.

RIAA maintains, and the Broadcasters concur, that no evidence exists to support the Panel's determination that Yahoo! and RIAA considered and made adjustments for the promotional value of radio retransmissions. RIAA Reply at 48; Broadcasters Petition at 39. In fact, the Broadcasters argue that it was '' 'patently' arbitrary for the Panel to conclude that promotional value was a ''likely influence'' on Yahoo!'s RR rate when the record evidence showed that neither party had ever suggested anything of the kind.'' Broadcasters Petition at 39. The Register agrees and finds that the Panel's reliance on promotional value to justify the price differential for IO transmissions and radio retransmissions was arbitrary. The Panel's speculative conclusion that ''this factor was likely considered by RIAA and Yahoo!, and is evidently reflected in the resulting difference between RR and IO negotiated rates,'' only serves to undermine the validity of the Panel's final analysis on this point. See Report at 75.

Moreover, the Panel's own earlier findings with regard to the studies offered to show that the Internet has a promotional effect contradicts its later finding concerning the promotional effect derived from radio retransmissions over the Internet. After considering the two studies offered into evidence by the Services, the Panel categorically stated that it ''could not conclude with any confidence whether any webcasting service causes a net substitution or net promotion of the sales of phonorecords, or in any way significantly affects the copyright owners' revenue streams.'' Report at 33–34. It noted that ''the Soundata survey presented by Mr. Fine evinced a net promotional effect of radio broadcasts, but said little about the net promotional effect of the Internet—and nothing about the net promotional effect of webcasting.'' Id. at 33. It went on to say that ''for the time period this CARP is addressing, the net impact of Internet webcasting on record sales is indeterminate. Id. at 34. These observations do not support a conclusion that radio retransmissions have a greater impact than IO transmissions on record sales or that either form of transmission has any impact on record sales.

However, the CARP did conclude that ''to the extent promotional value influences the rates that willing buyers and willing sellers would agree to, it will be reflected in the agreements that result from those negotiations.'' Id. But therein lies the problem. As discussed above, RIAA and Yahoo! did not consider promotional value when negotiating the Yahoo! agreement, therefore, its effect cannot be reflected in the IO and RR rates set forth in the Yahoo! agreement.

However, rejection of the CARP's conclusion on this point does not nullify the usefulness of the Yahoo! agreement. The Register accepts the Panel's determination that the Yahoo! agreement yields valuable information about the marketplace rate for transmissions of sound recordings over the Internet, and is a suitable benchmark for setting rates for all the reasons discussed in section IV.3, supra. Moreover, a careful review of the record support's the Panel's further finding that in effect, the real agreement between Yahoo! and RIAA was for a single, unitary rate for the digital performance of a sound recording and not the two separate rates set forth in the agreement—rates, which the Panel found were artificially high (for IO transmissions) and low (for RR).

The Register accepts the CARP's conclusion that the differential rate structure was developed to effectuate particular objectives of the parties, distinct and apart from establishing an actual valuation of the performances. Specifically, the Panel found that RIAA obtained an artificially high IO rate in an attempt to protect its targeted valuation of IO transmissions for use in this proceeding and Yahoo! received an ''effective rate'' it could accept. Because the record evidence supports this finding, Report at 65, referring to Tr. 11256–57; 11281 (Mandelbrot); Panel Rebuttal Hearing Exhibit 1 at 4; Tr. 11279–81, 11395–96 (Mandelbrot); Tr. 10237–38 (Marks), it was not arbitrary for the Panel to reach this conclusion. Report at 64–65 (noting that ''Yahoo!'s

primary concern, as characterized by its negotiator, was to negotiate a license agreement under which it would pay 'the lowest amount possible', that ''Yahoo! was willing to accept a higher IO rate in exchange for a lower RR rate in order to achieve the lowest overall effective rate for all its transmissions'' (emphasis added), and that Yahoo! was pleased to achieve the lowest possible overall rate.''); (noting that ''the bottom line'' combined rate was of paramount importance to Yahoo!). Report at 74. Moreover, Yahoo! maintains that it would not have paid the 0.2 cent rate for the IO transmissions but for the rate it received for radio retransmissions because the two rates, when considered together, yielded an acceptable ''effective rate'' for all transmissions. The testimony of David Mandelbrot, the Yahoo! representative, is particularly informative on this point.

*Question:* When you entered into the agreement with the RIAA, just looking at the 0.2 cents per performance rate for Internet-only broadcasting, you didn't consider that an unfair rate, did you?

*Answer:* Mandelbrot: We considered it a higher rate than we would have paid if we were just negotiating an Internet-only rate. I would say we did not consider it an unfair rate in the totality of the entire agreement, which was that we were getting the 0.05 cent rate for the radio retransmissions.

Mandelbrot Tr. at 11347–11348. This statement supports a finding that Yahoo!, the willing buyer in this case, did not accept the stated IO rate as an accurate reflection of what it would be willing to pay for the right to make those transmissions.

There is also scant evidence to indicate that Yahoo! gave any serious consideration to the effect of the 150-mile exemption for certain radio retransmissions when negotiating the IO and RR rates. Mandelbrot maintained that the exemptions were of little significance to Yahoo!, since it was ''looking to use whatever [it] could to get as low a rate as possible.'' Id. at 11381; see also 11331 (Mandelbrot admits using the ambiguities in the law, even though they thought the arguments in their favor were weak, solely for the purpose of getting ''an effective rate that we could live with''). Again it is clear that Yahoo!'s focus was the negotiation of a rate at the lowest possible level that would allow it to conduct business without concerns about copyright violations.

Where such determinations are based on the testimony and evidence found in the record, the Register and the Librarian must accept the Panel's weighing of the evidence and its determination regarding the credibility of a witness. Likewise, the Register and the Librarian may not question findings and conclusions that proceed directly from the arbitrators' consideration of factual evidence in the record. In this instance, the Panel credited Mandelbrot's testimony and his characterization of the negotiation process, specifically concluding that his testimony was credible, and that Yahoo! understood the argument based on the 150-mile exemption had no significant impact on the rates ultimately negotiated.[26] Report at 67. Consequently, we must accept the Panel's assessment on this point, which leads to the conclusion that the ''effective rate'' achieved through the unique rate structure represents the value these parties placed on the performance of a sound recording, without regard to origin of or the entity making the transmission.

Based upon a modification to the Panel's approach for calculating rates for making transmissions of sound recordings under statutory license that accepts as much of the Panel's reasoning as possible, the base rate for each performance is 0.07¢ (rounded to the nearest hundredth). The methodology for calculating this rate is presented and discussed in full in section IV.8.

6. Are Rates Based on the Yahoo! Agreement Indicative of Marketplace Rates?

Many webcasters, including Live365, maintain that the proposed rates derived from the Yahoo! rates do not reflect what a willing buyer would pay in the marketplace for the right to make these transmissions. Live365 maintains that the Panel incorrectly analyzed the evidence in the record. First, it notes that the Panel itself found that many of the rates in the voluntary agreements were prohibitively high, including a revenue-based royalty set at 15% of a webcaster's gross revenue. Live 365 Petition at 16. It then argues that it was arbitrary for the Panel to make this finding and then propose rates that exceed the rates it deemed to be excessive, and more than the market could bear. Id. To make its point, Live365 uses the Panel's per performance rate and calculates how much certain services would pay for the digital performance right and translates that amount into a percentage of revenue metric. In each of the cited examples, the amount to be paid based on the proposed per performance rate (as expressed as a percentage of revenues) is considerably higher than that that would be required under any of the percentage-of-revenue models proposed by any party at any time. For example, under the Panel's proposed rates, one service would purportedly pay 21% of its gross revenue, a figure which is considerably higher than the 15% of gross revenues contained in many of the voluntary agreements ultimately rejected by the Panel. Based on this observation, Live365 contends that the Panel's proposal runs counter to the evidence and, therefore, it is arbitrary. Id. at 18.

Moreover, Live365 argues that the Panel failed to account for relevant market factors, including how much a webcaster can pay. Id. at 19. Webcasters voice similar concerns, arguing that the adoption of a per performance rate will cause ruin to many webcasters who to date have yet to generate a viable income stream. Webcasters Petition at 60. In place of this structure, webcasters assert that a percentage-of-revenue model must be adopted in order to address the economic situation facing small, independent webcasters. They maintain that those Services that entered into voluntary agreements based on a percentage-of-revenue will remain in business while those operating under the statutory license with its per performance royalties will not. Webcasters Petition at 62–63. In the eyes of the Webcasters, such a result reflects unexplained disparate treatment of similarly situated parties, and requires an adjustment to eliminate this unjust and arbitrary result. Webcasters also argue that the Panel failed to articulate a rational basis for failing to offer an alternative rate structure based on percentage-of-revenue.

In addition, Live365 argues, as do the Broadcasters, that Yahoo! is a substantially different type of business from small start-up webcasters who would be unwilling to pay the same rates as Yahoo! for the use of sound

[26] The Register finds that RIAA's explanation for the rate structure is equally plausible. Certainly, at the time the Yahoo! agreement was being negotiated, the application of the general exemption for a nonsubscription broadcast transmission, 17 U.S.C. 114(d)(1)(A), and the more specialized exemption for radio retransmissions within 150 miles of the radio broadcast transmitter, 17 U.S.C. 114 (d)(1)(B)(I), was in dispute. Thus, it would have been totally rational for the parties to fashion a rate structure that accounted for possibly exempt transmissions. It would have been logical to achieve this end by discounting the unitary rate to reflect the number of exempt transmissions which, in this case, was approximately 70% of all the radio retransmissions.

However, it is not for the Register or the Librarian to choose between two equally plausible explanations of the facts. The law requires that the Librarian accept the Panel's determination unless its conclusions are unsupported by the record. Thus, having found record support for the Panel's conclusion that the 150-mile exemption played no role in the final determination of the negotiated rates, we must accept its finding on this point.

recordings. Thus, it contends that the Yahoo! rates do not reflect what these buyers would be willing to pay in the marketplace. The implication is that these businesses have expended significant monies on start-up costs, including software, infrastructure development, and bandwidth, and having not yet established substantial revenue streams would be unable or unwilling to pay the same rates. Live365 Petition at 7, 11. Moreover, Live365 argues that the rates set by the Panel thwart Congressional intent ''by making Internet performances of sound recordings economically unviable for many webcasters.'' Live365 Petition at 21.

RIAA takes exception with the Webcasters and Live365 on these issues. It analyzes how much certain webcasters and Live365 pay, as a percentage-of-revenue, for sales and marketing cost, personnel cost and bandwidth. The results show that a company's costs for these services can amount to more than 100 times the amount of a company's revenue, whereas the projected costs of the royalties for transmitting sound recordings for the same time period are no more than 2 times the amount of a company's revenue. RIAA Reply at 57. In all cases, these costs reflect the start up nature of the industry, and not the ultimate make or break point of the business. Thus, a proposed fee that results in royalty payments above the current revenue stream for a webcaster is not atypical or unexpected. Certainly, if that were the measure of the value of these services, then the costs for employment, hardware, and marketing—so essential to establishing and maintaining the business—must also be viewed as excessive and above the fair market value for each of these services. Clearly, that is not the case, nor can one rationally conclude that it should be the case.

Moreover, RIAA notes that the courts have historically upheld rates set by the CRT, even when users have argued that the rates would cause the business to cease certain operations. Where the intent of Congress is to set a rate at fair market value, as in this proceeding, the Panel is not required to consider potential failure of those businesses that cannot compete in the marketplace. See *National Cable Television Ass'n.* v. *CRT*, 724 F.2d 176 (D.C. Cir. 1983) (holding that rates set at fair market value were proper even though cable operators argued that the rates were prohibitively high and would cause them to cease transmission of the distant signals at issue.).

The law requires only that the Panel set rates that would have been negotiated in the marketplace between a willing buyer and a willing seller. It is silent on what effect these rates should have on particular individual services who wish to operate under the license. Thus, the Panel had no obligation to consider the financial health of any particular service when it proposed the rates. It only needed to assure itself that the benchmarks it adopted were indicative of marketplace rates.

7. Should a Different Rate be Established for Commercial Broadcasters Streaming Their Own AM/FM Programming?

Although RIAA had argued that the rate for commercial broadcasters should be the same as the rate for Internet-only webcasters, the Panel did not agree. It did agree, however, that the rate for commercial broadcasters should be the same as the rate adopted for radio retransmissions and that these rates should be based on the Yahoo! agreement.

It noted that the Yahoo! agreement established rates for retransmissions of the same types of radio station signals as those directly streamed by commercial broadcasters. Consequently, it put the burden of proof on the broadcasters to present evidence to distinguish between the direct transmission of their programs over the Internet and the retransmission of the same programming made by a third-party. Broadcasters were unable to offer any compelling evidence on this point. Thus, in the end, the Panel was unable to distinguish between commercial broadcasters and radio retransmisions, stating that ''the record was utterly devoid of evidence implying a *higher* rate [for commercial broadcasters] and *insufficient* [evidence] to warrant a lower rate.'' Report at 84–85. (emphasis in the original).

Nevertheless, Broadcasters are troubled by the Panel's use of the Yahoo! agreement to set rates for broadcasters for two main reasons. First, they argue that Yahoo! represents a substantially different type of business. Second, they maintain that the Panel must make affirmative findings that the businesses are comparable before applying the same rates to both Services. Broadcasters Petition at 26–27.

Indeed, Yahoo! offers a plethora of services, making available hundreds of radio stations, local television stations, video networks, concerts, CD listening programs, Internet-only music channels and educational and entertainment video programs. Id. at 28. Nevertheless, an examination of the record clearly shows that both business models are fundamentally comparable in at least one all-important way: they simulcast AM/FM programs over the Internet to anyone anywhere in the world who chooses to listen. Even accepting the fact that Broadcasters say their fundamental business is to provide programming to their local audiences, the potential for reaching a wider audience cannot be denied. Given that the record indicates that 70% of Yahoo!'s radio retransmissions are to listeners within 150 miles of the originating radio station's transmitter, Yahoo!'s business with respect to radio retransmissions seems to be very similar. Moreover, the fact that Yahoo! offers many additional services is not relevant to this proceeding because the Yahoo! agreement only addressed the rates Yahoo! paid for streaming sound recordings over the Internet. Had the contract been tied to other services offered by Yahoo!, it might well have been inappropriate to use this contract in this context. That is not the case and so it was not arbitrary for the Panel to rely on the Yahoo! contract to set the rate for broadcasters who stream their own programming over the Internet.

Commercial broadcasters then take another approach and argue that they never would have agreed to the rates that Yahoo! paid because their purposes for streaming differ from Yahoo!'s purposes. Commercial broadcasters assert that they began streaming in order to have a presence ''in the online world, to maintain the local radio brand, and as a convenience to their regular over-the-air listeners.'' Broadcasters Petition at 29. They then note that many commercial broadcasters have already ceased streaming because of an increase in costs. They cite this fact as evidence of their assertion that they would only be willing to pay a significantly lower rate than a third-party aggregator like Yahoo! See Broadcasters Petition at 31, fn 25 (offering examples of decisions made by radio stations to cease their streaming operations because of bandwidth fees and dispute over royalty fees between AFTRA and the advertising agencies). They also cite the testimony of David Mandelbrot, who testified that Yahoo! feared broadcasters would be unwilling to absorb the rates Yahoo! negotiated for streaming AM/FM programming. Id. at 32. Based upon this evidence, the Broadcasters and Live365 conclude that the Panel acted in an arbitrary manner in setting the rates that will put many services out of business. Live365 Petition at 15, 18.

However, the Panel did consider the differences between the two business models, speculating that it was entirely

possible that the cost to stream AM/FM programming would be lower for broadcasters than for third-party aggregators like Yahoo! Id. at 84–85. Had Broadcasters made that argument or similar ones to show that Yahoo! received greater value from its streaming activities, the Panel may well have set a lower rate for Broadcasters who stream their own programming. Id. at 85. But as the Panel observed, it cannot make adjustments based on mere speculation. So when the Panel found no record evidence to distinguish these services, it had no reason to offer a separate rate for commercial broadcasters who stream their own AM/FM signal over the Internet. Id. at 84.

Moreover, RIAA points out that Yahoo! never even tried to pass along the costs of the transmissions to the radio stations. Thus, no determination could be made as to whether the broadcasters would have accepted the rate and paid it, or rejected it out of hand. RIAA Reply at 45. RIAA's observation is persuasive, as is the Panel's general observation that the record did not contain any evidence to support a different rate for commercial broadcasters. Thus, the Panel's decision not to set a different rate for commercial broadcasters was not arbitrary.

For these reasons, the Register accepts the Panel's decision not to differentiate between simulcasts made by commercial broadcasters and simulcasts of the same programming made by a third-party aggregator. Accordingly, the rate for commercial broadcasters streaming their over-the-air radio programs on the Internet is the unitary rate gleaned from the Yahoo! agreement.

8. Methodology for Calculating the Statutory Rates for the Webcasting License

a. *Calculation of the unitary rate.* In section IV.5, the Register rejected the Panel's determination that the Yahoo! agreement provided a basis for establishing different rates for Internet-only transmissions and radio retransmissions. Instead, a determination was made that the Yahoo! agreement justified only a single rate applicable to all transmissions, without regard to the source of the transmission. To calculate this unitary rate, it is necessary to determine what Yahoo! paid for the initial 1.5 billion performances, based on the lump sum payment, and what it expected to pay for transmissions after that time.

The first calculation was actually done by the Panel based upon Yahoo!'s agreement to pay RIAA $1.25 million for the first 1.5 billion transmissions made by Yahoo!. It divided the amount paid by the number of performances ($1.25 million/1.5 billion performances) to get a ''blended'' rate of 0.083¢ per performance. Report at 63. To determine the ''effective rate'' for the second period, a calculation must be made to account for the differential IO and RR rates, 0.2¢ and 0.05¢, respectively, set forth in the agreement and the relative proportion of Internet-only transmissions to radio retransmissions. This is a simple arithmetic calculation and one that Yahoo! had already performed in order to gauge the actual costs of the performances under the differentiated rate structure. This calculation yielded an ''effective'' or ''blended'' rate of 0.065¢ per performance based upon Yahoo!'s expectation that 90% of its transmissions would continue to be radio retransmissions with the remaining 10% being Internet-only transmissions [$((9 \times 0.05¢) + (1 \times 0.2¢))/10$]. Report at 63, citing Tr. 11279, 11292 (Mandelbrot), Panel Rebuttal Hearing Exhibit 1 at 7.

Now the question is how to reconcile these values to determine the unitary rate. Although an argument can be made for adopting either value, it makes more sense to use both values and take the average of the two. In this way, the final unitary rate captures the actual value of the performances made in the initial period (for which Yahoo! paid a lump sum for the first 1.5 billion performances) and the projected value of the transmissions at the agreed upon rates for the remainder of the license period; and it falls within the range of acknowledged values of these transmissions. Courts have long acknowledged that rate setting is not an exact science, and all that is necessary is that the rates lie within a ''zone of reasonableness.'' See *National Cable Television Assoc. Inc.* v. *CRT,* 724 F.2d 176, 182 (D.C. Cir. 1983) (''Ratemaking generally ''is an intensely practical affair. The Tribunal's work particularly, in both ratemaking and royalty distributions, necessarily involves estimates and approximations. There has never been any pretense that the CRT's rulings rest on precise mathematical calculations; it suffices that they lie within a ''zone of reasonableness'''). Thus, the record here supports a ''zone of reasonableness'' between 0.083¢ and 0.065¢.

Accordingly, the Register recommends that the rate for making an eligible nonsubscription transmission of a sound recording over the Internet under section 114 be set at 0.07 cents per performance, per listener, the midpoint of the ''zone of reasonableness.''

Determination of this rate, however, is not necessarily the end of the rate-setting process. Webcasters had argued for a downward adjustment to the rates proposed by the Panel to compensate for litigation cost savings and added value due to MFN clause. Such arguments apply with equal force to the unitary rate proposed by the Register. Webcasters Petition at 42–43. The Webcasters' argument is well taken and, based on the record evidence, it is reasonable to assume that the rates in the Yahoo! agreement are slightly higher to account for these two factors. See Report at 68–69. However, there is a problem in making an adjustment to the proposed rate where the record contains no information quantifying the added value of the factors that purportedly resulted in inflated rates. See Report at 29 (discussing lack of record evidence quantifying value of any factor, other than promotional value, that allegedly influenced the negotiated rates). The potential (but apparently unquantifiable) added value attributable to these 2 factors might present a problem if the Register were proposing a rate at the high end of the 0.065¢–0.083¢ range, but because the Register is recommending a rate in middle of the ''zone of reasonableness,'' it is safe to conclude that the recommended rate falls into that zone of reasonableness even taking these factors into account.

Similarly, Broadcasters argued for a downward adjustment of the simulcast rate to account for the promotional value associated with over-the-air broadcasts. Broadcasters Petition at 41. The record, however, does not support this suggestion. Indeed, the Panel did acknowledge that over-the-air radio retransmissions had promotional value, but it concluded that ''the net impact *of Internet* webcasting on record sales is indeterminate.'' Report at 34. This is not to say that webcasting, including simulcasting of over-the-air radio programming, has no promotional value. It only means that the record companies gain similar benefits from both types of transmissions. Consequently, no adjustment is necessary.

b. *The 150-mile exemption.* Under section 114(d)(1)(B)(I), any retransmission of a nonsubscription broadcast transmission is exempt, as a matter of law, from the digital performance right, provided that ''the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter.'' During the course of the negotiations between RIAA and Yahoo!, there was a great deal of uncertainty regarding this

provision and whether it applied to transmissions made over the Internet. See discussion above, section IV.a.5.

As noted above (section IV.a.5.), in its Petition, RIAA argued that during the course of the negotiations between RIAA and Yahoo!, there was a great deal of uncertainly regarding this provision and whether it applied to transmissions made over the Internet. RIAA argued that because of this uncertainty, it had been willing to agree to a lower radio retransmission rate. In fact, RIAA pointed out that its chief negotiator had advised its negotiating committee that RIAA's arguments against application of the 150-mile exemption to a retransmitter such as Yahoo! ''are not particularly strong.'' RIAA Petition at 20.

Confronted with the assertions made in RIAA's petition which indicated that RIAA itself had had considerable doubts on the subject at the time of the negotiations, the Register felt compelled to determine whether radio retransmissions over the Internet to recipients within 150 miles of the radio transmitter are, in fact, eligible for the section 114(d)(1)(B) exemption.[27] The Register issued an order on June 5, 2002, asking the parties to brief two legal questions concerning the 150-mile exemption. The first question asked whether a retransmission over the Internet of a radio station's broadcast transmission to a recipient located within 150 miles of the site of the radio broadcast transmitter is an exempt transmission pursuant to 17 U.S.C. 114(d)(1)(B). The second question then queried whether the exemption would still apply to radio retransmissions made within the 150-mile radius by a Licensee, in the case where that same service is simultaneously retransmitting the radio station's broadcast transmission of one or more recipients, located more than 150 miles from the site of the radio broadcaster's transmitter.

Section 114 could be read as allowing a Licensee to take advantage of the exemption for all Internet retransmissions of a radio broadcast to recipients within a 150 mile radius of that radio station's transmitter. The statutory language, however, does not make clear whether that same Licensee would retain the benefit of the exemption for those transmissions if additional retransmissions of the radio broadcast signal were also made ''willfully'' or ''repeatedly'' outside the 150-mile radius.

A critical piece in the analysis is the meaning of the word ''retransmission.'' Each retransmission of a radio signal over the Internet may be viewed as a discrete, point-to-point transaction to be considered on its own merit without reference to further retransmissions made by the Licensee. Alternatively, the reference to ''willful and repeated'' may require consideration of each retransmission, together with all other retransmissions, made by the Licensee to multiple listeners over a period of time, both inside and outside the 150-mile radius.

Having considered the parties' responses, the statutory language and its relationship to section 112, the Register now concludes that the exemption is not applicable to radio retransmissions made over the Internet. While Copyright Owners and Performers offer many arguments in support of their position that radio retransmissions within 150 miles of the radio station's transmitter are not exempt, and while Broadcasters offer many arguments to the contrary, the critical piece of the analysis—and the argument that the Register finds persuasive—is found in the text of section 112(e). This section provides a statutory license for making ephemeral recordings only to ''a transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f).'' 17 U.S.C. 112(e)(1).

The statutory license for ephemeral recordings in section 112(e) was enacted as part of the same section of the DMCA—section 104—that expanded the section 114 statutory license to include webcasting. The purpose of this ephemeral recording statutory license was to enable business establishment services and services using the new section 114 statutory license for webcasting to make the ephemeral recordings they need to make in order to facilitate their licensed transmissions, and in recognition of the fact that the exemption in section 112(a) permitting the making of a single ephemeral recording might not be adequate. See H.R. Rep. 105–796, at 89–90.

Congress expressly provided in the DMCA amendments that business establishment services operating under the section 114(d)(1)(C)(iv) exemption are eligible for the section 112(e) statutory license for ephemeral recordings in order to facilitate Internet transmissions by business transmission services. Congress's failure to do the same for services operating under the section 114(d)(1)(B) exemption demonstrates that Congress did not contemplate that that exemption would be available to services making retransmissions via the Internet.

Moreover, if section 114(d)(1)(B) were interpreted as providing an exemption for a radio retransmission over the Internet, when that retransmission is to a recipient located within 150 miles of the radio station's transmitter, the Licensee could not make ephemeral recordings to facilitate such an exempt retransmission. This interpretation would put the Licensee in the illogical position of having a right to retransmit the radio signal, but no means of accomplishing the retransmission without negotiating private licenses to make ephemeral recordings to facilitate the exempt transmissions. At the same time, the Licensee could operate under a statutory license for making the ephemeral recordings to facilitate its non-exempt transmissions beyond the 150-mile radius made pursuant to the section 114(f) statutory license. As RIAA points out in its response to the June 5 Order: ''Such a result is inconsistent with one of the purposes of the DMCA statutory licenses to create efficient licensing mechanisms for copyright owners and webcasters,'' citing H.R. Rep. 105–796, at 79–80 (1998). Consequently, the better interpretation of the section 114(d)(1)(B) exemption is to consider all retransmissions of a License in the aggregate, which logically means that no Internet retransmissions are exempt under section 114(d)(1)(B).

Based on the interplay between sections 112 and 114, the better interpretation of the law is that the exemption does not apply to radio retransmissions made over the Internet.[28]

[27] If the Register had concluded that Internet retransmissions to recipients located within the 150-mile radius are exempt, she most likely would have recommended an adjustment of the 0.07¢ per performance rate as applied to radio retransmissions to take into account the record evidence that approximately 70% of radio retransmissions are to recipients located within 150 miles of the radio transmitter. The result would have been a radio retransmission rate of .02¢ per performance, and correspondingly lower rates for radio retransmissions by non-CPB, noncommercial broadcasters.

[28] Copyright Owners argue that the Copyright Office had already decided this issue twice before: (1) In its decision in a rulemaking announced December 11, 2000 that transmissions of a broadcast signal over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A), Public Performance of Sound Recordings: Definition of a Service, 65 FR 77292; and (2) in an Order issued July 16, 2001, in which the Office stated that the ''Panel must use the ''willing seller/willing buyer'' standard to set rates for all non-interactive, nonsubscription transmissions made under the section 114 license, including those within 150 miles of the broadcaster's transmitter.'' (Emphasis added.) The Register made no such decision on either occasion.

9. Rates for Other Webcasting Services and Programming

a. *Business to business webcasting services.* Some Services provide specialized Internet radio-like stations to businesses rather than directly to consumers. These business-to-business webcasting services (B2B) are in many respects analogous to business establishment music services [29] and can provide programming customized to the demographics of the customers of a particular business. Report at 78. For this reason, RIAA had proposed setting a higher rate for business to business webcasting services than for business to consumer (B2C) services. The Panel, however, rejected this suggestion, finding that the evidence did not support a higher rate for B2B services. It found that most of the agreements for such services had rates near or below the predominant rate set for standard Internet-only transmissions. Report at 79. Thus, the Panel concluded that it had ''found insufficient evidence to support a separate rate for syndicator services'', and set the rate accordingly at 0.14¢ per performance, just as it had for Internet-only performances. Id.

RIAA argues for a premium rate for these Services, because they syndicate their programming through third-party non-entertainment websites. RIAA maintains that these transmissions are outside the scope of the webcasting license, and consequently, services should pay a premium when they make transmissions through non-entertainment websites. RIAA Petition at 50–52. In response, Webcasters argue that the ''value of the performance does not change merely because of the technology of the webcaster or the fact that the sound recording is heard when it is accessed at a third-party website rather than the originating webcaster's website.'' Webcasters Reply at 57. Moreover, they maintain that RIAA offered no evidence to demonstrate that these transmissions should be valued at a higher rate. In fact, the record indicates the opposite. Most of the RIAA voluntary agreements which permit the licensee to distribute its webcasts to third-party websites contain no premium for this practice. Id. at 59.

Thus, based on the weight of the evidence, it was not arbitrary for the Panel to conclude that a separate rate should not be set for syndication services. The Panel is responsible for weighing the evidence and so long as the record supports its decision, the Register will not second-guess the Panel's finding of fact. Nevertheless, this determination does not end the inquiry. RIAA correctly cites section 114(j)(6) of the Copyright Act for the proposition that an eligible nonsubscription transmission does not include those made by a service whose primary purpose is to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events. Thus, in any given case a determination would have to be made to ascertain whether such transmissions are covered under the statutory license. This proceeding, however, is not the appropriate vehicle for such a fact-specific determination. If a court determines that the transmissions made by a particular business-to-business service fall outside the scope of the webcasting license, then those transmissions are acts of copyright infringement unless the service obtains licenses from the copyright owners. In such cases, an infringement action would be the appropriate course of action, rather than the imposition of a premium rate for such transmissions as suggested by RIAA. No rate—premium or otherwise—can be set for a transmission that does not comply with the terms of the license.

b. *Listener-influenced services.* There was also much discussion about listener-influenced services that allow the listener some control over the programming through on-line ratings and skip-through features. RIAA's position first and foremost is that these services do not qualify for the webcasting license. However, RIAA also proposed a much higher rate for these services in the event the Panel discerned a need to set a separate rate for these services. Again, the Panel found no record support for setting a separate and higher rate for listener-influenced services. It rejected the agreements between RIAA and non-DMCA compliant services because the rates in those agreements were for rights beyond those granted under the statutory license. Nor could the Panel discern from the record evidence which services would be subject to the basic webcasting rate as distinguished from the rate for listener-influenced services. Consequently, the Panel decided ''that so long as a service complies with, and is deemed eligible for the statutory license, it should not pay a separate rate based upon listener influence.'' Report at 81.

The Register finds the Panel's analysis to be consistent with the law, and thus accepts the Panel's decision not to set a separate rate for transmissions which might not come within the scope of the license. Again, if transmissions made by a listener-influenced service are determined to be outside the scope of the statutory license, the proper course of action would be for the parties to negotiate a voluntary agreement for these transmissions, or for the copyright owner to file a copyright infringement suit against the service. The Panel has no authority to propose a rate for any transmission which cannot be made lawfully under the statutory license.

c. *Other types of transmissions.* A broadcaster may stream three different types of programming in addition to a simulcast of its AM/FM radio signal: (1) ''Archived'' (previously aired) radio programming; (2) ''side channels'' (Internet-only programming); and (3) ''substituted programming'' (programming that replaces over-the-air programming that has not been licensed for simulcast over the Internet). The question for the Panel was whether such programming is the same or substantially similar to radio retransmissions or Internet-only programming.

In making its decision, the Panel first considered the definition of a ''radio retransmission performance.'' It found that the record failed to provide a coherent and workable definition, rejecting both the definition set forth in the Yahoo! agreement and the one that was included in the defunct settlement agreement between RIAA and the commercial broadcasters. Instead, it adopted the definition of the term provided by Congress in the statute which defines the term as ''a further transmission of an initial transmission * * * if it is simultaneous with the initial transmission.'' See 17 U.S.C. 114(j)(12). Based on this definition, the

The scope of section 114(d)(1)(B) was not at issue in the December 2000 rulemaking on the status of broadcasters. Likewise, the July 16 Order was in response to Copyright Owners' Motion for Declaratory Ruling Concerning Statutory Standard, in which Copyright Owners argued that one of the Services' witnesses was ''in effect'' arguing for ''an exemption for AM/FM Webcasts within the 150-mile area.'' However, the testimony in question actually was arguing only that in determining the radio retransmission rate, the CARP should take into account that no royalty is payable on non-Internet radio retransmissions within the 150-mile radius because of the promotional value those retransmissions have on record sales. The witness asserted that because ''local distribution of exactly the same material via the Internet has identical economic effects,'' the Panel should exclude from its calculations ''recipients of those transmissions who lie within 150 miles of the station's transmitter.'' Fisher Testimony at ¶ 52. In their opposition to the motion, the Services made no argument that Internet retransmissions are exempt under section 114(d)(1)(B), and the Office made no ruling with respect to the exemption. Thus, until the responses to the June 5, 2002 order were filed, the issue had never been joined, much less decided, on whether radio retransmissions within the 150-mile radius are exempt, and the issue had never been decided.

[29] See footnote 6, supra, for a description of a Business Establishment Service.

Panel concluded that a transmission made as part of archived programming, side channels or substituted programming was something other than a radio retransmission and, therefore, not entitled to the lower rate proposed for radio retransmissions. Instead, it agreed with RIAA that the programming was essentially the same as Internet-only programming, and without any record evidence to substantiate a different rate, should be subject to the 0.14¢ IO rate.

Broadcasters do not contest the Panel's determination with respect to side channels, and they recommend that the Librarian provide that the side channel rate be set at the webcaster rate expressly without prejudice to reconsideration in a subsequent CARP proceeding. Broadcasters Petition at 56. They do, however, object to the imposition of the rate for IO transmissions on the performances of sound recordings made during the transmission of an archived program or a substituted program. Id. at 55. Broadcasters' arguments no longer have any relevance under the statutory rate structure proposed by the Register, which proposes a single, unitary rate for all transmission. This fact in conjunction with the Panel's observation that the Yahoo! agreement did not differentiate or even recognize these alternative categories supports a determination that no separate rate should be set for these transmissions.

10. Rates for Transmissions Made by Non-CPB, Noncommercial Stations

National Public Radio (''NPR'') and the National Religious Broadcasters Music License Committee (''NRBMLC'') were the only two representatives of non-commercial stations participating in this proceeding. NPR reached a private settlement with the Copyright Owners during the proceeding and withdrew. In considering what the rate should be for the stations represented by NRBMLC and any other noncommercial station operating under the statutory license, the panel first considered past CARP decisions involving the statutory licenses. It found that a prior CARP had considered and distinguished commercial stations and noncommercial stations on the basis of their financial resources, noting that noncommercial stations depend upon funding from the government, business, and viewers, whereas commercial broadcasters generate a revenue stream through advertising. Report at 89, citing CARP report adopted by Librarian on September 18, 1998, Noncommercial Education Broadcasting Rate Adjustment Proceeding, 63 FR 49823. Moreover, the earlier Panel determined that a rate set for a commercial station is an inappropriate benchmark to use when setting a rate for the same right for noncommercial stations because of these economic differences between these businesses. Specifically, it acknowledged that use of a rate set for a commercial broadcaster would overstate the market value of the performance for a noncommercial station.

Next, the Panel examined RIAA's approach, which focused on the amount the performing rights organizations (''PROs'') were awarded in the 1998 Noncommercial Education Broadcasting Rate Adjustment Proceeding for use of their works by noncommercial stations. It adduced that they received ⅓ the amount of the fees paid by the commercial stations. Based on this precedent, RIAA offered the noncommercial stations a rate that corresponds to ⅓ the rate to be paid by commercial broadcasters.[30] The Panel, finding no other evidence in the record to support a different rate, adopted the RIAA proposal for radio retransmissions, and proposed a rate of 0.02¢ per-performance (one-third of the 0.07¢ per performance rate, rounded to the nearest hundredth of a cent) for these transmissions only. Just as with the commercial broadcasters, the Panel found that archived programming subsequently transmitted over the Internet, transmissions of substituted programming, and transmissions of side channels constitute a transmission more akin to an Internet-only event. Consequently, it proposed a per performance rate for noncommercial broadcasters of 0.05¢ (one-third the rate paid by commercial broadcasters and webcasters for IO transmissions) for each sound recording included in these transmissions. This rate, however, is meant to apply only to the first two side channels—and not to additional side channels—in order to avoid the possibility of a noncommercial broadcaster gaining a competitive advantage over the commercial broadcasters and webcasters who initiate Internet-only programs and do so at a higher cost.

Non-CBP broadcasters argue in their petition to set aside the CARP report, that the Panel failed to set the appropriate rates in two ways. They contend that the Panel ignored the record evidence which clearly established that the noncommercial stations are fundamentally different from commercial broadcasters and webcasters, and less viable economically, thus requiring the Panel to establish a lower rate for these stations. They also dispute, like the Webcasters and the commercial broadcasters, the Panel's decision to reject, as a benchmark, the amount of royalty fees these services pay for the use of the underlying musical works in an analog market under a separate compulsory license. Non-CPB Petition at 4. They then calculate a ratio between what a commercial broadcast station pays for use of the musical works in the analog world and what on average the non-CPB stations pay in the same market, based on an estimation of the number of stations, and the amount of royalties the stations paid for use of musical works in their over-the-air broadcasts. From these calculations, they suggest that a noncommercial broadcaster, on average, pays only 1/34th the amount of royalties that a commercial station pays for use of the same musical works and argue for a rate equal to 1/34th the amount that commercial broadcasters will pay. Alternatively, they request a flat rate of $100 per station, see Non-CPB, Noncommercial Broadcasters Reply Petition at 5, and argue that in no case should the rate exceed ⅓ the rate adopted for commercial broadcasters. Non-CPB, Noncommercial Broadcasters Petition at 9.

NRBMLC also turned to the rates for the statutory noncommercial broadcasting license and argued that the rates for the webcasting license should be based upon the rates currently paid to performing rights organizations for use of the musical works in over-the-air programs under this license. The Panel rejected this proposal on a number of grounds. First, it noted that those rates were the subject of prior settlements which stated that the negotiated rates for the noncommercial license were to have no precedential value for future rate setting proceedings for the noncommercial license. In light of this term, the Panel found the rates for the statutory noncommercial license had no relevance to the current proceeding. Not only were the rates for a totally different right, but they apparently have no precedential value for considering

[30] RIAA stated that ''the Noncommercial Broadcasters should pay the same royalty rates that apply to Webcasters and commercial broadcasters, which are based on a benchmark derived from marketplace agreements for the same and closely related rights.'' RIAA PFFCL concerning the Broadcaster Royalty Rate (Jan. 25, 2002) at ¶ 44; but *see,* Reply of Copyright Owners and Performers to Non-CPB Entities (Dec. 18, 2001) at 3 (''Copyright Owners are willing to accept a rate for Noncommercial Broadcasters that is no less than one-third of the rate paid for commercial broadcasters.'').

future statutory noncommercial rates for use of the musical works. Report at 90. Second, the panel considered rates proposed by Dr. Murdoch, the expert witness for NPR, who at the request of the Panel made an attempt to identify an appropriate rate for noncommercial stations based on the fees currently paid to the PROs. Although she complied with the request of the Panel, she expressed severe reservations about her own conclusions, citing numerous problems with her own calculations. Report at 91. For these reasons, the Panel rejected Murdoch's proposed rates.

RIAA supports the Panel's decision, noting that the non-CPB, noncommercial broadcasters failed to offer any differential rate for this type of service in its direct case or an expert witness who could support their ultimate request for a $100 flat rate. The only witness who testified on behalf of this group was Joe Davis, who works for a commercial broadcaster, and had only anecdotal information concerning noncommercial stations. Because of his lack of expertise in this area, the Panel did not credit his testimony. Such action on the part of the panel is not arbitrary.

Nor was it arbitrary for the Panel to decide not to rely on the statutory rates set for use of the musical works by noncommercial broadcasters. The arbitrators rejected the non-CPB, commercial broadcasters' request to look to these rates because the agreements, at the insistence of the parties to the agreements, are not even considered precedent for setting future rates for the use of the musical works. If anything, it would be arbitrary to rely on these values as a benchmark for setting rates for a completely different category of works when they had no acknowledged value for readjusting the rates for the works to which they do apply. Had the Panel wished to use these rates, it needed at the very least an opportunity to examine the circumstances surrounding the adoption of the ''no precedent'' clause. It would have also required record evidence to substantiate such bold assertions on the part of the users as the notion that these rates were set at a rate higher than what would have been negotiated in the marketplace. Non-CPB Broadcasters Reply Petition at 7; RIAA Reply at 11. Because of these infirmities, the Register finds the Panel did not act arbitrarily in rejecting the rates set for the section 118 license as a benchmark.

Thus, in the end, the Panel accepted RIAA's proposal to set the rate for noncommercial broadcasters at one-third the rate established for commercial broadcasters. The Panel also provided a separate rate for archived programming subsequently transmitted over the Internet, substituted programming and up to 2 side channels set at one-third the rate established for Internet-only transmissions. The Panel made this adjustment based on its determination that a noncommercial broadcaster should not be subject to commercial rates when streaming programming consistent with the educational mission of the station, over the Internet. Report at 94. However, the Panel imposed a limitation on the use of this reduced rate for Internet-only transmissions to avoid the possibility that a non-CPB broadcaster could use its unique position to essentially become a commercial webcaster.

The Register accepts the Panel's methodology for setting the rate for noncommercial broadcasters. The rates proposed by the Panel, however, must be adjusted to reflect the Register's recommendation to set a unitary rate for both commercial broadcasters and webcasters. Using the proposed base rate of 0.07¢ and reducing this value by two-thirds, the adjusted rate for non-CPB, noncommercial broadcasters is 0.02¢ (one-third of 0.07¢, the base rate for all transmissions, rounded to the nearest hundredth) per performance, per listener. This rate shall apply to a simultaneous retransmission of the non-CPB, noncommercial over-the-air radio programming, archiving programming subsequently transmitted over the Internet, substituted programming, and up to two side channels. The rate for all other Internet-only transmissions is 0.07¢.

One last disputed issue raised by the non-CPB, noncommercial broadcasters is the imposition of the same $500 minimum fee that the CARP set for all other licensees. They argue that a $500 minimum fee far exceeds any reasonable rate that should be imposed on this category of users in light of the financial considerations that distinguish them from the other services. Non-CPB Broadcasters Reply Petition at 10. In support of this position, the users cite Dr. Murdoch's testimony to illustrate that the Internet license for use of SESAC's repertoire is less than $100. But this is not the total amount that a noncommercial station would pay; it would also have to pay fees to BMI and ASCAP in order to license all the works included in the sound recordings covered by the section 114 license. The minimal amount that a webcaster must pay to cover the combined works administered by the three PROs is $673, more than the proposed minimum rate to operate under the section 114 license. Webcasters PFFCL ¶ 363. In any event, the Panel set the rate at $500 to cover administrative costs to the copyright owners and access to the sound recordings. It was not arbitrary to impose a minimum fee on the Non-CPB, noncommercial broadcasters that merely covers costs for these rudimentary purposes nor can it be deemed excessive in light of what these entities pay the PROs for the public performance of musical works.

11. Consideration of Request for Diminished Rates and Long Song Surcharge

RIAA requested a surcharge for songs longer than five minutes. RIAA PFFCL ¶ 210. Its request was denied because the Panel did not find that such a charge was included in most of the relevant license agreements. Report at 105. RIAA, however, argues that the Panel misread the Yahoo! agreement. RIAA Petition at 42. It notes that Yahoo! could estimate the number of performances it made by multiplying its listening hours by a fixed number of performances and that when it did so, the record companies received compensation for [material redacted subject to a protective order] performances, even though Yahoo! may have only played, for example, 5 12-minute classical recordings in an hour. Id. The Yahoo! agreement, however, does not require that it employ the estimation methodology; it merely states that Yahoo! may make this calculation. Thus, there was no probative evidence that the marketplace valued a classical sound recording, or similar sound recordings of longer than average duration, at a different rate. Consequently, it was not arbitrary for the Panel to reject RIAA's suggestion to impose a ''long song'' surcharge. In any event, it is highly likely that this concern will be addressed for the time period to which these rates apply, since most services will be using the estimation formula for calculating the number of performances which assumes 15 performances for each aggregate tuning hour.[31] See section IV.11, infra.

On the other side, webcasters asked that there be no royalty fee for songs that are less than thirty seconds long, citing technology problems or the use of song-skip functions. Webcasters Petition at 71. The Panel disagreed and saw no

[31] Nevertheless, RIAA has raised a valid point and future CARPs should carefully consider how to value performances of longer recordings, such as classical music, to ensure that the copyright owner is fully compensated. That being said, no party should assume that a particular approach to the problem is being advocated by the Register for adoption by a future CARP.

need to make any adjustment. It noted that the use of the blended rate from which it calculated the proposed rates was itself based upon figures which already took into account problem performances that had occurred during the initial period. This adjustment was expressly made for the first 1.5 billion transmissions only. Report at 106–107. The Panel chose not to make a similar adjustment for subsequent performances because the Yahoo! agreement did not provide for such an adjustment.

Likewise, the Panel determined that the use of the skip function provides a benefit to webcasters and it saw no need to penalize copyright owners for the benefit that flowed to the users through a conscious use of a function provided by the service. Moreover, none of the negotiated agreements provided for any reduction in rate for skipped songs. Report at 107. Consequently, the Panel did not provide a lower rate or exemption for truncated performances resulting from use of the skip song function.

The Webcasters object to the Panel's conclusion, maintaining that the Panel failed to adequately explain its decision and consider relevant evidence. See Webccasters Petition at 71. They contend that the Panel should have given more weight to three of the 26 agreements, which provided an exemption for performances less than thirty seconds in duration. Such action, would itself, have been arbitrary. Clearly, the Panel could not rely on these agreements when it had already disregarded them for purposes of establishing the royalty rates.

Moreover, RIAA makes a number of arguments in support of the Panel's decision. First, it notes that the performance of even a portion of a sound recording without a license is an infringement of a copyright owner's rights. As such, there is no *a priori reason* for making 30-seconds-or-fewer performances exempt from royalty obligations. Second, RIAA cites 17 U.S.C. 114(h)(2)(B) to demonstrate that Congress recognized the value of performances of limited duration and the right to license such performances. Specifically, this section exempts copyright owners licensing public performances of sound recordings from the requirement to make these sound recordings available on no less favorable terms or conditions to all bona fide entities, when they are licensing promotional performances of up to 45 seconds in duration. RIAA Reply at 71–75. These arguments support the Panel's decision not to exempt performances of thirty seconds or less, and as such, its decision is neither arbitrary nor contrary to law.

The Panel did, however, grant the users an exemption for incidental performances, citing the existence of a similar term in the Yahoo! agreement as the basis for its decision. Specifically, the Panel ''exclude[d] transmissions or retransmissions that make no more than incidental use of sound recordings, including but not limited to, certain performances of brief musical transitions, brief performances during news, talk and sports programming, commercial jingles, and certain background music.'' Report at 108. This is not a disputed provision.

With the agreement of the parties, the Panel also exempted performances of sound recordings made pursuant to a private license agreement. Id.

The Register notes, however, that the Webcasters' concerns regarding the Panel's determination not to grant its request to impose no royalty on songs less than 30 seconds in duration are ameliorated for the current licensing period. Under the proposed terms of payment, a service may estimate the number of performances for purposes of determining the extent of copyright liability on an ''Aggregate Tuning Hour'' basis, which calculates payment on the basis of 15 performances per hour.[32] This approach alleviates a Licensee's obligation to account for and pay for each performance, including those that are less than 30 seconds in duration.

12. Methodology for Estimating the Number of Performances

Until each service can account for each performance, and is required to do so, there is a need for a methodology that will allow a service to make a reasonable estimate of the number of performances. Accordingly, the Panel proposes the following procedure:

> For the period up to the effective date of the rates and terms prescribed herein, and for 30 days thereafter, the statutory licensee may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the licensee's total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of retransmissions of AM and FM radio stations reasonably classified as news, business, talk or sports stations, and 12 performances per hour in the case of all other AM and FM radio stations).

Report at 110.

The Broadcasters object to the Panel's formulation for estimating the number of performances, arguing that for many program formats, e.g., news, business, talk, or sports stations, the estimate would likely significantly overstate the use of music by these stations. Broadcasters Petition at 57. However, they do not offer an alternative methodology for calculating these performances. Moreover, a mere likelihood of overstating the values in some cases is not enough to undo the Panel's formulation.

Likewise, Webcasters argue that the 30-day cutoff period for using the methodology for estimating the number of performances is arbitrary because there is no record support for this determination. Webcasters Petition at 72. Instead, they propose allowing the Services to employ this methodology through the remainder of the current licensing period, which ends December 31, 2002, since it will be used, in any event, by most Services for purposes of calculating their liability for their past usage of the sound recordings. Id.

What is troubling about this provision is the Panel's determination to require a full accounting of each performance beginning 30 days after the effective date of the order setting the rates and terms. The Report documents that many services are not currently equipped to track or accurately account for each performance, and the Register agrees. In fact, until the issuance of final rules regarding Records of Use, there are no requirements for tracking these performances. Because the Office has yet to establish just how a service will account for its use of the sound recordings, the Register determines that the proposed timeframe for requiring a strict accounting is arbitrary. Instead, the rule shall require that a Service begin accounting for each performance in accordance with the rules and regulations regarding Records of Use 30 days after the effective date of final rules. These rules shall determine what information needs to be calculated to determine which sound recordings have been performed, how many of such performances occurred, and when and how often such information shall be collected by the Services. Meanwhile, interim rules are being promulgated that

[32] The Webcasters had advocated the use of ''Aggregated Tuning Hours'' as a way to address their concerns regarding the Panel's decision not to provide a lower rate for partial performances. Webcasters Petition at 71–72. Their argument, however, is not the bases for the Register's recommendation to provide for use of the estimation methodology throughout the license period.

The Register is proposing this course of action in the short term merely to address separate concerns of the Register regarding the logistics involved in reporting the number of performances of sound recordings. This recommendation on the part of the Register should in no way be construed as undermining the Panel's decision that transmissions of sound recordings of less than 30 seconds are compensable.

will, for the immediate future, impose more modest reporting requirements on Services.

In the meantime, for the remainder of the period covered by this proceeding (i.e., through December 31, 2002), Services may estimate the number of performances in accordance with the Panel's formulation. While this is not the perfect solution, it represents a reasonable approximation of the number of performances. And in those cases where a Service believes the formulation overestimates the use of the sound recordings, it has the option of actually counting the number of performances and calculating the royalties accordingly. Certainly, it cannot be seriously argued that a Service would be unduly burdened by undertaking this task. Conversely, if after accounting for each of the performances in the programs which are allowed to use the one performance per hour estimate, the Service finds its programming performs more sound recordings than the approximation, a Service benefits from use of the Panel's methodology.

13. Discount for Promotion and Security

RIAA proposed a 25% discount to any service that includes promotional and security features beyond those required under either the webcasting license or the ephemeral recording license. Because that proposal would exceed the scope of the terms set forth in the law, the Panel declined RIAA's invitation to provide for such discounts within the context of the statutory license. Report at 110. It is clear that the Panel may reject such a proposal, as it did here, because the statutory license does not expressly require that such a rate be established. No party contested the Panel's determination on this issue. Therefore, the Register sees no reason to question the Panel's decision.

14. Ephemeral Recordings for Services Operating Under the Section 114 License

A transmitting organization entitled to make transmissions of sound recordings under the webcasting license may also make a single ephemeral copy of each work to facilitate the transmission under an exemption in the law or it may make multiple copies of these works pursuant to a statutory license. See 17 U.S.C. 112(a) and (e), respectively. In addition to setting rates and terms for the webcasting license, the Panel in this proceeding had the responsibility for setting the rates for the ephemeral recordings. The Office combined these section 112 and section 114 proceedings because the licenses are interrelated and the beneficiaries of the license, just as the users, are in most instances the same for both the webcasting license and the ephemeral recording license. However, there is one group of users of the ephemeral recording license that is exempt from the digital performance right—services which provide transmissions to a business establishment for use by the business establishment within the normal course of its business (''business establishment services'').[33] 17 U.S.C. 114(d)(1)(C)(iv).

During the proceeding, the Services argued that these ''ephemeral'' copies have no economic value apart from the value of the performance they facilitate. Webcasters Petition at 67; Broadcasters Petition at 50. In support of this position, the Services cite with approval a Copyright Office Report which stated that the Office found no rationale for ''the imposition of a royalty obligation under a statutory license to make copies that have no independent economic value, and are made solely to enable another use that is permitted under a separate license.'' Report at 98, citing U.S. Copyright Office, DMCA Section 104 Report at 114, fn 434 (August 2001). The Panel also contended that experts on both sides took this view. Webcasters Petition at 66, citing Jaffe W.D.T. 52–54; Tr. at 6556; Tr. at 2632 (Nagle). Had there been nothing more, the Panel might have agreed with the Services and adopted the Office's position. In construing the statute, however, the Panel found that Congress did not share the Copyright Office's view. Instead, the Panel found that Congress required that a rate be set for the making of ephemeral copies in accordance with the willing buyer/willing seller standard.[34] Report at 98–99.

The Panel utilized the same approach in setting rates for the ephemeral recording license as it had in setting the rates for the webcasting license. Report at 104. It first examined the 26 RIAA agreements for evidence that market participants paid a fee to make ephemeral copies and how much they paid. Of the 26 agreements, fifteen did not contain any rate for the ephemeral license and did not purport to convey this right; two used a percentage of overall revenues; eight used a percentage (calculable to 10%) of the performance royalty fees paid; and one paid a flat rate per use of the license for a year (calculable to 8.8% of the performance royalty fees paid). Id. From this, the Panel identified a range of rates between 8.8% and 10% of the performance fees paid.[35] It then chose to place significant weight on the 8.8% value because it was derived from the information in the Yahoo! agreement to which the Panel has given considerable weight throughout this proceeding. Id. However, the Panel did not rely solely on the Yahoo! agreement in this instance, choosing instead to give minimal weight to the eight other agreements that set the ephemeral rate at 10% of the performance rate, and so rounded the 8.8% value up to 9.0%. Id. Both Webcasters and Broadcasters filed Petitions to Modify in which they object to the Panel's approach to setting the ephemeral rate. They argue that the evidence supports their position that the ephemeral copies have no independent economic value apart from the performances they facilitate. In the alternative, they maintain that the value of the ephemeral copies is included in the royalty fee for the performance of the sound recording. Consequently, they contend that the appropriate way to set the ephemeral rate would be to determine the economic value of the ephemeral copies and reduce the performance rate by that amount. Webcasters Petition at 67; Broadcasters Petition at 51.

Moreover, the Services disagree with the Panel's use and analysis of the voluntary agreements for setting this rate. Specifically, they cite the lack of an ephemeral rate in 15 of the 26 agreements, even though it is clear that these recordings are necessary to effectuate a performance, as evidence of RIAA's view that the making of ephemeral copies had only a de minimis

[33] Business establishment services deliver sound recordings to business establishments for the enjoyment of the establishments' customers. Two such services, AEI, Music Network, Inc. and DMX Music, Inc., participated in these proceedings. These companies merged into a single company during the course of this proceeding. AEI/DMX provides music to more than 120,000 businesses, including Pottery Barn, Abercrombie & Fitch, Red Lobster, and Nordstrom. The rate setting process as it pertains to the business establishment services is discussed in Section IV.14.

[34] The Panel and the Services note that the Register has adopted a policy position regarding the making of ephemeral recordings which attributes no economic value to the making of such recordings when ''made solely to enable another use that is permitted under a separate compulsory license.'' U.S. Copyright Office, DMCA Section 104 Report at 144, fn.434. (August 2001). This statement was made in a different context and has no relevance to the current proceeding. The task of the Register in this proceeding is to determine whether the Panel's determination is arbitrary or contrary to law without regard to the Office's own views on how the law should read to implement policy objectives.

[35] Most of the original 26 license agreements did not grant the right to make ephemeral copies, either because the Service did not realize it needed this right or because the Service had assumed the negotiated rate covered all rights needed to make the digital transmissions. However, that trend did not continue. Licenses that were renewed expressly granted the right to make ephemeral copies for a fee. Report at 58, fn 39.

value. Broadcasters Petition at 52. For this reason, webcasters and broadcasters argue that RIAA placed little value on these copies and implicitly acknowledged that the value of these recordings is at best de minimis. They then criticize the Panel's methodology, asserting that the calculation of the ephemeral rate based upon the rates derived from the Yahoo! agreement for a per performance model, totally ignored the fact that Yahoo! agreed to pay a flat fee once it began making payments on a per performance basis, without regard to the number of performances. Webcasters Petition at 69; Broadcasters Petition at 53. Finally, Webcasters object to any use of the non-Yahoo! agreements in calculating this rate because the Panel had already found these agreements to be unreliable for purposes of setting the marketplace rates. Similarly, the Broadcasters question the Panel's reliance on eight of the agreements that it had rejected earlier as ''unreliable benchmarks.'' Id. at 54.

The non-CPB, noncommercial broadcasters adopt the objections to ephemeral recording rate put forth by the commercial broadcasters. Noncommercial Broadcasters Petition at 11.

On the other hand, RIAA supports the Panel's determination in general, noting that the CARP relied primarily on the Yahoo! agreement to calculate the ephemeral rate for webcasters. It maintains, however, that the Panel should have afforded the 25 voluntary agreements more weight and set the rate at 10% of the performance rate in deference to the fact that many RIAA licensees had agreed to a negotiated or effective ephemeral rate of 10%. RIAA Reply at 68. RIAA also challenges the Services' complaints in general, noting that in spite of all the objections to the Panel's determination, the Services fail to offer any evidence regarding an alternative rate.

The Panel's approach in setting the ephemeral rate was not arbitrary. It calculated the rate based on the fees Yahoo! actually paid to RIAA for the right to make ephemeral reproductions. Use of the Yahoo! agreement for this purpose was perfectly logical, and consistent with the general approach taken by the Panel in determining rates for webcasting. What causes concern, however, is the Panel's reliance, even to a small degree, on the ephemeral rates set forth in eight of the 25 voluntary agreements it had previously repudiated. Such action is arbitrary unless the Panel can offer a clear explanation for its actions. It did not do so and, in fact, it stated that its review of the 26 licenses ''reveals an inconsistent, rather than a consistent, pattern.'' Report at 100. Moreover, the Panel conceded that these agreements ''do not represent evidence which establishes RIAA's proposed rate.'' Id. at 104. Nevertheless, the Panel granted ''very modest effect'' to those agreements which have ephemeral rates around 10% to justify its decision to round the 8.8% effective rate up to 9%. Considering those agreements is clearly arbitrary and, consequently, to the extent the Panel gave any weight to any license agreement other than the Yahoo! agreement, it acted in an arbitrary manner. Accordingly, the rate for the ephemeral license for licensees operating under section 114 should be set at 8.8% of the performance rate.

15. Minimum Fees

The Panel established a minimum fee of $500 for each licensee for use of the webcasting license and the ephemeral recording license. These rates are in line with those negotiated by RIAA and the 26 services with which it reached an agreement. The Panel determined that RIAA would not have negotiated a minimum fee that failed to cover at least its administrative costs and the value of access to all the works up to the cost of the minimum fee. Report at 95. The adoption of the $500 minimum, however, is predicated on the adoption of a per performance rate and not a percentage-of-revenues. The Panel implied that had it decided to adopt a percentage-of-revenue model, the minimum fee would have been more substantial because the Panel would have had to consider more carefully the impact of start-up services with little revenue. Report at 95.

Because the minimum rate is calculated to cover at least the administrative costs of the copyright owners in administering the license and access to the sound recordings, the Panel applied the rate to all webcasting services and made it payable as a non-refundable advance against future royalty fees to be paid during that year, due upon the first monthly payment of each year. Moreover, the Panel offered no proration of the fee, making it due in full for any calendar year in which a service operates under the statutory license. Report at 96.

RIAA objects to the low value for the minimum fee set by the Panel because it fails to take into account the broad range of rates established in the licenses RIAA negotiated in the marketplace.[36] Moreover, as a policy matter, RIAA contends that use of the lowest value set forth in a single agreement discourages copyright owners from adopting a low minimum fee in a single instance to accommodate special circumstances for a particular service. RIAA Petition at 44–45. Finally, RIAA faults the Panel for justifying its choice by comparing the $500 minimum fee to the amount that the Services pay the performing rights organizations (PROs) under a blanket license. RIAA rejects this rationale on two fronts. First, the minimum fee does not approximate the amounts that are paid to the PROs, and second, use of the musical works benchmark has been found by the CARP to be an inappropriate measure for establishing fees in this proceeding.

In response, Broadcasters first note that RIAA never disputed the Panel's understanding for the existence of a minimum fee, or claimed that a higher fee is necessary to achieve the stated purposes of the minimum fee. Namely, the minimum fee is meant to cover the costs of incremental licensing, i.e., the cost to the license administrator of adding another license to the system without regard to the number of performances made by the Licensee, see Webcasters PFFCL ¶ 361, and access to the entire repertoire of sound recordings. Broadcasters Reply at 12–13; Webcasters Reply at 52–53. Moreover, they claim that the minimum fee is in line with the fees paid to the performing rights organizations which can serve as a benchmark for the minimum because ''they serve the same purposes that the CARP identified in setting the minimum fees for the statutory license at issue.'' Broadcasters Reply at 14; Webcasters Reply at 52, 55. The Services, however, do not blindly accept the Panel's proposed fee, arguing first that the record supports a much lower minimum fee. They also strenuously object to RIAA's request for a $5,000 minimum, arguing that such a high minimum would be confiscatory for most users of the license, especially for those radio stations that play little featured music. Broadcasters Reply at 16; Webcasters Reply at 56.

None of these arguments compel the Librarian to reject the proposed $500 minimum. The Panel set a minimum rate to accomplish two purposes, and none of the parties argue that the $500 fee falls outside the ''zone of reasonableness'' for such rates. If anything, the fee may be viewed as too low, if one takes into account the

[36] According to RIAA, a $5,000 minimum fee is the typical amount paid by users in the marketplace, without regard to whether the royalties are paid on a percentage of revenue base or in accordance with a per performance metric. RIAA Petition at 43.

minimum amounts paid to the performing rights organizations for the blanket license for performing musical works. Together each Service must pay, at the very least, a total of $673 to the three performing rights organizations to cover access to the musical works for use over the Internet and the incremental cost of licensing—the very purposes for which the minimum fee is being set in this proceeding.

Whether to utilize the musical works benchmark was a decision for the Panel and it chose not to do so. This approach was not arbitrary. As it had done throughout this proceeding, the Panel could choose, as it did, to rely on agreements negotiated in the marketplace between willing buyers and willing sellers. Moreover, the Panel could propose any rate consistent with the agreements so long as the proposed rate would cover costs for administering the license and access to the works.[37] For this reason, the Panel examined the agreements offered into evidence by the RIAA and chose the lowest value that RIAA had accepted in a prior agreement. It did so because it assumed that an entity would not agree to a minimum rate that would result in a loss. Had RIAA truly believed that the $500 minimum fee was inadequate to cover at least the administrative costs and the value of access, the Panel reasoned that it would have required a higher fee. This approach is not arbitrary and, consequently, the proposed minimum fee is adopted for the period covered by this proceeding.

16. Ephemeral Recordings for Business Establishment Services (''BES'')

a. *Rates for use of the statutory license.* Business establishment services are well-established businesses, which have offered their services for many years. Among the established businesses in this group are AEI Music Network, Inc.,[38] DMX Music, Inc., Muzak, Inc., PlayNetwork, Inc. and Radio Programming and Management Inc. Two of the old guard, AEI and DMX, and one new service, Music Choice, participated in this proceeding. At an early stage of this proceeding, but after filing a direct case, Music Choice withdrew from the proceeding.

Of the services offered by AEI and DMX only those services that transmit musical programs to their customers via cable or satellite in a digital format are eligible for the ephemeral recording license. The Panel referred to this aspect of the business as the ''broadcast model'' of the service. Through this process, these services make hundreds of thousands, if not millions, of copies of the sound recordings. The law allows these services to perform sound recordings publicly by means of a digital transmission under an exemption in section 114.[39] However, Congress did not exempt these services from copyright liability when making copies of these works in the normal course of their business. Rather, Congress created a statutory license to cover the making of ephemeral recordings by these services. In its proposed findings of fact and conclusions of law, DMX and AEI proposed a flat fee of $10,000 per year[40] for each company for the making of buffer and cache copies, but argued in the alternative for a zero rate. See DMX/AEI PFFCL ¶ 44. In support of the alternative position, DMX/AEI argued that Congress had only envisioned a minimal rate to compensate the copyright owners for the use of ephemeral copies. It also cited the Copyright Office's Section 104 DMCA Study for the proposition that ephemeral recordings have no independent economic value apart from its use to facilitate transmissions. However, as RIAA points out, these businesses have always paid for such copies. Report at 115–116, citing RIAA Reply to DMX/AEI PFFCL ¶¶ 8–12. RIAA asked that rate be set at 10% of gross revenues with a minimum fee of $50,000 a year and asked the Panel to refrain from setting rates tailored to the needs of specific companies. RIAA made the later request because AEI/DMX asserted that its digital database is already covered by preexisting licenses and therefore, it does not need an ephemeral license in order to make these phonorecords. Consequently, AEI/DMX asked the Panel to set a rate to cover only the cache and buffer copies it needed to facilitate its transmissions and to exclude the value of the database copies when setting the rate for the ephemeral license. In fact, AEI/DMX contends that it was arbitrary for the Panel to set a rate ''for all ephemeral copies which may be utilized in the operation of a broadcast service'' when it had received evidence for setting a rate only for buffer and cache copies. DMX/AEI Petition at 4. It also maintains that the statute contemplates that the Panel set rates according to the needs and desires of the parties. Id. at 8–10.

RIAA disagreed with this approach, asking the panel to establish a technology-neutral rate to cover the making of all copies that a business establishment service may need to make under the license. It also proposed that the CARP rely on license agreements between the copyright owners and Business Establishment Services when fashioning the appropriate rate and not the 26 voluntary licenses considered when setting the webcasting rates.

As an initial matter, the Panel had first to decide which copies and how many are covered by the ephemeral recording license. This is a necessary step in the process, because the statutory license allows a transmitting organization to make and retain no more than a single phonorecord of a sound recording, except as provided ''under the terms and conditions as negotiated or arbitrated under the statutory license.'' Section-by-section analysis of the H.R. 2281 as passed by the United States House of Representatives on August 4, 1998, Committee Print, Serial No. 6, 105th Cong., 2d Sess., p. 61.

Thus, the Panel considered and ultimately rejected DMX/AEI's request for a rate that only covered certain types of ephemeral copies. It did so in large part because it determined that Congress had ''intended to create blanket licenses which would afford each licensee all the rights necessary to operate such a service,'' and noted that in this case, that would include ''the right to make any and all ephemeral copies utilized in a broadcast background music service.'' Report at 118. This interpretation of the law is consistent with the purpose of the section 112 license.

In creating the ephemeral recording license, Congress sought to provide a

[37] Had the Panel recommended a royalty based on a percentage-of-revenues, its recommended minimum fee also would have had to serve the function of ensuring that copyright owners receive adequate compensation in cases where a service makes substantial use of copyrighted works but generates little or no revenue.

[38] AEI and DMX were separate business entities at the beginning of this proceeding. During the course of this proceeding, they merged into a single company.

[39] Section 114(d)(1)(iv) provides that:

(d) Limitations on Exclusive Right.—Notwithstanding the provisions of section 106(6)—

(1) Exempt transmissions and retransmission.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

(C) a transmission that comes within any of the following categories—

(iv) a transmission to a business establishment for use in the ordinary course of its business: Provided, That the business recipient does not retransmit the transmission outside of its premises or the immediately surrounding vicinity, and that the transmission does not exceed the second recording performance complement. Nothing in this clause shall limit the scope of the exemption. Nothing in this clause shall limit the scope of the exemption in Clause (ii).

[40] At the beginning of this proceeding, DMX and AEI each filed a separate direct cause in which each company proposed a flat rate of $25,000 for each year (prorated for the October–December 1998 period) covered by these proceedings for use of the section 112 license. Knittel W.D.T. 19; Troxel W.D.T. 15.

way for any licensee or business establishment service to clear all the reproduction rights involved in making digital transmissions of sound recordings under section 114. Congress ''intended [this provision] to facilitate efficient transmission technologies, such as the use of phonorecords encoded for optimal performance at different transmission rates or use of different software programs to receive the transmissions.'' H.R. Rep. No. 105–796, at 90 (1998). These copies are known as ''ephemeral recordings.'' ''The term ''ephemeral recording'' is a term of art referring to certain phonorecords made for the purpose of facilitating certain transmissions of sound recordings, the reproduction of which phonorecords is privileged by the provisions of section 112.'' Id. Because the purpose of the license is to facilitate a lawful transmission of a sound recording under a statutory license or exemption, it would appear that the license covers not only the first reproduction of the sound recording on a company's server, but also all intermediate copies needed to facilitate the digital transmission of the sound recording.

The mere fact that the license covers different ephemeral recordings that may be catalogued in different ways does not mean that a separate rate must be set for each category. Had the record supported different rates for different categories of ephemeral recordings, or for different types of business establishment services, it is conceivable that the Panel might have chosen to differentiate among these categories or types of businesses by assigning different rates to each one.[41] See also Order (dated July 16, 2001) (advising Panel that it could set different rates for different business models, provided that the record supported such a decision). Whether such an approach would have been arbitrary would depend upon the findings of the Panel in light of the record evidence and, more importantly, upon whether the proposed rates covered the making of all ephemeral copies needed to facilitate the digital transmission of a sound recording under the section 114 business to business exemption.

The section 112 license is without question for the benefit of all services operating under the business to business exemption and not just DMX/AEI. A rate tailored only to meet the specific needs of a single service would by its very nature be arbitrary if the rate failed to cover the entire scope of the license. The fact that DMX/AEI has chosen to license the copies in its database through a private agreement and use the statutory license to cover the remaining ephemeral copies would not relieve the Panel of its responsibility to set rates for all ephemeral copies which fall within the scope of the license, including those copies in a DMCA compliant database. Other business establishment services using a DMCA-compliant database exist and may choose to meet their copyright liability by operating under the statutory license. See RIAA reply at 18; Report at 116. It is without question that such a service may take advantage of the statutory license without participating in a CARP proceeding.

Once these rates are set, a Service can either operate entirely under the statutory license or, alternatively, the Service may choose to make some ephemeral copies under the statutory license and others under a private agreement. These choices, however, have no bearing on the responsibility of the Panel to establish a rate, or a schedule of rates, that would allow a Service to utilize the license to the full extent of the law.

In fashioning the rate, the Panel considered the arguments put forth by the parties and ultimately rejected DMX/AEI's basic premise that Congress had contemplated a *de minimis* rate to compensate for ''leakage'' (use of ephemeral copies to make phonorecords for sale) and, its interpretation of what it characterized as the Copyright Office's view that such copies have no independent economic value. This decision was reached after examining the statute and its legislative history and finding nothing that directly supported the ''leakage'' theory.[42] Moreover, the Panel had already determined that its responsibility was not to give effect to the Copyright Office's view on how the law should change. Instead, it determined that its duty was ''to follow the current Congressional mandate set forth in section 112(e)(4) and determine a separate rate for ephemeral copies' based upon the willing buyer/willing seller standard. Report at 98–99. Thus, the Panel rejected AEI/DMX's proposal to set a low rate based upon its finding that these entities have always paid substantial royalties to record companies in exchange for the use of its complete catalogue. Report at 119.

In any case, the starting point for setting the rates for the ephemeral recording license as it applies to business establishment services is the statute. It provides that, as with the rates for the webcasting license, the rates should be those that ''most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller.'' 17 U.S.C. 112 (e)(4). Thus, the Panel turned to actual agreements that have been negotiated in the marketplace to discover how the market values these rights. As discussed previously, the use of rates negotiated in the marketplace is not arbitrary. It eliminates the need to try to value specific economic, competitive, and programming factors because the parties would have already accounted for these considerations during the negotiation process and their impact would be reflected in the negotiated rates.

Both sides seem to agree with the Panel's approach. RIAA had no complaint with the Panel's use of voluntarily negotiated licenses in setting the ephemeral rates for business establishment services. Moreover, DMX/AEI's own counsel acknowledged that marketplace agreements were appropriate benchmarks for establishing the rates for the rate for the section 112 license and conceded that the agreements relied upon were worthy of consideration. Tr. 9577–78 (Sept. 12, 2001). Nevertheless, DMX/AEI did argue that the proposed rate constitutes an undue financial burden that thwarts Congress' intent to facilitate the adoption of new technologies. DMX/AEI Petition at 11.

The question is which agreements should be considered when setting the rates for the ephemeral reproductions. Having found that the business establishment services offer a completely different type of service from webcasting, the Panel rejected DMX/AEI's invitation to use the ephemeral rates negotiated by the webcasters. Report at 121. Instead, the Panel opted to use the license agreements that had been negotiated between individual record companies and background music services[43] as a benchmark for setting the relevant section 112 rates even though, in some instances, the license conveyed some

[41] As RIAA points out, insufficient evidence exited to support his approach and accommodate DMX/AEI's proposal. RIAA reply at 15, citing Panel report at 118–10/9.

[42] RIAA supports the Panel's determinatin, nothing tha the legislative history makes clear that the purpsoe of the license is ''to create fir and efficient licensing mechanisms.'' RIAA Reply at 20, citing H.R. Conf. Rep. 105–796 at 79–80 (1998).

[43] A background music service is a type of Business Establishment Service that complies and delivers music to business establishments who play the music for the enjoyment of their customers. Among the license agreements considered by the Panel were those negotiated between the major record labels and AEI, DMX, Muzak, Play Network, Inc., and Radio Programming and Management Inc. Report at 123–124.

rights to the licensee beyond the reproduction and distribution of the sound recording. The Panel was not troubled by this observation, however, because it found that in all cases the right to copy and distribute the works was by far the most important right for which the licensee paid royalties. Moreover, it noted that the rates did not fluctuate through the year even when a service altered its method for delivering music. Thus, the Panel used the rates reflected in these licenses to establish a range of rates (10–15% of gross proceeds) for consideration. See Report at 117; see e.g., RIAA Reply to AEI/DMX at 2. From this data, it found that ''background music companies and record companies would agree to a royalty of at least 10% of gross proceeds,'' and set the rate accordingly. Report at 126.

RIAA agrees with the Panel's approach, and that it was appropriate for the Panel not to consider contracts for ephemerals made in the course of webcasting because these businesses are not comparable with Business Establishment Services. They serve different customers and operate under different economic business models with different delivery methods. For example, Business Establishment Services make reproductions of sound recordings and deliver them via cable or satellite for use by the establishment for the enjoyment of their customers. These differences are further underscored by transactions in the marketplace. RIAA notes that within a single license with one business entity, it negotiated a separate rate for webcasting ephemeral copies and a separate rate for ephemeral copies used by the Business Establishment Service. RIAA reply at 24–25. The fact that RIAA negotiated separate rates for the making of ephemeral recordings for different services supports a finding that the businesses are not comparable. Therefore, it was not arbitrary for the Panel to decline to consider the ephemeral rates set forth in the licenses between the webcasters and the record companies when establishing a rate for Business Establishment Services.

Moreover, an examination of the record evidence clearly shows that the 10% of revenues rate set by the Panel is not an arbitrary figure. RIAA Exhibits 9 DR, 10 DR, 11 DR, 12 DR, 13 DR, 14 DR, 26 DR, 27 DR, 28 DR, 60–A DR, 66 DR–X, Knittel Rebuttal Ex. 22; Knittel W.D.T. 14–15. It represents the low end of the range of rates set forth in the agreements between the major record labels and Business Establishment Services. The fact that two agreements, negotiated during a period of uncertainty whether there was a legal obligation to pay anything for the satellite transmissions they covered, reflect a lower rate does not change the outcome. See Report at 124. As RIAA points out, the rate in one of these agreements was reset at a substantially higher rate once the initial contract with the lower rate expired. RIAA Reply to AEI/DMX at 25, fn 25. Nor is there any reason to reject the Panel's determination, as DMX/AEI contends, because the Panel failed to adjust for the promotional value to the record companies or bring these rates into line with those set for Subscription Services in the previous proceeding. As the Panel stated on several occasions, it is unnecessary to adjust a marketplace-negotiated rate for the promotional value that flows to the record companies because that benefit would already be reflected in the contract price, if it were important to the parties.

Likewise, DMX/AEI's second premise for rejecting the Panel's determination must also be discarded. It argued that the Panel set an arbitrarily high rate for Business Establishment Services when compared to the rate set for Subscription Services in an earlier proceeding. DMX/AEI Petition at 19–20. As discussed in a previous section, see section IV.3, rates set for Subscription Services in a prior proceeding are just not comparable to rates under consideration in this proceeding. Marketplace rates for making reproductions of sound recordings for use by a Business Establishment Service have no established relationship to rates set under a totally different standard for the public performance of sound recordings by Subscription Services. There is no established nexus between the industries, the marketplaces in which they operate, or the rights for which the rates are set. To make any adjustments to the ephemeral rate based on the rate for the digital performance rate adopted for the Subscription Services in a previous proceeding would itself be patently arbitrary.

b. Minimum fee. The statute also requires the Panel to set a minimum fee for use of the license. Using the same licenses, it determined that the minimum fee should be $500 a year based on its observation that most, although not all, willing buyers have not agreed to a fee approaching RIAA's proposed rate of $50,000 a year and that some agreements include no minimum fee at all. Because there is no discernable trend in the licenses, the Panel chose to adopt the same fee it proposed for the webcasting licenses because it is calculated to cover at least the administrative costs of the license.

RIAA argues that a $500 minimum is too low and contradicts the record evidence, citing the existence of significantly higher rates in many of the industry agreements and the lack of any agreement with a minimum as low as $500. RIAA Petition at 46–47. RIAA further contends that the CARP by its own reasoning should set a significantly higher minimum fee where, as here, the ephemeral rate is based on a percentage-of-revenue model. Id. at 49. The Copyright Owners are concerned that a low minimum rate will increase ''the risk that a service, especially a new one, will make a large number of ephemeral copies and not generate revenues, effectively giving the service a blanket license for free.'' Id. Consequently, the Copyright Owners ask the Librarian to adopt their proposal and set the minimum fee for use of the ephemeral license at rate no lower than $50,000.

DMX/AEI objects to RIAA's request for a higher minimum fee. It maintains that RIAA requested rate is inconsistent with record evidence, which establishes that either DMX/AEI currently pays [material redacted subject to a protective order] in its direct licensing agreements with the major labels for On-Premises services or that it is disproportionately high when compared with the minimum fees paid by other members of the background music service industry. DMX/AEI Reply at 7. Accordingly, AEI/DMX urges the Librarian not to entertain the RIAA's request.

An examination of the relevant agreements reveals that almost all of these agreements have a substantial minimum fee for the making of ephemeral recordings and that all of those minimum fees are considerably greater than the $500 minimum proposed by the CARP. Consequently, the Panel's decision to adopt a $500 minimum fee when no contract considered by the Panel contained a minimum fee as low as $500 is arbitrary. The minimum fees in the agreements before the CARP were by and large significantly higher than the $500 fee proposed by the CARP and should have served as the guiding principle in setting the minimum fee for the Business Establishment Services, especially in light of the Panel's earlier observation that a percentage of revenue fee requires the establishment of a substantial minimum fee to offset the risk that a start-up Service with little revenue could operate without paying adequate royalty fees for use of the license. Moreover, RIAA notes that each contract before the CARP was between a Business Establishment Service and a single record label. It then makes the argument that ''[i]f a business

establishment service is willing to pay a minimum fee [significantly higher than the minimum fee proposed by the Register] for access to just one label's sound recordings, the value of the blanket license to all copyrighted recordings must be higher.'' RIAA Petition at 46. Based on this evidence, the Panel should have set the minimum fee for the section 112 license as it applies to Business Service Establishments at a significantly higher level, and it was arbitrary not to have done so.

The Register notes that minimum fees have been as low as $5,000 and as high as the $50,000 minimum proposed by RIAA. The purposes of the minimum fee, however, are to cover the costs of administration and insure an adequate return to the copyright owners based upon the value of the right with respect to the overall fee for use of the license. For these reasons, the Register proposes a minimum fee of $10,000 per Licensee. The fee is at the low end of the range of negotiated minimum fees and is in line with DMX/AEI's own valuation of the license at $10,000 per year. Admittedly this fee appears high when compared with the minimum fee for the eligible nonsubscription services, but it serves to balance the risk associated with setting a statutory fee based upon a percentage of revenues instead of a fee that would charge a specific fee for each reproduction.

17. Effective Period for Proposed Rates

The rates and terms proposed by the parties were the same for each time period under consideration by the Panel. Consequently, the Panel proposed, and the parties agreed, that the same rates and terms would apply to both periods: (1) October 28, 1998 (the effective date of the DMCA) through December 31, 2000; and (2) January 1, 2001, through December 31, 2002. The Register finds that it was not arbitrary for the Panel to propose the same rates and terms for both periods under consideration.

*B. Terms*

Sections 112(e)(4) and 114((f)(2)(B) require that the CARP propose and the Librarian adopt terms for administering payment for the two statutory licenses. The Panel stated that, as with rates, the standard for setting these terms is what the willing seller and the willing buyer would have negotiated in the marketplace. The Panel did not interpret the standard to include necessarily setting terms that ''represent the optimum alternative from the standpoint of administrative convenience and workability.'' It reasoned that such considerations were ''not part of the governing standard for the Panel, nor [were they] a matter on which [the Panel] would have either record evidence or institutional expertise.'' Consequently, the Panel made no determination pertaining to administrative efficiency, choosing instead to defer to the expertise of the Librarian. Report at 129.

For the most part, the terms proposed by the Panel are those to which all parties to the CARP proceeding have agreed in negotiations. For this reason, the Panel accepted all terms on which the parties agreed, finding that where there was agreement, the terms meet the statutory standard under which these terms must be set. Moreover, the Panel found that there was evidence in the record to support adoption of most of these terms.

The Register is skeptical of the proposition that terms negotiated by parties in the context of a CARP proceeding are necessarily evidence of terms that a willing buyer and a willing seller would have negotiated in the marketplace. Especially when those terms relate to administration of the receipt and distribution of royalties by collectives that are artificial (but necessary) creations of the statutory license process, rather than entities likely to be created in an agreement between a copyright owner and a licensee, the fiction that those terms reflect the reality of the marketplace is difficult to accept.

Not all of the terms recommended by the Panel are terms that the Register would have adopted if her task were to determine the most reasonable terms governing payment of royalties. However, in light of the standard of review, the Register recommends accepting the terms adopted by the Panel except in the relatively few instances where the Panel's decision was either arbitrary or not feasible. See Report at 129 (''we must defer to the expertise of the Librarian the final evaluation of the administrative feasibility of terms which willing buyers and willing sellers would agree to in marketplace negotiations''). The discussion that follows addresses, first, the terms recommended by the Panel that one or more parties have asked the Librarian to reject. Following that discussion, the Register discusses those terms recommended by the Panel that, although they are acceptable to the parties, she proposes to modify or reject, because they are arbitrary or contrary to law.

1. Disputed Terms

The parties were unable to reach a consensus with respect to two issues: (1) The incorporation of specific definitions for the terms, ''Affiliated,'' ''AM/FM streaming,'' ''Broadcaster,'' and ''Non-Public;'' and (2) the designation of an agent for unaffiliated copyright owners.

a. *Definitions.* The Panel carefully considered the utility of incorporating the proposed terms for Affiliated,'' ''AM/FM streaming,'' ''Broadcaster,'' and ''Non-Public.'' It decided to reject the webcasters'' request to adopt the disputed terms and definitions, noting that the terms were not applicable to the rate structure ultimately adopted by the Panel. The Parties have filed no objection on this point and the Register finds no reason to include a definition of these terms in the regulations.

Notwithstanding the Panel's decision as to these terms, it did incorporate other terms that were necessary for the administration of the license. The proposed definitions for these additional terms are based upon submissions from the parties made at the Panel's request. See, Services' Submission of Definitions; Proposed Definitions of the Recording Industry Association of America, Inc. (Feb. 12, 2002). Again, no party has filed an objection to the Panel's decision to propose additional terms the purpose of which is make the regulatory framework clearer and more functional.

b. *Designated Agent for Unaffiliated Copyright Owners.* Read literally, section 114 appears to require that Services pay the statutory royalties directly to each Copyright Owner. As a practical matter, it would be impractical for a Service to identify, locate and pay each individual Copyright Owner whose works it performed. As a result, in the administration of the predecessor statutory license for noninteractive subscription services, a Collective was appointed to receive and distribute all royalties. The RIAA has served as the Collective for the nonsubscription services.

In this proceeding, the Parties proposed and the CARP agreed to a modification of the single-collective model. Licensees making transmissions of a public performance of a sound recording pursuant to the statutory license in section 114 and/or making ephemeral recordings of these works under the statutory license in section 112(e) would make all payments owed under these licenses to the designated ''Receiving Agent.'' [44] The Receiving

[44] A ''Receiving Agent'' is the agent designated by the Librarian of Congress through the rate setting process for the collection of the royalty fees from

Agent would then make further distribution of the royalty fees to the two Designated Agents [45] who would then distribute the royalty fees among the Copyright Owners and Performers in accordance with the methodology set forth in the regulations.

The CARP accepted the proposal of the parties to designate a single Receiving Agent, SoundExchange, in order to maximize administrative efficiencies for the Copyright Owners and Performers, on the one hand, and Licensees, on the other. SoundExchange is a nonprofit organization formed by RIAA for the purpose of administering the sections 112 and 114 statutory licenses. It has over 280 member companies, affiliated with more than 2,000 record labels accounting for over 90% of the sound recordings lawfully sold in the United States. W.D.T. at 4 (Rosen). SoundExchange is governed by a board comprised of representatives of Copyright Owners and Performers and, under a recent reorganization, the Copyright Owners and artists representatives will have equal control over the SoundExchange Board. AFM/AFTRA PFFCL ¶ 6.

In addition to its role as a Receiving Agent, the CARP accepted the Parties' proposal that both SoundExchange and Royalty Logic, Inc. (''RLI'') serve as Designated Agents. RLI is a for profit subsidiary of Music Reports, Inc. and was created to offer a competitive alternative to SoundExchange. W.D.T. at 2 (Gertz). The purpose of having two designated agents is to provide Copyright Owners with the option of electing to receive their royalty distribution from either SoundExchange or RLI. The Receiving Agent will allocate royalties to the two Designated Agents based on the Copyright Owner's designation.[46]

However, the parties could not agree on which Designated Agent would distribute funds to Copyright Owners who failed to make an election. The Webcasters proposed that RLI be named the agent for unaffiliated Copyright Owners, but Copyright Owners and Performers asked the Panel to designate SoundExchange as the agent for those copyright owners.

After carefully considering the role of the Designated Agent for unaffiliated copyright owners and the record evidence, the Panel made a determination to name SoundExchange as the Designated Agent for those copyright owners who fail to expressly designate either SoundExchange or RLI as their agent to receive and distribute royalties on their behalf. The primary reason for this designation was the preference expressed by the Copyright Owners and the Performers. The Panel reasoned that the Services had no real stake in deciding this issue because their responsibilities and direct interest end with the payment of the royalty fees to the Receiving Agent. Moreover, AFM and AFTRA, which represent artists who are among the beneficiaries of the license, expressed a strong preference for the designation of SoundExchange as the agent in these instances. The Copyright Owners made this choice based on the non-profit status of SoundExchange, its experience with royalty payments, and the fact that SoundExchange has agreed to a reorganization that gives artists substantial control over its operations. The Panel agreed with the reasons articulated by the Copyright Owners and Performers and found that the probable outcome of a marketplace negotiation would have been the selection of SoundExchange.

Broadcasters contest the Panel's decision to designate SoundExchange as the agent for unaffiliated copyright owners. They assert that there is no record evidence to support the Panel's observation that this was the inevitable outcome of marketplace negotiations, in spite of the actual requests made by Copyright Owners who participated in this proceeding. Broadcasters Petition at 59–60.

The Copyright Owners and Performers disagree, and assert that unlike the Licensees whose only concern is whom to pay and when, copyright owners and performers have a vital interest in how their royalty fees are collected and distributed and have expressed a strong preference for SoundExchange as the designated agent. See RIAA Reply at 81; AFM/AFTRA Reply at 2. Certainly, Performers believe that SoundExchange will make fair and equitable distributions and not deduct additional costs beyond those necessary costs incurred to effectuate a distribution. AFM/AFTRA Reply at 2–3 (''SoundExchange is subject to the joint and equal control of copyright owner and performer representatives with an interest in maintaining an efficient operation that will distribute the maximum possible license fees, that SoundExchange is a nonprofit organization so that no copyright owner's or artist's royalty share will be diminished by anything other than necessary distribution costs, and that SoundExchange is experienced and has demonstrated its commitment to identifying, finding and paying performers during its distribution of Section 114 and 112 subscription service statutory license fees.''); see also RIAA Reply at 83.

The CARP's decision to designate SoundExchange as the agent for unaffiliated copyright owners is fully supported by the record evidence and, consequently, it is not arbitrary. First, the fact that Copyright Owners and Performers commend SoundExchange to the Panel is direct evidence of their preference for a non-profit organization that has already invested heavily in a system designed to locate and pay Copyright owners and Performers. It would be arbitrary to ignore their wishes where, in fact, the alternative agent represents primarily broadcasters, television stations, and other Licensees—not Licensors. See AFM/AFTRA PFFCL concerning terms ¶ 13. Second, SoundExchange is a non-profit collective that will deduct only necessary distribution costs. On the other hand, RLI, the entity competing for the agency designation, is a for-profit organization whose acknowledged goal is to make a profit. In fact, RLI has suggested that it needs the designation from the CARP in order to generate enough revenues to make it worthwhile to take on the role of an agent for purposes of making distributions of statutory license royalty fees. See Services Proposed Findings (12/18/01) at ¶ 16. In addition, RLI has been unable to say just how much it expects to deduct as reasonable costs, making it impossible to ascertain whether designation of RLI would be in the best interest of the unaffiliated copyright owners. Third, Performers and Copyright Owners have a direct governance role in the operation of SoundExchange, thereby insuring their interests are not neglected or overshadowed by the interests of the agent. AFM/AFTRA Reply at 4; AFM/AFTRA PFFCL concerning terms ¶ 6. Performers have expressed strong concerns about the designation of an agent who has no mechanism or apparent interest in providing the Copyright Owners and Performers with

the Licensees operating under the sections 112 and 114 licenses.

[45] A ''Designated Agent'' is an agent designated by the Librarian of Congress through the same rate setting process who receives royalty fees paid for use of the statutory licenses from the Receiving Agent and makes further distributions of these fees to Copyright Owners and Performers.

[46] The Register is skeptical of the benefit of this two-tier structure, which adds expense and administrative burdens to a process the purpose of which is to make prompt, efficient and fair payments of royalties to Copyright Owners and Performers with a minimum of expense. However, the Register cannot say that the Panel's decision, presumably based on the conclusion that competition among Designated Agents will result in better service to Copyright Owners and Performers, is arbitrary.

a means to voice their concerns. See AFM/AFTRA PFFCL concerning terms ¶ 9 (noting that designation of RLI as the agent for unaffiliated copyright owners would have the undesirable effect of forcing these non-members ''into an agency relationship with an entity that not only is not governed by Copyright Owners and Performers, but also is not even required to obtain their guidance and input regarding policies, procedures or distribution methodologies.'' ).

For all the foregoing reasons, the Register concludes that the CARP was not arbitrary in designating SoundExchange as the agent for unaffiliated copyright owners. Of the four factors considered by the Panel, each weighs in favor of SoundExchange. Of course, any Copyright Owner or Performer can affirmatively choose RLI to act on its behalf as a Designated Agent.

c. *Gross proceeds.* As discussed earlier, the Panel proposed the adoption of a rate for Business Establishment Services making ephemeral recordings under section 112 at 10% of gross proceeds. The Panel recognized the necessity of also formulating a definition of ''gross proceeds'' in order to make the rate workable. To meet this need, it opted to incorporate, with minor modifications to accommodate the section 112 license, the definition used in many of the background music agreements even though the definition is less than clear on its face as to what constitutes gross proceeds. The lack of specificity, however, did not trouble the Panel because it expected the parties to adopt the understandings within the industry developed during the normal course of dealings.

RIAA does not share the Panel's view. It objects to the proposed definition of ''gross proceeds,'' arguing that the provision fails utterly to define the term in any meaningful way. It also contends that it is arbitrary to rely on industry practices to flesh out the industry's understanding of the term when no record evidence exists about these practices. To remedy this situation, RIAA proposes that the Librarian adopt the definition of ''gross proceeds'' for a Business Establishment Service that is set forth in the agreement between SoundExchange and MusicMusicMusic (''MMM''). RIAA Exhibit No. 60A. RIAA asserts that this is the only record evidence on this point. RIAA petition at 52–54.

DMX/AEI rejects RIAA's suggestion that the Librarian adopt a definition from an agreement with MMM, ''an unsophisticated licensee, who by its own admission is unlikely to pay any significant royalties pursuant to the agreement.'' DMX/AEI Reply at 3. RIAA's proposed definition of ''gross proceeds'' would include fees generated by equipment rental, maintenance services, advertising of all kinds, and revenues payable to a licensee from any source in connection with the licensee's background music service. Id. at 5. DMX/AEI argues that such a definition is utterly contrary to the normal practice of using proceeds derived solely from the delivery of copyrighted sound recordings to business establishments.

As a general principle, terms pertaining to a statutory license must be defined with specificity. At first blush, the proposed definition of ''gross proceeds'' does not appear to meet this standard, merely reciting that a Business Establishment Service must pay a sum equal to ten percent of the licensee's gross proceeds derived from use of the musical programs that are attributable to copyrighted recordings. However, record evidence suggests the definition may be as simple as the CARP's characterization of the term. Barry Knittel,[47] in discussing the promotional funds established for the benefit of the record companies from gross proceeds, stated that the money placed into these accounts comes from the company's gross revenues, and that these revenues are generated from all the billings for music. Tr. 8384 (Knittel). This statement suggests that the determination of what constitutes ''gross revenues'' is not a mystery and that it is merely the amount the Business Establishment Services receive from their customers for use of the music. This approach, however, does not necessarily appear to capture in-kind payments of goods, free advertising or other similar payments for use of the license. See RIAA Petition at 54.

Consequently, the Register proposes to expand on the CARP's approach and adopt a definition of ''gross proceeds'' which clarifies that ''gross proceeds'' shall include all fees and payments from any source, including those made in kind, derived from the use of copyrighted sound recordings to facilitate the transmission of the sound recording pursuant to the section 112 license. See RIAA Exhibit No. 60A DR. (Second Webcasting Performance and Webcasting and Business Establishment Ephemeral Recording License Agreement). The Register finds it necessary to expand upon the proposed definition to avoid any confusion on this point and not as a means to capture additional revenue streams not contemplated by the Panel or by the parties to such agreements. Because the record fails to enumerate the types of revenue that may be received in kind, the Register finds it unwise to include even an illustrative list when there is little evidence of what specific types of revenues should be considered in the calculation of ''gross proceeds.'' Thus, the definition of ''gross proceeds'' shall be as follows:

> ''Gross proceeds'' shall mean all fees and payments, including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

2. Terms Not Disputed by the Parties

a. *Limitation of Liability.* One of the terms proposed by the Parties and adopted by the CARP was that ''A Designated Agent shall have no liability for payments made in accordance with this subsection with respect to disputes between or among recipients.'' The Parties explained that the purpose of this provision was to ''mak[e] clear that so long as a Designated Agent complies with the requirements adopted by the Copyright Office for distributing royalties, then a beneficiary of statutory royalties cannot sue such Designated Agent for payments made in accordance with Copyright Office regulations. Any dispute among recipients should be resolved among themselves.''

The Register understands the desire of SoundExchange and RLI to insulate themselves from liability in cases where Copyright Owners or Performers dispute the Designated Agent's allocation of royalties. The Copyright Office's experience with distribution proceedings for the statutory licenses for which royalties are initially paid to the Copyright Office provides ample evidence that individual copyright owners and performers often believe they are being paid less than their fair share of statutory license royalties, and it is natural for a Designated Agent to wish to avoid having to defend against such claims.

Moreover, as has become apparent in the course of the pending rulemaking proceeding relating to notice and recordkeeping for the use of sound recordings under the statutory licenses, the information that Licensees will be providing to the Designated Agents about which (and how many) sound recordings they have performed will be far from perfect, and the Designated Agents necessarily will have to make

[47] Barry Knittel, formerly President of AEI Music Markets—Worldwide is now DMX/AEI's Senior Vice President of Business Affairs Worldwide.

difficult judgments in determining how to allocate royalties. If the Designated Agents had comprehensive information identifying each and every performance transmitted by a Licensee, and each and every Copyright Owner and Performer for each performance, in theory they could pay each Copyright Owner and Performer his or her precise share of royalties. In the real world—or at least for the remainder of the period for which this proceeding is setting rates and terms—some Copyright Owners and Performers inevitably will receive less than their precise share of the royalty pool, and others will receive more than their precise share. The Designated Agents should not be held to an impossibly high standard of care.

Unfortunately, neither the CARP nor the Librarian have the power to excuse a Designated Agent (or, for that matter, anyone else) from liability for a breach of a legal obligation. If a Designated Agent has in fact wrongfully withheld or underpaid royalties to a Copyright Owner or Performer, the law may provide a remedy to the Copyright Owner or Performer.

Although the Librarian cannot excuse the Designated Agents from potential liability, he can adopt terms that provide a mechanism that will make claims by disgruntled Copyright Owners or Performers less likely, or at least less viable. The Register therefore recommends that in place of the ultra vires provision excusing the Designated Agents from any liability, the Librarian provide that the Designated Agents must submit to the Copyright Office a detailed description of their methodology for distributing royalty payments to nonmembers. This information will be made available to the public, and any Copyright Owner or Performer who believes the methodology is unfair will have an opportunity to raise an objection with the Designated Agent prior to the distribution, thereby giving the Designated Agent the opportunity to address the problem before the Copyright Owner or Performer has suffered any alleged harm. This provision is modeled on a provision proposed by the parties to the previous CARP proceeding to establish rates and terms for noninteractive subscription services under section 114. See proposed 37 CFR 260.3(e), in Notice of Proposed Rulemaking, Determination of Reasonable Rates and Terms for the Public Performance of Sound Recordings, 66 FR 38226, 38228 (July 23, 2001).[48]

The Register also proposes that the Librarian adopt a term that provides a Designated Agent with an optional mechanism pursuant to which the Designated Agent may request that the Register provide a written opinion stating whether the Agent's methodology for distributing royalty payments to nonmembers meets the requirements of the terms for distribution set forth in the implementing regulations. Although such an opinion by the Register would not be binding on a court evaluating a claim against a Designated Agent, it can be assumed that a court would find the opinion of the Register persuasive.

The Register anticipates that under this scheme, a Designated Agent that acts conscientiously and in good faith in the distribution of royalties will not be found liable to a Copyright Owner or Performer who is dissatisfied with his or her share of the distribution.

b. *Deductions from Royalties for Designated Agent's Costs.* The parties had proposed, and the CARP agreed, that Designated Agents be permitted to deduct from the royalties paid to Copyright Owners and Performers ''reasonable costs incurred in the licensing, collection and distribution of the royalties paid by Licensees * * * and a reasonable charge for administration.'' The Register recommends that the provision permitting deductions for costs incurred in licensing be removed from this provision. See § 261.4(i). Although a Designated Agent may happen to engage in licensing activities, licensing per se is not among the responsibilities of a Designated Agent under the terms of the statutory license. The purpose of the Designated Agent is to receive and distribute the statutory royalty fees. There is no justification for permitting a Designated Agent to deduct costs incurred in licensing activity from the statutory royalties, and the CARP's acquiescence in this term was therefore arbitrary.

There was also a suggestion in testimony presented to the CARP that it would be proper for a Designated Agent to deduct from statutory royalties its costs incurred as a participant in a CARP proceeding. Tr. 11891–11893 (Williams). Nothing in § 261.4(i), including the references to ''reasonable costs incurred in the collection and distribution of the royalties paid by Licensees,'' can properly be construed as permitting a Designated Agent to deduct from the royalty pool any costs of participating in a CARP proceeding. Such activity is beyond the scope of collection and distribution of royalties. Of course, Copyright Owners and Performers may enter into agreements with a Designated Agent permitting such deductions, but a Designated Agent may not make such deductions from royalties due to unaffiliated Copyright Owners and Performers or those who have simply designated a Designated Agent without specifically agreeing to permit such deductions.[49]

c. *Ephemeral Recording.* The Register recommends that a definition of ''Ephemeral Recording'' be added to the definitions. This definition incorporates by reference the requirements set forth in section 112(e).

In a related provision, the Register has harmonized the language of §§ 261.3(b) and (c) and makes clear that beneficiaries of the statutory license for ephemeral recordings may make any number of ephemeral recordings so long as they are made for the sole purpose of facilitating the statutory licensees permitted transmissions of performances of sound recordings. The regulatory text proposed by the parties and accepted by the Panel provided that for Business Establishment Services, the section 112 royalty shall be paid ''[f]or the making of unlimited numbers of ephemeral recordings in the operation of broadcast services pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv),'' (emphasis added), but that for webcasters, the section 112 royalty shall be paid ''[f]or the making of all ephemeral recordings required to facilitate their internet transmissions.''

A literal reading of section 112(e) might lead to the conclusion that the ephemeral recording statutory license permits only the making of a single ephemeral recording, but the statute qualifies that provision by stating ''(unless the terms and conditions of the statutory license allow for more),'' and the legislative history makes clear that the terms established by the Librarian in this proceeding may include terms permitting the making of additional

[48] A similar provision is recommended with respect to the methodology for allocating royalties among Designated Agents.

[49] The Register is also troubled by the parties permitting a Designated Agent to deduct ''a reasonable charge for administration'' which is included ''to permit a for-profit Designated Agent to make a reasonable profit on royalty collection and distribution on top of the direct expenses that may be incurred in licensing, collection and distribution.'' Appendix B, p. B–13. But in light of the parties' acceptance and the CARP's adoption of a procedure permitting multiple Designated Agents, including a for-profit Designated Agent, the Register reluctantly cannot conclude that the provision is arbitrary.

ephemeral recordings. H.R.Rep. 105–796, at 89. Therefore, it is appropriate that the terms make clear that statutory licensees may make more than one ephemeral recording to accomplish the purposes of the statutory license.

The reference to ''all'' ephemeral recordings ''required'' to facilitate webcasters'' transmissions, and the reference to ''unlimited'' recordings for Business Establishment Services'' ''operation'', are arguably inconsistent with each other and somewhat ambiguous. To clarify that the scope of the section 112 statutory license is similar for both types of service, and to more accurately reflect the appropriate scope of that license, the Register recommends that the regulatory language provide, in the case of webcasters, ''[f]or the making of *any number* of ephemeral recordings to facilitate the Internet transmission of a sound recording,'' and in the case of Business Establishment Services, ''[f]or the making of *any number* of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption.'' (Emphasis added).

d. *Definition of ''Listener''.* The definitions of ''Aggregate Tuning Hours'' and ''Performance'' both include references to a ''listener'' or to ''listeners.'' It is not clear from the text of these definitions whether each person who is hearing a performance is a ''listener'' even if all the persons hearing the performance are listening to the same machine or device (e.g., two or more persons listening to a performance rendered on a single computer). Clearly the intent is that all persons listening to a performance on a single machine or device constitute, collectively, a single ''listener,'' because ''listener'' is used here to assist in defining what constitutes a single performance. Indeed, it would be difficult to implement an interpretation that counted all individuals in such circumstances as separate ''listeners.'' Accordingly, the Register recommends including a definition that provides that if more than one person are listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

e. *Timing of Payment by Receiving Agent to Designated Agent.* The terms proposed by the Parties and accepted by the CARP included a provision requiring that the Receiving Agent pay a Designated Agent its share of any royalty payments received from a Licensee within 20 days after the day on which the Licensee's payment is due. While the Register recognizes that such a provision would, in principle, be unobjectionable, she concludes that under current conditions it is administratively unfeasible.

As the parties recognized in their commentary on this provision, ''The parties do not know either the payment methodology that will be used to calculate royalties or the types of information that will be reported by Licensees. Such determinations cannot be made before the conclusion of this proceeding and the Notice and Recordkeeping Proceeding.'' Appendix B, p. B–10. However, they assumed that the Receiving Agent and the Designated Agent could agree on a ''reasonable allocation method'' even in the absence of any firm data.

The Register is skeptical. It is apparent at this point in the rulemaking on notice and recordkeeping that obtaining accurate reports of Licensees' use of sound recordings will be difficult, particularly during the first few months. Moreover, the initial reports of use will require reporting on less than a monthly basis, making it impossible in many instances for the Receiving Agent to make any determination whatsoever as to a Designated Agent's allocated share during at least the first month or two in which royalties are paid. Reports on past use of sound recordings (i.e., from October 28, 1998, to the present) will present an even more formidable challenge. It is difficult to imagine that 20 days after the Receiving Agent has received the first royalty payments from Licensees, the Receiving Agent and the Designated Agent will have any reliable information from which they can ascertain how the proceeds should be allocated. The Register therefore recommends that the proposed requirement that payment be made within 20 days of the day on which the Licensee's payment is due be replaced by a requirement that the payment be made ''as expeditiously as is reasonably possible,'' a more flexible term that recognizes the difficulty in establishing a specific deadline. The Register cautions that during the first few months of operation of the system of reporting and or royalty payment, ''expeditious'' payment under the circumstances may be a matter of many weeks, if not months.

It can reasonably be expected that for future periods governed by future CARPs or negotiated agreements, more stringent requirements of prompt payment will be appropriate. But it must be recognized that in this initial, transitional period, delays will be inevitable.

f. *Allocation of Royalties among Designated Agents and Among Copyright Owners and Performers.* The terms proposed by the Parties and accepted by the Panel provide that the Receiving Agent allocate royalty payments to Designated Agents ''on a reasonable basis to be agreed among the Receiving Agent and the Designated Agents,'' and that the Designated Agents distribute royalty payments ''on a reasonable basis that values all performances by a Licensee equally.'' The Panel accepted these terms, but observed that a ''determination of how royalty payments should be apportioned between the Designated Agents cannot be made until the parties know the rate structure adopted by the CARP (in the first instance) and the Librarian of Congress (on review) and the outcome of the Notice and Recordkeeping Proceeding.'' Appendix B, at p. B–10. Similarly, the Panel remarked that ''The terms do not specifically provide how a Designated Agent should allocate royalties among parties entitled to receive such royalties because such allocation will depend upon the rate structure adopted by the CARP (in the first instance) and by the Librarian of Congress (on review) and may be affected by the types of reporting requirements that are adopted by the Copyright Office in the Notice and Record-keeping Proceeding for eligible nonsubscription transmissions and business establishment services.'' Id., p. B–12.

The Register recommends that the provisions for allocation of royalty payments among Designated Agents and for allocation of royalties among parties entitled to receive such royalties be clarified, making explicit the relationship between the notice and recordkeeping regulations and the allocation of royalties. Each of these provisions should provide that the method of allocation shall be based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances.

The Register has some trepidation about the provision in § 261.4(a), proposed by the Parties and recommended by the CARP, that provides that apportionment among Designated Agents ''shall be made on a reasonable basis that uses a methodology that values all performances equally and *is agreed upon* among the Receiving Agent and the Designated Agents.'' (Emphasis added). The regulation does not provide what happens in the event that the Receiving Agent and the Designated Agents cannot agree on an allocation methodology. One could recommend a provision that gives the ultimate decisionmaking power to one of the parties or to a third party, but instead,

the Register proposes the addition of § 261.4(l), which would simply provide that in the event of a stalemate, ''either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute.''

g. *Choice of Designated Agent by Performers.* A literal reading of the terms recommended by the Panel would permit a Copyright Owner to select the Designated Agent of its choice, but would require a Performer to accept the Designated Agent selected by the Copyright Owner; and the Panel's report appears to agree with this interpretation. Report at 132. However, the Report does not articulate any reason for the decision to deprive Performers of the same right to choose that is given to Copyright Owners, and the commentary in Appendix B is silent as well.

As the Panel acknowledged, ''Copyright owners and performers, on the other hand, have a direct and vital interest in who distributes royalties to them and how that entity operates'' Report at 132 (emphasis added). The Register agrees. It was arbitrary to permit Copyright Owners to make an election that Performers are not permitted to make. The Register can conceive of no reason why Performers should not be given the same choice. Accordingly, the Register recommends that § 261.4 be amended to provide that a Copyright Owner or a Performer may make such an election. See § 261.4(c) of the recommended regulatory text.

The Register has also inserted a housekeeping amendment to provide that for administrative convenience, a Copyright Owner's or Performer's designation of a Designated Agent shall not be effective until 30 days have passed.

h. *Performers' Right to Audit.* The terms proposed by the Parties and accepted by the CARP provided that a Copyright Owner may conduct an audit of a Designated Agent. These provisions also include safeguards to ensure that a Designated Agent is not subjected to more than one audit in a calendar year.

However, the terms do not provide that Performers have a similar right to conduct an audit of a Designated Agent, despite the fact that Performers, like Copyright Owners, depend upon the Designated Agent to make fair and timely royalty payments. The Parties' commentary in Appendix B states that audit rights are limited to Copyright Owners ''rather than the entire universe of Copyright Owners and Performers, which could number in the tens of thousands.'' Appendix B at p. B–24. The commentary suggests that it would be impracticable for a Designated Agent to be subject to audit from individual Performers. Apart from reproducing the Parties' commentary, the Panel offered no observations on this point.

The Register fails to understand how it would be ''impracticable'' to permit Performers, who depend on a Designated Agent for their royalty payments, to initiate an audit of the Designated Agent when the Copyright Owners may do so. The Designated Agent is given sufficient protection by virtue of the provision that it can be subject to only a single audit in a calendar year, by the provision that the party requesting the audit must bear the presumably considerable costs of the audit, and by the provision that any audit ''shall be binding on all Copyright Owners and Performers.'' [50] The Register, therefore, recommends that the audit provisions be amended to permit not only Copyright Owners, but also Performers, to initiate an audit.

i. *Effective date.* Section 114(f)(4)(C) states that payments in arrears for the performance of sound recordings prior to the setting of a royalty rate are due on a date certain in the month following the month in which the rate is set. The effective date of the rates, however, is not necessarily the date of publication in the **Federal Register**. The Librarian has often set the effective date of a rate several months after the initial announcement of the decision. See Determination of Reasonable Rates and Terms for Subscription Services, 63 FR 25394 (May 8, 1998) (setting the effective date for the rate for subscription services three weeks after the date of publication of the final order in the **Federal Register**); Rate Adjustment for the Satellite Carrier Compulsory License, 62 FR 55742 (October 28, 1997) (announcing an effective date of January 1, 1998, set to coincide with the next filing period of the statements of account).

Section 802(g) provides that the effective date of the new rates is ''as set forth in the decision.'' 17 U.S.C. 802(g). The Register has interpreted the term ''decision'' to mean the decision of the Librarian, since section 802(g) only refers to the decision of the Librarian. Thus, this provision has been interpreted as providing the Librarian with discretion in setting the effective date. Moreover, the courts have held that an agency normally retains considerable discretion to choose an effective date, where, as here, the statute authorizing agency action fails to specify a timetable for effectiveness of decisions. *RIAA* v. *CRT,* 662 F.2d. 1, 14 (D.C. Cir. 1981).

In setting an effective date, the Register has considered the impact of the rate on the Licensees and the administrative burden on the Office in promulgating regulations to insure effective administration of the license. Clearly, there will be a burden on many Licensees who, by law, are required to make full payment of all royalties owed for transmissions made since the effective date of the DMCA, October 28, 1998, on or before the 20th day of the month next succeeding the month in which the royalty rate is set. Moreover, the Copyright Office is in the midst of promulgating rules governing records of use that will be used to make distribution of royalty fees in accordance with the terms of payment.

Consequently, the Register proposes an effective date of September 1, 2002, which will require the Licensees to make full payment of the arrears on October 20, 2002. Payment for the month of September shall be due on or before November 14, 2002, the forty-fifth (45th) day after the end of the month on which the rate becomes effective, in accordance with the term proposed by the parties and adopted by the CARP. Similarly, all subsequent payments shall be due on the 45th after the end of each month for which royalties are owed. This payment schedule provides the Licensees with additional time to make the initial payment and any necessary adjustments in their business operations to meet their copyright obligation.

## V. Conclusion

Having fully analyzed the record in this proceeding, the submissions of the parties, the Register of Copyrights recommends that the Librarian adopt the statutory rates for the transmission of a sound recording pursuant to section 114, and the making of ephemeral phonorecords pursuant to section 112(e), as set forth below:

[50] It is noteworthy that although the Parties were unwilling to give Performers a right to initiate an audit, they did not hesitate to provide that Performers will be bound by an audit initiated by a Copyright Owner.

SUMMARY OF ROYALTY RATES FOR SECTION 114(F)(2) AND 112(E) STATUTORY LICENSES

| Type of DMCA—Complaint service | Performance fee (per performance) | Ephemeral license fees |
|---|---|---|
| 1. Webcaster and Commercial Broadcaster: | | |
| All Internet transmissions, including simultaneous internet retransmissions of over-the-air AM or FM radio broadcasts. | 0.07¢ | 8.8% of Performance Fees Due. |
| 2. Non-CPB, Non-Commercial Broadcaster: | | |
| (a) Simultaneous internet retransmissions of over-the-air AM or FM radio broadcasts. | 0.02¢ | 8.8% of Performance Fees Due. |
| (b) Other internet transmissions, including up to two side channels of programming consistent with the public broadcasting mission of the station. | 0.02¢ | 8.8% of Performance Fees Due. |
| (c) Transmissions on any other side channels | 0.07¢ | 8.8% of Performance Fees Due. |
| 3. Business Establishment Service: | | |
| For digital broadcast transmissions of sound recordings pursuant to 17 U.S.C. 114(d)(1)(C)(iv). | Statutorily Exempt | 10% of Gross Proceeds. |
| 4. Minimum Fee: | | |
| (a) Webcasters, commercial broadcasters, and non-CPB, non-commercial broadcasters. | $500 per year for each licensee. | |
| (b) Business Establishment Services | | $10,000 |

In addition, the Register recommends that the Librarian adopt the terms of payment proposed by the CARP, as modified in the recommendation, and set September 1, 2002, as the effective date for the statutory rates and the terms of payment.

## VI. The Order of the Librarian of Congress

Having duly considered the recommendation of the Register of Copyrights regarding the Report of the Copyright Arbitration Royalty Panel in the matter to set rates and terms for Licensees making certain digital performances of sound recordings under section 114(d)(2) and those making ephemeral recordings under section 112(e), the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision in part and reject it in part. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing this order, and amending the rules of the Library and the Copyright Office, announcing the new royalty rates and terms of payment for the sections 112 and 114 statutory licenses.

## List of Subjects in 37 CFR Part 261

Copyright, Digital audio transmissions, Performance right, Recordings.

## Final Regulation

In consideration of the foregoing, part 261 of 37 CFR is added to read to as follows:

## PART 261—RATES AND TERMS FOR ELIGIBLE NONSUBSCRIPTION TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS

Sec.
261.1 General.
261.2 Definitions.
261.3 Royalty fees for public performance of sound recordings and for ephemeral recordings.
261.4 Terms for making payment of royalty fees and statements of account.
261.5 Confidential information.
261.6 Verification of statements of account.
261.7 Verification of royalty payments.
261.8 Unclaimed funds.

**Authority:** 17 U.S.C. 112(e), 114, 801(b)(1).

### § 261.1 General.

(a) This part 261 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain Licensees in accordance with the provisions of 17 U.S.C. 112(e).

(b) Licensees relying upon the statutory license set forth in 17 U.S.C. 114 shall comply with the requirements of that section and the rates and terms of this part.

(c) Licensees relying upon the statutory license set forth in 17 U.S.C. 112 shall comply with the requirements of that section and the rates and terms of this part.

(d) Notwithstanding the schedule of rates and terms established in this part, the rates and terms of any license agreements entered into by Copyright Owners and services within the scope of 17 U.S.C. 112 and 114 concerning eligible nonsubscription transmissions shall apply in lieu of the rates and terms of this part.

### § 261.2 Definitions.

For purposes of this part, the following definitions shall apply:

*Aggregate Tuning Hours* mean the total hours of programming that the Licensee has transmitted over the Internet during the relevant period to all end users within the United States from all channels and stations that provide audio programming consisting, in whole or in part, of eligible nonsubscription transmissions. By way of example, if a service transmitted one hour of programming to 10 simultaneous listeners, the service's Aggregate Tuning Hours would equal 10. Likewise, if one listener listened to a service for 10 hours, the service's Aggregate Tuning Hours would equal 10.

*Business Establishment Service* is a Licensee that is entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that obtains a compulsory license under 17 U.S.C. 112(e) to make ephemeral recordings for the sole purpose of facilitating those exempt transmissions.

*Commercial Broadcaster* is a Licensee that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission to make over-the-air broadcasts, other than a CPB-Affiliated or Non-CPB-Affiliated, Non-Commercial Broadcaster.

*Copyright Owner* is a sound recording copyright owner who is entitled to receive royalty payments made under this part pursuant to the statutory licenses under 17 U.S.C. 112(e) or 114.

*Designated Agent* is the agent designated by the Librarian of Congress for the receipt of royalty payments made pursuant to this part from the Receiving

Agent. The Designated Agent shall make further distribution of those royalty payments to Copyright Owners and Performers that have been identified in § 261.4(c).

*Ephemeral Recording* is a phonorecord created solely for the purpose of facilitating a transmission of a public performance of a sound recording under the limitations on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) or under a statutory license in accordance with 17 U.S.C. 114(f), and subject to the limitations specified in 17 U.S.C. 112(e).

*Gross proceeds* mean all fees and payments, as used in § 261.3(d), including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

*Licensee* is: (1) A person or entity that has obtained a compulsory license under 17 U.S.C. 112 or 114 and the implementing regulations therefor to make eligible non-subscription transmissions and ephemeral recordings, or

(2) A person or entity entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv) and that has obtained a compulsory license under 17 U.S.C. 112 to make ephemeral recordings.

*Listener* is a recipient of a transmission of a public performance of a sound recording made by a Licensee or a Business Establishment Service. However, if more than one person is listening to a transmission made to a single machine or device, those persons collectively constitute a single listener.

*Non-CPB, Non-Commercial Broadcaster* is a Public Broadcasting Entity as defined in 17 U.S.C. 118(g) that is not qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396.

*Performance* is each instance in which any portion of a sound recording is publicly performed to a listener via a Web Site transmission or retransmission (e.g. the delivery of any portion of a single track from a compact disc to one listener) but excluding the following:

(1) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(2) A performance of a sound recording for which the service has previously obtained license from the copyright owner of such sound recording; and

(3) An incidental performance that both: (i) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(ii) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

*Performer* means the respective independent administrators identified in 17 U.S.C. 114(g)(2)(A) and (B) and the parties identified in 17 U.S.C. 114(g)(2)(C).

*Receiving Agent* is the agent designated by the Librarian of Congress for the collection of royalty payments made pursuant to this part by Licensees and the distribution of those royalty payments to Designated Agents, and that has been identified as such in § 261.4(b). The Receiving Agent may also be a Designated Agent.

*Side channel* is a channel on the Web Site of a Commercial Broadcaster or a Non-CPB, Non-Commercial Broadcaster, which channel transmits eligible non-subscription transmissions that are not simultaneously transmitted over-the-air by the Licensee.

*Webcaster* is a Licensee, other than a Commercial Broadcaster, Non-CPB, Non-Commercial Broadcaster or Business Establishment Service, that makes eligible non-subscription transmissions of digital audio programming over the Internet through a Web Site.

*Web Site* is a site located on the World Wide Web that can be located by an end user through a principal Uniform Resource Locator (a ''URL''), e.g., www.xxxxx.com.

**§ 261.3 Royalty fees for public performances of sound recordings and for ephemeral recordings.**

(a) For the period October 28, 1998, through December 31, 2002, royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114(d)(2), and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) shall be as follows:

(1) Webcaster and Commercial Broadcaster Performance Royalty. For all Internet transmissions, including simultaneous Internet retransmissions of over-the-air AM or FM radio broadcasts, a Webcaster and a Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(2) Non-CPB, Non-Commercial Broadcaster Performance Royalty.

(i) For simultaneous Internet retransmissions of over-the-air AM or FM broadcasts by the same radio station, a non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(ii) For other Internet transmissions, including up to two side channels of programming consistent with the mission of the station, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.02¢ per performance.

(iii) For Internet transmissions on other side channels of programming, a Non-CPB, Non-Commercial Broadcaster shall pay a section 114(f) performance royalty of 0.07¢ per performance.

(b) Estimate of Performance. Until December 31, 2002, a Webcaster, Commercial Broadcaster, or Non-CPB, Non-Commercial Broadcaster may estimate its total number of performances if the actual number is not available. Such estimation shall be based on multiplying the total number of Aggregate Tuning Hours by 15 performances per hour (1 performance per hour in the case of transmissions or retransmissions of radio station programming reasonably classified as news, business, talk or sports, and 12 performances per hour in the case of transmissions or retransmissions of all other radio station programming).

(c) Webcaster and Broadcaster Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings to facilitate the Internet transmission of a sound recording, each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster shall pay a section 112(e) royalty equal to 8.8% of their total performance royalty.

(d) Business Establishment Ephemeral Recordings Royalty. For the making of any number of ephemeral recordings in the operation of a service pursuant to the Business Establishment exemption contained in 17 U.S.C. 114(d)(1)(C)(iv), a Business Establishment Service shall pay a section 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross

proceeds derived from the use in such service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program,

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

(e) Minimum fee. (1) Each Webcaster, Commercial Broadcaster, and Non-CPB, Non-Commercial Broadcaster licensed to make eligible digital transmissions and/or ephemeral recordings pursuant to licenses under 17 U.S.C. 114(f) and/or 17 U.S.C. 112(e) shall pay a minimum fee of $500 for each calendar year, or part thereof, in which it makes such transmissions or recordings.

(2) Each Business Establishment Service licensed to make ephemeral recordings pursuant to a license under 17 U.S.C. 112(e) shall pay a minimum fee of $10,000 for each calendar year, or part thereof, in which it makes such recordings.

**§ 261.4 Terms for making payment of royalty fees and statements of account.**

(a) A Licensee shall make the royalty payments due under § 261.3 to the Receiving Agent. If there are more than one Designated Agent representing Copyright Owners or Performers entitled to receive any portion of the royalties paid by the Licensee, the Receiving Agent shall apportion the royalty payments among Designated Agents using the information provided by the Licensee pursuant to the regulations governing records of use of performances for the period for which the royalty payment was made. Such apportionment shall be made on a reasonable basis that uses a methodology that values all performances equally and is agreed upon among the Receiving Agent and the Designated Agents. Within 30 days of adoption of a methodology for apportioning royalties among Designated Agents, the Receiving Agent shall provide the Register of Copyrights with a detailed description of that methodology.

(b) Until such time as a new designation is made, SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., is designated as the Receiving Agent to receive statements of account and royalty payments from Licensees. Until such time as a new designation is made, Royalty Logic, Inc. and SoundExchange are designated as Designated Agents to distribute royalty payments to Copyright Owners and Performers entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners.

(c) SoundExchange is the Designated Agent to distribute royalty payments to each Copyright Owner and Performer entitled to receive royalties under 17 U.S.C. 114(g)(2) from the performance of sound recordings owned by such Copyright Owners, except when a Copyright Owner or Performer has notified SoundExchange in writing of an election to receive royalties from a particular Designated Agent. With respect to any royalty payment received by the Receiving Agent from a Licensee, a designation by a Copyright Owner or Performer of a particular Designated Agent must be made no later than thirty days prior to the receipt by the Receiving Agent of that royalty payment.

(d) Commencing September 1, 2002, a Licensee shall make any payments due under § 261.3 to the Receiving Agent by the forty-fifth (45th) day after the end of each month for that month. Concurrently with the delivery of payment to the Receiving Agent, a Licensee shall deliver to each Designated Agent a copy of the statement of account for such payment. A Licensee shall pay a late fee of 0.75% per month, or the highest lawful rate, whichever is lower, for any payment received by the Receiving Agent after the due date. Late fees shall accrue from the due date until payment is received by the Receiving Agent.

(e) A Licensee shall make any payments due under § 261.3 for transmissions made between October 28, 1998, and August 31, 2002, to the Receiving Agent by October 20, 2002.

(f) A Licensee shall submit a monthly statement of account for accompanying royalty payments on a form prepared by the Receiving Agent after full consultation with all Designated Agents. The form shall be made available to the Licensee by the Receiving Agent. A statement of account shall include only such information as is necessary to calculate the accompanying royalty payment. Additional information beyond that which is sufficient to calculate the royalty payments to be paid shall not be required to be included on the statement of account.

(g) The Receiving Agent shall make payments of the allocable share of any royalty payment received from any Licensee under this section to the Designated Agent(s) as expeditiously as is reasonably possible following receipt of the Licensee's royalty payment and statement of account as well as the Licensee's Report of Use of Sound Recordings under Statutory License for the period to which the royalty payment and statement of account pertain, with such allocation to be made on the basis determined as set forth in paragraph (a) of this section. The Receiving Agent and the Designated Agent shall agree on a reasonable basis on the sharing on a pro-rata basis of any incremental costs directly associated with the allocation method. A final adjustment, if necessary, shall be agreed and paid or refunded, as the case may be, between the Receiving Agent and a Designated Agent for each calendar year no later than 180 days following the end of each calendar year.

(h) The Designated Agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances; Provided, however, that Copyright Owners and Performers who have designated a particular Designated Agent may agree to allocate their shares of the royalty payments among themselves on an alternative basis.

(i)(1) A Designated Agent shall provide to the Register of Copyrights:

(i) A detailed description of its methodology for distributing royalty payments to Copyright Owners and Performers who have not agreed to an alternative basis for allocating their share of royalty payments (hereinafter, ''non-members''), and any amendments thereto, within 30 days of adoption and no later than 60 days prior to the first distribution to Copyright Owners and Performers of any royalties distributed pursuant to that methodology;

(ii) Any written complaint that the Designated Agent receives from a non-member concerning the distribution of royalty payments, within 30 days of receiving such written complaint; and

(iii) The final disposition by the Designated Agent of any complaint specified by paragraph (i)(1)(ii) of this section, within 60 days of such disposition.

(2) A Designated Agent may request that the Register of Copyrights provide a written opinion stating whether the Agent's methodology for distributing royalty payments to non-members meets the requirements of this section.

(j) A Designated Agent shall distribute such royalty payments directly to the Copyright Owners and Performers, according to the percentages set forth in 17 U.S.C. 114(g)(2), if such Copyright

Owners and Performers provide the Designated Agent with adequate information necessary to identify the correct recipient for such payments. However, Performers and Copyright Owners may jointly agree with a Designated Agent upon payment protocols to be used by the Designated Agent that provide for alternative arrangements for the payment of royalties to Performers and Copyright Owners consistent with the percentages in 17 U.S.C. 114(g)(2).

(k) A Designated Agent may deduct from the royalties paid to Copyright Owners and Performers reasonable costs incurred in the collection and distribution of the royalties paid by Licensees under § 261.3, and a reasonable charge for administration.

(l) In the event a Designated Agent and a Receiving Agent cannot agree upon a methodology for apportioning royalties pursuant to paragraph (a) of this section, either the Receiving Agent or a Designated Agent may seek the assistance of the Copyright Office in resolving the dispute.

**§ 261.5 Confidential information.**

(a) For purposes of this part, ''Confidential Information'' shall include the statements of account, any information contained therein, including the amount of royalty payments, and any information pertaining to the statements of account reasonably designated as confidential by the Licensee submitting the statement.

(b) Confidential Information shall not include documents or information that at the time of delivery to the Receiving Agent or a Designated Agent are public knowledge. The Receiving Agent or a Designated Agent that claims the benefit of this provision shall have the burden of proving that the disclosed information was public knowledge.

(c) In no event shall the Receiving Agent or Designated Agent(s) use any Confidential Information for any purpose other than royalty collection and distribution and activities directly related thereto; Provided, however, that the Designated Agent may report Confidential Information provided on statements of account under this part in aggregated form, so long as Confidential Information pertaining to any Licensee or group of Licensees cannot directly or indirectly be ascertained or reasonably approximated. All reported aggregated Confidential Information from Licensees within a class of Licensees shall concurrently be made available to all Licensees then in such class. As used in this paragraph, the phrase ''class of Licensees'' means all Licensees paying fees pursuant to § 261.4(a).

(d) Except as provided in paragraph (c) of this section and as required by law, access to Confidential Information shall be limited to, and in the case of paragraphs (d)(3) and (d)(4) of this section shall be provided upon request, subject to resolution of any relevance or burdensomeness concerns and reimbursement of reasonable costs directly incurred in responding to such request, to:

(1) Those employees, agents, consultants and independent contractors of the Receiving Agent or a Designated Agent, subject to an appropriate confidentiality agreement, who are engaged in the collection and distribution of royalty payments hereunder and activities directly related thereto, who are not also employees or officers of a Copyright Owner or Performer, and who, for the purpose of performing such duties during the ordinary course of employment, require access to the records;

(2) An independent and qualified auditor, subject to an appropriate confidentiality agreement, who is authorized to act on behalf of the Receiving Agent or a Designated Agent with respect to the verification of a Licensee's statement of account pursuant to § 261.6 or on behalf of a Copyright Owner or Performer with respect to the verification of royalty payments pursuant to § 261.7;

(3) In connection with future Copyright Arbitration Royalty Panel proceedings under 17 U.S.C. 114(f)(2) and 112(e), under an appropriate protective order, attorneys, consultants and other authorized agents of the parties to the proceedings, Copyright Arbitration Royalty Panels, the Copyright Office or the courts; and

(4) In connection with *bona fide* royalty disputes or claims by or among Licensees, the Receiving Agent, Copyright Owners, Performers or the Designated Agent(s), under an appropriate confidentiality agreement or protective order, attorneys, consultants and other authorized agents of the parties to the dispute, arbitration panels or the courts.

(e) The Receiving Agent or Designated Agent(s) and any person identified in paragraph (d) of this section shall implement procedures to safeguard all Confidential Information using a reasonable standard of care, but no less than the same degree of security used to protect Confidential Information or similarly sensitive information belonging to such Receiving Agent or Designated Agent(s) or person.

(f) Books and records of a Licensee, the Receiving Agent and of a Designated Agent relating to the payment, collection, and distribution of royalty payments shall be kept for a period of not less than three (3) years.

**§ 261.6 Verification of statements of account.**

(a) *General.* This section prescribes general rules pertaining to the verification of the statements of account by the Designated Agent.

(b) *Frequency of verification.* A Designated Agent may conduct a single audit of a Licensee, upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Designated Agent must submit a notice of intent to audit a particular Licensee with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the Designated Agent's notice. The notification of intent to audit shall be served at the same time on the Licensee to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Designated Agents, and all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Licensee shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Designated Agent requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all Designated Agents with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Designated Agent, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Licensee being audited in order to remedy any factual errors and clarify any issues relating to the audit;

Provided that the appropriate agent or employee of the Licensee reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Designated Agent requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Licensee shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Licensee shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Licensee and more than $5,000.00.

**§ 261.7 Verification of royalty payments.**

(a) *General.* This section prescribes general rules pertaining to the verification by any Copyright Owner or Performer of royalty payments made by a Designated Agent; Provided, however, that nothing contained in this section shall apply to situations where a Copyright Owner or a Performer and a Designated Agent have agreed as to proper verification methods.

(b) *Frequency of verification.* A Copyright Owner or a Performer may conduct a single audit of a Designated Agent upon reasonable notice and during reasonable business hours, during any given calendar year, for any or all of the prior three (3) calendar years, and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* A Copyright Owner or Performer must submit a notice of intent to audit a particular Designated Agent with the Copyright Office, which shall publish in the **Federal Register** a notice announcing the receipt of the notice of intent to audit within thirty (30) days of the filing of the notice. The notification of intent to audit shall be served at the same time on the Designated Agent to be audited. Any such audit shall be conducted by an independent and qualified auditor identified in the notice, and shall be binding on all Copyright Owners and Performers.

(d) *Acquisition and retention of records.* The Designated Agent making the royalty payment shall use commercially reasonable efforts to obtain or to provide access to any relevant books and records maintained by third parties for the purpose of the audit and retain such records for a period of not less than three (3) years. The Copyright Owner or Performer requesting the verification procedure shall retain the report of the verification for a period of not less than three (3) years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent and qualified auditor, shall serve as an acceptable verification procedure for all parties with respect to the information that is within the scope of the audit.

(f) *Consultation.* Before rendering a written report to a Copyright Owner or Performer, except where the auditor has a reasonable basis to suspect fraud and disclosure would, in the reasonable opinion of the auditor, prejudice the investigation of such suspected fraud, the auditor shall review the tentative written findings of the audit with the appropriate agent or employee of the Designated Agent being audited in order to remedy any factual errors and clarify any issues relating to the audit; Provided that the appropriate agent or employee of the Designated Agent reasonably cooperates with the auditor to remedy promptly any factual errors or clarify any issues raised by the audit.

(g) *Costs of the verification procedure.* The Copyright Owner or Performer requesting the verification procedure shall pay the cost of the procedure, unless it is finally determined that there was an underpayment of ten percent (10%) or more, in which case the Designated Agent shall, in addition to paying the amount of any underpayment, bear the reasonable costs of the verification procedure; Provided, however, that a Designated Agent shall not have to pay any costs of the verification procedure in excess of the amount of any underpayment unless the underpayment was more than twenty percent (20%) of the amount finally determined to be due from the Designated Agent and more than $5,000.00.

**§ 261.8 Unclaimed funds.**

If a Designated Agent is unable to identify or locate a Copyright Owner or Performer who is entitled to receive a royalty payment under this part, the Designated Agent shall retain the required payment in a segregated trust account for a period of three (3) years from the date of payment. No claim to such payment shall be valid after the expiration of the three (3) year period. After the expiration of this period, the unclaimed funds of the Designated Agent may first be applied to the costs directly attributable to the administration of the royalty payments due such unidentified Copyright Owners and Performers and shall thereafter be allocated on a pro rata basis among the Designated Agents(s) to be used to offset such Designated Agent(s) other costs of collection and distribution of the royalty fees.

Dated: June 20, 2002.

**Marybeth Peters,**

*Register of Copyrights.*

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 02–16730 Filed 7–5–02; 8:45 am]

BILLING CODE 1410–33–P

Federal Register

Monday,
July 8, 2002

# Part IV

# Department of Education

## Office of Special Education and Rehabilitative Services; Notice

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2002.

**SUMMARY:** This notice announces closing dates, applicable priorities, and other information regarding the transmittal of grant applications for FY 2002 competitions under two programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act (IDEA), as amended. The two programs are: (1) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (one priority); and (2) Special Education—Technology and Media Services for Individuals with Disabilities (one priority).

Please note that significant dates for the availability and submission of applications, important fiscal information, and page limits for application narratives are listed in a table following information on individual programs and priorities.

**Waiver of Rulemaking**

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

**General Requirements**

(a) The projects funded under this notice must make positive efforts to employ and advance in project activities qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

**Page Limit**

Part III of each application, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed under each applicable priority and in the table at the end of this notice, using the following standards:

- A ''page'' is 8.5'' × 11'' (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

*Instructions for Transmittal of Applications*

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

**Pilot Project for Electronic Submission of Applications**

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The two programs in this announcement: Personnel Preparation to Improve Services and Results for Children with Disabilities-CFDA 84.325L, and Technology and Media Services for Individuals with Disabilities-CFDA 84.327L are included in the pilot project. If you are an applicant for a grant under either of the programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Personnel Preparation to Improve Services and Results for Children with Disabilities, and the Technology and Media Services for Individuals with Disabilities programs at:

*http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

**Special Education—Personnel Preparation to Improve Services and Results for Children With Disabilities [CFDA Number 84.325L]**

*Purposes of Program:* The purposes of this program are to (1) help address State-identified needs for qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities; and (2) ensure that these personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve these children.

*Eligible Applicants:* Institutions of higher education (IHEs).

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 304; and (c) The selection criteria chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

**Priority**

Under section 673 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priority:

**Absolute Priority—Interdisciplinary Preservice Programs In Large-Scale Special Education Research (CFDA Number 84.325L)**

**Background**

Building on the momentum of previous reauthorizations of IDEA, as well as the Government Performance and Results Act (GPRA), the 1997 Amendments to IDEA mandated a national assessment of IDEA (section 674(b)). OSEP responded by designing and implementing several child-focused (by age-range) and policy-focused studies that are gathering a large amount of nationally representative evaluative data on all aspects of special education and early intervention. These data can be used to inform policy and practice decisions and improve results for children with disabilities.

The Assistant Secretary is interested in improving research activities by awarding grants to IHEs to establish doctoral training programs that focus on large-scale research methodology in early intervention, special education and related services.

**Priority**

This priority supports individuals—at both the doctoral and postdoctoral levels—to (1) develop or refine their expertise in large-scale research methods; and (2) conduct secondary analyses of the data bases associated with national assessment studies or similar studies that are national in scope.

Postdoctoral fellows must have completed a doctoral degree in a relevant discipline such as education, psychology, sociology, economics, or statistics.

The first year of the program must, focus on developing the training program. This includes developing the curriculum and syllabus through interdisciplinary and collaborative cooperation with participating agencies, institutions, departments, etc.

**Application Information**

An applicant under the proposed project must do the following:

(a) Demonstrate the willingness of one or more entities conducting large-scale longitudinal research on special education or early intervention such as that funded by the Department of Education, another Federal agency, or a university to collaborate in providing postdoctoral training.

(b) Include course syllabi that may currently be relevant to the proposed training program. Course syllabi must clearly reflect the incorporation of large-scale research-based curriculum and pedagogy that ordinarily are not part of a traditional doctoral training program.

(c) Describe how it will inform scholarship recipients of their service obligation requirement.

As part of its activities, the proposed project must do the following:

(a) Develop at the doctoral level extensive coursework that reflects current research and pedagogy on large-scale research studies.

(b)(1) Use clear, defensible, data-based methods for evaluating the extent to which recipients of training are prepared to conduct high quality large-scale research; and (2) communicate the results of this evaluation to OSEP in annual performance reports and the final performance report.

(c) Develop among students competencies: (1) In methodological areas such as group research design, sampling or weighting, survey methods, statistical analyses; and (2) in topical areas such as special education law, special education or education policy, economics of human capital, or school finance.

(d) Provide that postsecondary fellows carry out research activities, at the direction of collaborating entities, that extend beyond the activities for which funding to these entities has already been provided. The project must also require fellows to conduct their own research using data made available by collaborating entities from large-scale longitudinal studies.

**Additional Fiscal Information**

(a) In accordance with section 673(i) of IDEA and 34 CFR 304.20, a grantee must use at least 65 percent of the total requested budget for student scholarships in years two, three, and four or provide sufficient justification for any designation less than 65 percent of the total requested budget for student scholarships.

(b) Because the first year of the project will be for developmental purposes, there will be no student support unless some students are required to participate in program development. Therefore, the grant funds available for the first year will be significantly less than the following three years.

**Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327L]**

*Purposes of Program:* To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

This competition focuses on captioning and video description activities.

*Applicable Regulations:* (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria are chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*Eligible Applicants:* State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

**Priority**

Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only

applications that meet the following priority:

*Absolute Priority—Television Access (84.327L)*

This priority supports cooperative agreements to provide captioning of a variety of types of television programs: (1) National news and public information programs; (2) local news and public information programs; (3) Spanish language programs; and (4) accessible children's television programs. For the purpose of this competition, program hours or the costs of captioning associated with those programs that are funded by promotional billboards shall not be considered as an in-kind cost, or a private sector match, for Federal funds.

To be considered for funding under this competition, a project must do the following:

(a) Include criteria for selecting programs that take into account the preference of educators, students, and parents; the diversity of the type of programming available; and the contribution of the programming to the general educational experience of students who have disabilities in the areas of vision or hearing.

(b) Identify and support a consumer advisory group, including parents and educators, that would meet at least annually.

(c) Use the expertise of this consumer advisory group to certify that each program captioned or described with project funds is educational, news, or informational programming.

(d) Identify the extent to which the programming is widely available.

(e) Identify the total number of program hours the project will make accessible and the cost per hour for description or captioning or both.

(f) For each program to be described or captioned or both, identify the source of any private or other public support, and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning or both of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under this project will air, and will continue to air, with descriptions or captions or both.

(i) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(j) Identify the anticipated shelf-life and range of distribution of the captioned or described programs that is possible without further costs to the project beyond the initial captioning costs.

An application may address only one type of the following programs —

(1) *National News and Public Information Programs.* To be funded under this type of programming, a project must continue and expand the captioning of national news and 9 public information programs. This is intended to enable persons who are deaf or hard of hearing to have access to up-to-date national morning, evening, and weekend news, as well as information concerning current events and other significant public information.

(2) *Local News and Public Information Programs.* A project funded under this type of programming is expected to increase the capacity of the television captioning industry to respond to demands for accurate real-time captioning. To be funded a project must caption local news and public information programs using the real-time stenographic method preferred by consumers who are deaf or hard of hearing.

(3) *Spanish Language Programs.* To be funded under this type of programming, a project must caption in Spanish a variety of educational, news, and informational programs—including these types of programs for children—broadcast or cablecast in Spanish.

(4) *Accessible Children's Television Programs.* To be funded under this type of programming, a project must describe and caption widely available educational, news, and informational programs for children—including programs suitable for young adults—shown on broadcast, 10 satellite, or cable systems. Captioning must provide a visual representation of the audio portion of the programming while video description must provide a narrative of what takes place visually on the screen.

**Competitive Preference Priority**

Within the Local News and Public Information Programs segment of this absolute priority, we award under 34 CFR 75.105(c)(2)(i) an additional 20 points to an application from an applicant that —

(a) During FY 2001, was not a grantee or a subcontractor of a grantee under the Technology and Media Services for Individuals with Disabilities program; and

(b) Won't use a subcontractor who was a grantee or a subcontractor of a grantee under this program during FY 2001.

Thus, an applicant meeting this competitive preference could receive a maximum possible score of 120 points.

**Fiscal Information**

Under this priority, we intend to make one or more awards in each of the four areas of activity identified.

Funds provided under the National News and Public Information Programs segment of this priority may be used to support no more than 50 percent of the captioning costs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2002

| CFDA No. and name | Applications available | Application deadline date | Estimated available funds | Deadline for intergovernmental review | Maximum award (per year)* | Estimated range of awards | Estimated average size of awards | Project period | Page limit** | Estimated number of awards |
|---|---|---|---|---|---|---|---|---|---|---|
| 84.325L Interdisciplinary Preservice Programs In Large-Scale Special Education Research. | 07/08/02 | 08/08/02 | $150,000 (year one) | 09/30/02 | $150,000 (year one) | $130,000–$150,000 | $148,000 | Up to 48 mos. | 30 | 2 |
| | | | $500,000 (years two, three & four) | | $500,000 (years two, three & four) | $450,000–$500,000 | ..... | | ..... | ..... |
| 84.327L Television Access ..... | 07/08/02 | 08/08/02 | | 09/30/02 | | | | Up to 36 mos. | 40 | ..... |
| —National News and Public Information Programs. | | | $250,000 | | $250,000 | $230,000–$250,000 | $249,000 | | | 6 |
| —Local News and Public Information Programs. | | | $130,000 | | $130,000 | $100,000–$130,000 | $125,000 | | | 16 |
| —Spanish Language Programs ..... | | | $115,000 | | $115,000 | $100,000–$115,000 | $113,000 | | | 2 |
| —Accessible Children's Television Programs. | | | $500,000 | | $500,000 | $450,000–$500,000 | $480,000 | | | 5 |

* We will reject any application that proposes a budget exceeding the amounts shown for a single budget period of 12 months.

** Please refer to the ''Page Limit'' requirements under the ''General Requirements'' section.

*Note:* The Department is not bound by any estimates in this notice.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

**FOR FURTHER INFORMATION CONTACT:** Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8207. If you use a TDD, you 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 number listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

## Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

## Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at 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/nara/index.html*

**Program Authority:** 20 U.S.C. 1405, 1461, 1473 and 1487.

Dated: July 1, 2002.

**Robert H. Pasternack,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 02–16959 Filed 7–5–02; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Monday,
July 8, 2002

# Part V

# The President

**Proclamation 7576—To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products**

**Executive Order 13269—Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism**

**Executive Order 13270—Tribal Colleges and Universities**

Federal Register
Vol. 67, No. 130
Monday, July 8, 2002

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7576 of July 3, 2002**

## To Provide for the Efficient and Fair Administration of Safeguard Measures on Imports of Certain Steel Products

**By the President of the United States of America**

**A Proclamation**

1. On March 5, 2002, pursuant to section 203 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2253), I issued Proclamation 7529, which imposed tariffs and a tariff-rate quota on certain steel products under subheadings 9903.72.30 through 9903.74.24 of the Harmonized Tariff Schedule of the United States (HTS) (the ''safeguard measures'') for a period of 3 years plus 1 day.

2. In clause (3) of Proclamation 7529, I excluded imports of certain steel that are the product of World Trade Organization (WTO) member developing countries, as provided in subdivision (d)(i) of U.S. Note 11 to subchapter III of chapter 99 of the HTS (Note 11), from the safeguard measures.

3. In clause (5) of Proclamation 7529, I authorized the United States Trade Representative (USTR), within 120 days after March 5, 2002, to further consider any request for exclusion of a particular product submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001) and, upon publication in the **Federal Register** of a notice of his finding that a particular product should be excluded, to modify the HTS provisions created by the Annex to Proclamation 7529 to exclude such particular product from the pertinent safeguard measure.

4. Pursuant to section 203(g) of the Trade Act (19 U.S.C. 2253(g)), in order to provide for the efficient and fair administration of the safeguard measures, I have determined that:

(a) the USTR should have authority, as appropriate, to add WTO member developing countries to the list of countries in subdivision (d)(i) of Note 11;

(b) the period provided in clause (5) of Proclamation 7529 should be extended until August 31, 2002; and

(c) requests for exclusion submitted in accordance with the procedures set out in 67 *Fed. Reg.* 19307, 19308 (April 18, 2002); 67 *Fed. Reg.* 35842, 35842–35843 (May 21, 2002); 67 *Fed. Reg.* 38693, 38694 (June 5, 2002) should be treated as having been submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001).

5. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuation, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 203 and 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) The USTR is authorized, upon publication of a notice in the **Federal Register** of his determination that it is appropriate to add WTO member

developing countries to the list of countries in subdivision (d)(i) of Note 11, to add such countries to that list.

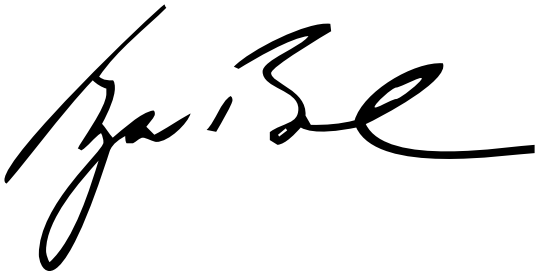
(2) Clause (5) of Proclamation 7529 is amended by deleting the words ''Within 120 days after the date of this proclamation'' and adding in their place the words ''At any time on or before August 31, 2002''. Note 11 is amended in subdivision (c), by deleting the date ''July 3, 2002'' and adding in its place the date ''August 31, 2002.''

(3) The USTR is authorized to treat requests for exclusion submitted in accordance with the procedures set out in 67 *Fed. Reg.* 19307 (April 18, 2002); 67 *Fed. Reg.* 35842 (May 21, 2002); or 67 *Fed. Reg.* 38693 (June 5, 2002) as having been submitted in accordance with the procedures set out in 66 *Fed. Reg.* 54321, 54322–54323 (October 26, 2001).

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2002, and shall continue in effect as provided in subchapter III of chapter 99 of the HTS, unless such actions are earlier expressly reduced, modified, or terminated. Effective at the close of March 21, 2006, or such other date that is 1 year from the close of the safeguard measures, the modifications to the HTS established in this proclamation shall be deleted from the HTS.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of July, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–17272
Filed 7–5–02; 10:21 am]
Billing code 3195–01–P

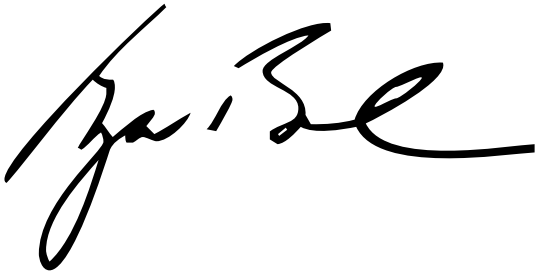
# Presidential Documents

**Executive Order 13269 of July 3, 2002**

## Expedited Naturalization of Aliens and Noncitizen Nationals Serving in an Active-Duty Status During the War on Terrorism

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) (the ''Act''), and solely in order to provide expedited naturalization for aliens and noncitizen nationals serving in an active-duty status in the Armed Forces of the United States during the period of the war against terrorists of global reach, it is hereby ordered as follows:

For the purpose of determining qualification for the exception from the usual requirements for naturalization, I designate as a period in which the Armed Forces of the United States were engaged in armed conflict with a hostile foreign force the period beginning on September 11, 2001. Such period will be deemed to terminate on a date designated by future Executive Order. Those persons serving honorably in active-duty status in the Armed Forces of the United States, during the period beginning on September 11, 2001, and terminating on the date to be so designated, are eligible for naturalization in accordance with the statutory exception to the naturalization requirements, as provided in section 329 of the Act. Nothing contained in this order is intended to affect, nor does it affect, any other power, right, or obligation of the United States, its agencies, officers, employees, or any other person under Federal law or the law of nations.



THE WHITE HOUSE,
*July 3, 2002.*

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# Presidential Documents

**Executive Order 13270 of July 3, 2002**

## Tribal Colleges and Universities

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** *Policy.* There is a unique relationship between the United States and Indian tribes, and a special relationship between the United States and Alaska Native entities. It is the policy of the Federal Government that this Nation's commitment to educational excellence and opportunity must extend as well to the tribal colleges and universities (tribal colleges) that serve Indian tribes and Alaska Native entities. The President's Board of Advisors on Tribal Colleges and Universities (the ''Board'') and the White House Initiative on Tribal Colleges and Universities (WHITCU) established by this order shall ensure that this national policy regarding tribal colleges is carried out with direct accountability at the highest levels of the Federal Government.

Tribal colleges are both integral and essential to their communities. Often they are the only postsecondary institutions within some of our Nation's poorest rural areas. They fulfill a vital role: in maintaining and preserving irreplaceable languages and cultural traditions; in offering a high-quality college education to younger students; and in providing job training and other career-building programs to adults and senior citizens. Tribal colleges provide crucial services in communities that continue to suffer high rates of unemployment and the resulting social and economic distress.

The Federal Government's commitment to tribal colleges is reaffirmed and the private sector can and should contribute to the colleges' educational and cultural missions.

Finally, postsecondary institutions can play a vital role in promoting excellence in early childhood, elementary, and secondary education. The Federal Government will therefore work to implement the innovations and reforms of the No Child Left Behind Act of 2001 (Public Law 107–110) in partnership with tribal colleges and their American Indian and Alaska Native communities.

**Sec. 2.** *Definition of Tribal Colleges and Universities.* Tribal colleges are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Diné College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a note).

**Sec. 3.** *Board of Advisors.* (a) *Establishment.* There shall be established in the Department of Education a Presidential advisory committee entitled the President's Board of Advisors on Tribal Colleges and Universities (the ''Board'').

(b) *Membership.* The Board shall consist of not more than 15 members who shall be appointed by the President, one of whom shall be designated by the President as Chair. The Board shall include representatives of tribal colleges and may also include representatives of the higher, early childhood, elementary, and secondary education communities; tribal officials; health, business, and financial institutions; private foundations; and such other persons as the President deems appropriate.

(c) *Functions*. The Board shall provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of this order. The Board also shall provide recommendations to the President, through the Secretary of Education (Secretary), on ways the Federal Government can help tribal colleges:

(1) use long-term development, endowment building, and planning to strengthen institutional viability;

(2) improve financial management and security, obtain private-sector funding support, and expand and complement Federal education initiatives;

(3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors;

(4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and

(5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

(d) *Meetings*. The Board shall meet at least annually, at the request of the Secretary, to provide advice and consultation on tribal colleges and relevant Federal and private-sector activities, and to transmit reports and present recommendations.

**Sec. 4.** *White House Initiative on Tribal Colleges and Universities.* There shall be established in the Department of Education, Office of the Secretary, the White House Initiative on Tribal Colleges and Universities (WHITCU). The WHITCU shall:

(a) provide the staff support for the Board;

(b) assist the Secretary in the role of liaison between the executive branch and tribal colleges; and

(c) serve the Secretary in carrying out the Secretary's responsibilities under this order.

**Sec. 5.** *Department and Agency Participation.* Each participating executive department and agency (agency), as determined by the Secretary, shall appoint a senior official who is a full-time officer of the Federal Government and who is responsible for management or program administration. The official shall report directly to the agency head, or to the agency head's designee, on agency activity under this order and serve as liaison to the WHITCU. To the extent permitted by law and regulation, each agency shall provide appropriate information as requested by the WHITCU staff pursuant to this order.

**Sec. 6.** *Three-Year Federal Plan.*

(a) *Content*. Each agency identified by the Secretary shall develop and implement a Three-Year Plan of the agency's efforts to fulfill the purposes of this order. These Three-Year Plans shall include annual performance indicators and appropriate measurable objectives for the agency. Among other relevant issues, the plans shall address how the agency intends to increase the capacity of tribal colleges to compete effectively for any available grants, contracts, cooperative agreements, and any other Federal resources, and to encourage tribal colleges to participate in Federal programs. The plans also may emphasize access to high-quality educational opportunities for economically disadvantaged Indian students, consistent with requirements of the No Child Left Behind Act of 2001; the preservation and revitalization of tribal languages and cultural traditions; and innovative approaches to better link tribal colleges with early childhood, elementary, and secondary education programs. The agency's performance indicators and objectives should be clearly reflected in the agency's annual budget submission to the Office of Management and Budget. To facilitate the attainment of these performance indicators and objectives, the head of each agency identified by the Secretary, shall provide, as appropriate, technical assistance and information to tribal colleges regarding the program activities of the agency

and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(b) *Submission*. Each agency shall submit its Three-Year Plan to the WHITCU. In consultation with the Board, the WHITCU shall then review these Three-Year Plans and develop an integrated Three-Year Plan for Assistance to Tribal Colleges, which the Secretary shall review and submit to the President. Agencies may revise their Three-Year Plans within the three-year period.

(c) *Annual Performance Reports.* Each agency shall submit to the WHITCU an Annual Performance Report that measures the agency's performance against the objectives set forth in its Three-Year Plan. In consultation with the Board, the WHITCU shall review and combine Annual Performance Reports into one annual report, which shall be submitted to the Secretary for review, in consultation with the Office of Management and Budget.

**Sec. 7.** *Private Sector.* In cooperation with the Board, the WHITCU shall encourage the private sector to assist tribal colleges through increased use of such strategies as:

(a) matching funds to support increased endowments;

(b) developing expertise and more effective ways to manage finances, improve information systems, build facilities, and improve course offerings; and

(c) increasing resources for and training of faculty.

**Sec. 8.** *Termination.* The Board shall terminate 2 years after the date of this order unless the Board is renewed by the President prior to the end of that 2-year period.

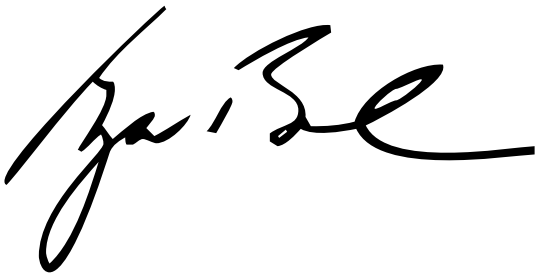
**Sec. 9.** *Administration.* (a) *Compensation*. Members of the Board shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(b) *Funding*. The Board and the WHITCU shall be funded by the Department of Education.

(c) *Administrative Support*. The Department of Education shall provide appropriate administrative services and staff support for the Board and the WHITCU. With the consent of the Department of Education, other agencies participating in the WHITCU shall provide administrative support (including detailees) to the WHITCU consistent with statutory authority. The Board and the WHITCU each shall have a staff and shall be supported at appropriate levels commensurate with that of similar White House Initiative Offices.

(d) *General Provisions*. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the ''Act''), may apply to the administration of any portion of this order, any functions of the President under the Act, except that of reporting to the Congress, shall be performed by the Secretary of Education in accordance with the guidelines issued by the Administrator of General Services.

**Sec. 10.** *Revocation.* Executive Order 13021 of October 19, 1996, as amended, is revoked.



THE WHITE HOUSE,
*July 3, 2002.*

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**H.R. 327/P.L. 107–198**

Small Business Paperwork Relief Act of 2002 (June 28, 2002; 116 Stat. 729)

**S. 2578/P.L. 107–199**

To amend title 31 of the United States Code to increase the public debt limit. (June 28, 2002; 116 Stat. 734)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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