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# Federal Register

1–8–03 Wednesday
Vol. 68 No. 5 Jan. 8, 2003
Pages 995–1142

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# Proposed Rules

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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

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NE–24–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF6–6 Series Turbofan Engines

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

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

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to General Electric (GE) CF6–6 series turbofan engines. This proposal would require a reduction of the cyclic life limit for certain high pressure turbine rotor (HPTR) rear shafts, and would require removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cyclic life limit according to the compliance schedule described in this proposal. The actions specified by the proposed AD are intended to prevent cracks in HPTR rear shafts that could result in uncontained engine failure and damage to the airplane.

**DATES:** Comments must be received by March 10, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7192, fax: 781–238–7199, e-mail: *karen.curtis@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–24–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

An updated low-cycle fatigue (LCF) analysis of certain HPTR rear shaft part numbers installed in CF6–6 engines, including an improved 3D finite element analysis of certain features, was performed by the manufacturer. That analysis indicated the need to lower the cyclic life limit for these part numbers. The updated analysis was prompted by a recently completed analysis on the same rotor assembly, but with different blades.

This proposal will require a new life limit for these HPTR rear shaft P/N's of 8,950 cycles-since-new. On August 8, 2002, the manufacturer issued Temporary Revision TR 05–0022, revising the life limits section of the engine manual to reflect the new life limit for these shafts. Because the fleet contains rear shafts that exceed this new lower limit, a draw down plan is required. This condition, if not corrected could result in LCF cracking and failure of the shafts, which could result in uncontained engine failure and damage to the airplane.

### FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other GE CF6–6 series turbofan engines of the same type design, the proposed AD would establish a new, lower cyclic life limit of 8,950 CSN for HPTR rear shafts P/N's 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 and would require removing certain HPTR rear shafts from service before exceeding the new, lower cyclic life limit. In addition, the proposal would require removing from service certain HPTR rear shafts that currently exceed, or will exceed, the new, lower cycle life limit according to a compliance schedule based on accumulated cycles on the rear shaft on the effective date of this AD.

### Economic Analysis

There are approximately 55 GE CF6–6 series turbofan engines of the affected design in the domestic fleet that would be affected by this proposed AD. There are no foreign registered engines. There are no labor or parts costs associated with the implementation of this proposed action. The total cost of the proposed AD to U.S. operators is

estimated to be $41,690 per engine, which is the cost of new rear shafts.

**Regulatory Analysis**

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

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

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**General Electric Company:** Docket No. 2002–NE–24–AD.

**Applicability**

This airworthiness directive (AD) is applicable to General Electric Company CF6–6 series turbofan engines. These engines are installed on, but not limited to McDonnell Douglas DC–10 series airplanes.

**Note 1:** This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines 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 (e) 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**

Compliance with this AD is required as indicated, unless already done.

To prevent cracks in high pressure turbine rotor (HPTR) rear shafts, which could result in uncontained engine failure and damage to the airplane, do the following:

(a) Remove from service HPTR rear shafts, part numbers (P/N's) 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 in accordance with Table 1 as follows:

TABLE 1.—HPTR REAR SHAFT REMOVAL SCHEDULE

| If the rear shaft cycles-since-new (CSN) on the effective date of this AD are: | Then remove the rear shaft |
|---|---|
| (1) Fewer than 5,000 CSN | Before exceeding 8,950 CSN |
| (2) 5,000 CSN or more, but fewer than 8,950 CSN | Within 3,950 additional cycles-in-service (CIS) from the effective date of this AD or before 11,550 CSN, whichever occurs earlier. |
| (3) 8,950 CSN or more | At next HPTR rear shaft piece part exposure, or within 2,600 additional cycles-in-service (CIS), whichever occurs earlier. |

(b) After the effective date of this AD, do not install any HPTR rear shaft, P/N 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, or 9687M22G04/G07/G10, that has 8,950 or more CSN into an engine.

(c) Except as provided in paragraph (a) of this AD, this action establishes a new, cyclic life limit of 8,950 CSN for HPTR rear shaft P/N's 9137M13G01/G02/G03, 9138M22G01/G02/G09/G10, 9138M25G02, and 9687M22G04/G07/G10 which is published in Chapter 05–11–03 of CF6–6 Engine Shop Manual, GEK 9266.

**Definition**

(d) For the purpose of this AD, HPTR rear shaft piece-part exposure is defined as complete disassembly of the rear shaft from the HPTR structure in accordance with the manufacturer's engine manual.

**Alternative Methods of Compliance**

(e) 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, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance §§ 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 done.

Issued in Burlington, Massachusetts, on January 3, 2003.

**Jay J. Pardee,**

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

[FR Doc. 03–330 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NM–231–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 and –400F Series Airplanes

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

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

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and –400F series airplanes. This proposal would require initial and, for certain airplanes, repetitive inspections of the

rivets in the forward, top, and side panels of the nose wheel well (NWW) for discrepancies; and follow-on inspections and corrective action, if necessary. This proposal also provides eventual terminating action for the repetitive inspections. This action is necessary to find and fix discrepancies of the rivets in the NWW panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by February 24, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–231–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–231–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–231–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received reports indicating that missing rivet heads were found in the side panels of the nose wheel well (NWW) between body stations 260 and 340 of the canted pressure bulkhead on certain Boeing Model 747–400 and –400F series airplanes. Investigation revealed that the rivets were incorrectly heat-treated and were made of 7050 aluminum, which is susceptible to stress corrosion cracking. Rivets in the subject area should be made of 2017 aluminum, which is a more durable material. One airplane had 44 discrepant rivets (missing heads, incorrectly heat-treated) at random locations on both side panels, 28 of the rivets were found using a detailed inspection, and 16 were found using an indirect conductivity eddy current inspection method. Such discrepancies, if not found and fixed, could result in failure of the rivets and consequent reduced structural integrity of the NWW panels and rapid depressurization of the airplane.

## Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001, which describes procedures for initial and repetitive detailed inspections and a follow-on indirect conductivity eddy current inspection for discrepancies (missing rivet heads or incorrectly heat-treated rivets) in the forward, top, and side panels of the NWW between fuselage stations 260 and 340 of the canted pressure bulkhead; and corrective action, if necessary. The corrective action includes the following:

- If up to three adjacent rivets with missing heads are found, remove the discrepant rivets and install permanent or time limited repair fasteners.
- If four or more adjacent rivets with missing heads are found, remove discrepant rivets and do a high frequency eddy current inspection of the web for cracking around the intact fasteners at each end of the line of missing rivets.
- If web cracking is found, the service bulletin specifies contacting the manufacturer for repair instructions.
- If no web cracking is found, install permanent or time limited repair fasteners.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

## Explanation of Requirements of Proposed Rule

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

## Difference Between Service Information and Proposed Rule

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be done per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

## Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

## Cost Impact

There are approximately 43 airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to do the proposed detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed inspection proposed by this AD on U.S. operators is estimated to be $1,440, or $240 per airplane, per inspection cycle.

It would take approximately 10 work hours per airplane to do the proposed indirect conductivity eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the indirect conductivity eddy current inspection proposed by this AD on U.S. operators is estimated to be $3,600, or $600 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket 2001–NM–231–AD.

*Applicability:* Model 747–400 and –400F series airplanes, line numbers 1141 through 1183 inclusive, certificated in any category.

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

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

To find and fix discrepancies of the rivets in the nose wheel well (NWW) panels, which could result in failure of the rivets and consequent reduced structural integrity of the panels and rapid depressurization of the airplane, do the following:

**Repetitive/Follow-on Inspections/Corrective Action**

(a) Within 6 months after the effective date of this AD: Do a detailed inspection of the forward, top, and side panels of the NWW for missing rivet heads, between fuselage stations 260 and 340 of the canted pressure bulkhead, per Figure 2 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001.

(1) If any missing rivet head is found, before further flight, replace with a permanent or time limited repair fastener and do the actions specified in paragraph (b) of this AD.

(2) If no missing rivet head is found, before further flight, do the actions required by paragraph (c) of this AD, or repeat the detailed inspection at least every 6 months until paragraph (c) of this AD is done.

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

(b) If any missing rivet head is found during any inspection required by paragraph (a) of this AD: Within 30 days after doing the detailed inspection, do an indirect conductivity eddy current inspection for discrepant rivets (incorrectly heat-treated) per Figure 2 of the Work Instructions of the service bulletin. If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener as required by paragraph (b)(1) or (b)(2) of this AD, as applicable. If no discrepant rivet is found, no further action is required by this AD. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(1) If up to three adjacent discrepant rivets are found: Before further flight, remove the affected rivets and replace with permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(2) If four or more adjacent discrepant rivets are found: Before further flight, remove the affected rivets and do a high frequency eddy current inspection of the web for cracking around the intact fasteners at each end of the line of missing rivets per the Work Instructions of the service bulletin.

(i) If no web cracking is found, before further flight, install permanent or time limited repair fasteners per the Work Instructions of the service bulletin.

(ii) If any web cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

**Terminating Action**

(c) For airplanes on which no missing rivet head is found during the inspection required by paragraph (a) of this AD: Within 2 years after the effective date of this AD, do an indirect conductivity eddy current inspection

for discrepant rivets (incorrectly heat-treated) of the NWW panels between fuselage stations 260 and 340 of the canted pressure bulkhead per the Work Instructions of Boeing Alert Service Bulletin 747–53A2472, including Appendix A, dated June 7, 2001.

(1) If any discrepant rivet is found, before further flight, replace with a permanent or time limited repair fastener. Replace any time limited repair fasteners with permanent fasteners within 24 months after installation.

(2) If no discrepant rivet is found, no further action is required by this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permit**

(e) 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 done.

Issued in Renton, Washington, on December 31, 2002.

**Kevin Mullin,**

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

[FR Doc. 03–333 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–131478–02]**

**RIN 1545–BB25**

## Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Hearing Cancellation

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code regarding proposed regulations that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain dispositions and deconsolidations of such stock.

**DATES:** The public hearing originally scheduled for January 15, 2003, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, October 23, 2002 (67 FR 65060), announced that a public hearing was scheduled for January 15, 2003, at 10 a.m., in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code. The public comment period for these regulations expires on January 21, 2003. Outlines of oral testimony were due on December 27, 2002. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit outlines of topics to be addressed. As of Friday, January 3, 2003, no one has requested to speak. Therefore, the public hearing scheduled for January 15, 2003, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).*

[FR Doc. 03–353 Filed 1–7–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[REG–124667–02]**

**RIN 1545–BA78**

## Disclosure of Relative Values of Optional Forms of Benefit; Hearing Cancellation

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

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels the public hearing on proposed regulations relating to the disclosure of relative values of optional forms of benefit under section 417 of the Internal Revenue Code.

**DATES:** The public hearing originally scheduled for Tuesday, January 14, 2003, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Guy R. Traynor in the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Monday, October 7, 2002 (67 FR 62417), announced that a public hearing was scheduled for January 14, 2003, at 10 a.m., in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20044. The subject of the public hearing is proposed regulations under section 417 of the Internal Revenue Code. The deadline for submitting outlines and requests to speak at the hearing for these proposed regulations expired on January 2, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of January 3, 2003, no one has requested to speak. Therefore, the public hearing scheduled for January 14, 2003, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Associate Chief Counsel, (Income Tax & Accounting).*

[FR Doc. 03–352 Filed 1–7–03; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[Notice No. 965; 2002R–421P]**

**RIN 1512–AD05**

## Proposed Expansion of the Russian River Valley Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

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

**SUMMARY:** ATF has received a petition proposing the expansion of the Russian River Valley viticultural area in Sonoma County, California. The petitioned 767-acre expansion lies on the eastern boundary of the Russian River Valley viticultural area, which is entirely within the Sonoma Coast and North Coast viticultural areas of northern California. We propose this action under the authority of the Federal Alcohol Administration Act. We invite comments on this proposal.

**DATES:** We must receive written comments by March 10, 2003.

**ADDRESSES:** You may send comments to any of the following addresses:

- Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 965);
- 202–927–8525 (Facsimile);
- *nprm@atfhq.atf.treas.gov* (E-mail);
- *http://www.atf.treas.gov* (An online comment form is available with this notice).

See the ''Public Participation'' section of this notice for specific requirements, as well as for information on how to request a public hearing.

**FOR FURTHER INFORMATION CONTACT:** N. A. Sutton, Specialist, Regulations Division (San Francisco, CA), Bureau of Alcohol, Tobacco and Firearms, 221 Main Street, 11th Floor, San Francisco, CA 94105–1906; telephone (415) 271–1254.

**SUPPLEMENTARY INFORMATION:**

## Background on Viticultural Areas

### *Authority*

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of deceptive information on such labels. The FAA Act also authorizes ATF to issue regulations to carry out the Act's provisions.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

### *Definition*

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9.

### *Requirements*

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence of local and/or national name recognition of the proposed viticultural area as the area specified in the petition;
- Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;
- Evidence of geographical characteristics, such as climate, soil, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features found on maps of the largest applicable scale that are approved by the United States Geological Survey (USGS); and
- A copy or copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Additionally, for a wine to use the name of a viticultural area as an appellation of origin, 85 percent of the grapes in the wine must be grown within the viticultural area.

## Expansion Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition from Donald L. Carano of the Ferrari-Carano Vineyards and Winery in Healdsburg, California, proposing a 767-acre expansion of the established 96,000-acre Russian River Valley viticultural area (*See* 27 CFR 9.66). This proposed expansion would result in less than a one percent increase in the established area's size. The petitioner states that approximately 365 of the proposed expansion's 767 acres are currently planted to grapes.

Located approximately 55 miles north of San Francisco, the proposed expansion fits into a 90° angle in the current Russian River Valley viticultural area's eastern boundary at the village of Fulton, which is just northwest of the city of Santa Rosa in Sonoma County, California. The proposed expansion is bordered by Fulton Road on the west, River Road on the north, U.S. Highway 101 on the east, and two locally known streets, Dennis Lane and Francisco Avenue, to the south.

The petitioner states that the proposed expansion has the same climate and other characteristics of the current Russian River Valley viticultural area, and, therefore, the proposed expansion meets the criteria for inclusion in the established viticultural area. The petitioner also notes that, in the past, some winegrape growers in the proposed expansion area have erroneously believed their vineyards to be within the boundaries of the Russian River Valley viticultural area.

### *Name Evidence*

The petitioner provided evidence that the proposed expansion area, adjacent to the established area's boundaries, is also referred to as the Russian River Valley viticultural area. A Wine Country Living magazine map of viticultural areas, dated July 2002, shows the proposed expansion area as being within the established Russian River Valley viticultural area's borders. A June 2002 Wine Spectator Online article states that the Vintners Inn hotel is in the Russian River Valley viticultural area, although it is actually in the proposed expansion. The Russian River Wine Road web site (1998–2002) also locates the Vintners Inn, as well as Siduri Wines, inside the Russian River viticultural area, even though both are within the proposed expansion area. In August 2002, the Russian River Valley Winegrape Growers Association website listed several members who are in the proposed expansion area. Road signs in the proposed expansion area also indicate that the area is associated locally with the Russian River.

### *Evidence of Boundaries*

Historically, the proposed expansion area was used for prune orchards and vineyards, according to Mr. John Marcucci, whose family has owned thirty acres in the proposed area for four generations. He recalls that, prior to 1918, the acreage was planted to Petite Syrah, Zinfandel, and Pinot Noir wine grapes. Mr. Marcucci and Mr. Henry Bisordi, both life long residents of the area, also recollect that years ago prune orchards were more profitable than vineyards, but when the market turned, some orchards were replaced with vineyards. The previous owner of the Vintners Inn acreage claims that approximately 50 acres of this land was devoted to French Colombard wine grapes and orchards until about 25 years ago when the orchards were removed for Chardonnay, Pinot Blanc, and Sauvignon Blanc wine grape plantings. Currently, 48 percent, or almost half of the 767 acre proposed expansion area, is used for viticulture.

### *Growing Conditions*

Treasury Decision ATF–159 of October 21, 1983, 48 FR 48813, established the Russian River Valley as a viticultural area. This Treasury Decision stated:

> The Russian River viticultural area includes those areas through which flow the Russian River or some of its tributaries and where there is a significant climate effect from coastal fogs. The specific growing climate is the principal distinctive characteristic of the Russian River Valley viticultural area. The area designated is a cool growing coastal area because of fog intruding up the Russian River and its tributaries during the early morning hours.

Climate

The petitioner states that the term ''Russian River,'' as it applies to viticulture, refers to that portion of the Russian River valley influenced by cool temperatures and coastal fog. The proposed expansion area has heavy fog, according to an undated map included in the petition and titled ''Lines of Heaviest and Average Maximum Fog Intrusion for Sonoma County.''

The current petitioner and Treasury Decision ATF–159, which established the Russian River Valley viticultural area, both refer to the Winkler degree-day (accumulated heat units) system, which is used to classify grape-growing climatic regions (*See* ''General Viticulture,'' Albert J. Winkler, University of California Press, 1975). As noted in Treasury Decision ATF–159, ''The Russian River Valley viticultural area is termed 'coastal cool' with a range of 2000 to 2800 accumulated heat units.''

The petitioner conducted a degree-day study of three vineyards from April 2001 through October 2001, which coincides with Winkler's growing season. Two of these vineyards are within the established Russian River Valley viticultural area, while the other is in the proposed expansion area. This study measured air temperature, wind speed, precipitation, and humidity at the three area vineyards. The petitioner provided the degree-day (accumulated heat units) results shown in the following table:

| Vineyard | Degree-days (accumulated heat units) |
|---|---|
| In the *established* viticultural area: | |
| Vino Farms Vineyard ..... | 2,477 |
| Storey Creek Vineyard ..... | 2,736 |
| In the *proposed expansion* area: | |
| LeCarrefour Vineyards ..... | 2,636 |

The results from the three vineyards studied show that all three are within the 2,000 to 2,800 accumulated heat units range found in the Russian River Valley viticultural area, as stated in Treasury Decision ATF–159. ATF independently confirmed that LeCarrefour Vineyards, at 4350 Barnes Road, Santa Rosa, California, is within the petitioned expansion area.

Elevation

Elevations within the proposed expansion area range from 130 feet to 160 feet, with a gentle rise from southwest to northeast, according to the two USGS topographic maps covering the expansion area. These elevations are similar to those found in the portion of the established Russian River Valley viticultural area immediately adjacent to the proposed expansion.

Soil

The predominant soils of the proposed expansion of the Russian River Valley viticultural area are Huichica Loam, Yolo Clay Loam, and Yolo Silt Loam, as depicted on the Sonoma County Soil Survey map (USDA, 1972), sheet 74. These soils are also found within the established Russian River Valley viticultural area in vineyards to the north of the proposed area, as depicted on pages 57 and 66 of the maps developed by the USDA's Forest Service and Soil Conservation Service in May 1972. Treasury Decision ATF–159, which established the Russian River Valley viticultural area, does not identify the predominant soils of the area or indicate any uniqueness in the soils of the viticultural area.

Watershed

The established Russian River Valley viticultural area and the proposed expansion area are in the large Russian River Valley watershed, as noted on the (California) Department of Fish and Game Inland Fisheries Division's ''Russian River Watershed'' map of April 1, 1997. This watershed includes the Russian River and the tributaries noted in Treasury Decision ATF–159.

*Boundary Description*

The proposed expansion area is along the current eastern boundary line of the Russian River Valley viticultural area in a 90° angle at the village of Fulton, just northwest of the city of Santa Rosa, California. The proposed expansion area boundary has four irregular sides and is wider along its southern side than at its northern side. Its overall size is 767 acres, or about 1.2 square miles. The general road boundaries are Fulton Road to the west, River Road to the north, U.S. Highway 101 to the east, and Dennis Lane and Francisco Avenue to the south. Fulton Road on the west and River Road on the north form a portion of the current Russian River Valley viticultural area's eastern boundary.

*Maps*

The proposed expansion of the Russian River Valley viticultural area is shown on two USGS maps: the Santa Rosa Quadrangle, California—Sonoma Co., 7.5 Minute Series, edition of 1994; and the Sebastopol Quadrangle, California, 7.5 Minute Series, edition of 1954, photorevised 1980.

**Public Participation**

We request comments from anyone interested. Please support your comments with historical data or data concerning the growing conditions or boundaries of the area. We will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We will not acknowledge receipt of any comments. All comments received will be considered as originals.

You may submit comments in any of five ways:

- *By Mail:* You may send written comments to ATF at the address listed in the **ADDRESSES** section.
- *By Facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Comments transmitted as facsimiles must—

(1) Be legible;

(2) Reference this notice number;

(3) Be on 8½ x 11-inch paper,

(4) Contain a legible, written signature; and

(5) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- By E-mail: You may e-mail comments to *nprm@atfhq.atf.treas.gov*. Comments transmitted as electronic-mail must—

(1) Contain your name, mailing address, and e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8½ x 11-inch paper.

- *Online:* We provide a comment form with the online copy of this proposed rule. See the ''Regulations'' section of the ATF Internet Web site at *http://www.atf.treas.gov.*
- *In Person:* You may write to the Director to ask for a public hearing. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

*Disclosure*

You may inspect copies of the petition, the proposed regulations, the appropriate maps, and any written comments received by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies of documents and comments related to this notice at 20 cents per page. If you want to view or request copies of comments, call the ATF librarian at 202–927–7890.

For your convenience, we will post comments received in response to this notice on the ATF Web site. All

comments posted on our Web site will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access online copies of the comments on this rulemaking, visit *http://www.atf.treas.gov/* and select ''Regulations,'' then ''Notices of proposed rulemaking (Alcohol).'' Next, select ''View Comments'' under this notice number.

We will not recognize any comments or submitted materials as confidential. We will disclose all information in comments and the names of commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

**Regulatory Analyses and Notices**

*Paperwork Reduction Act*

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

*Regulatory Flexibility Act*

We certify that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

*Executive Order 12866*

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

**Drafting Information**

The principal author of this document is N. A. Sutton (San Francisco), Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 9**

Wine.

**Authority and Issuance**

ATF proposes to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

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

**Authority:** 27 U.S.C. 205.

**Par. 2.** Amend §9.66, Russian River Valley viticultural area by removing ''Road'' and adding in its place ''Avenue'' at the end of paragraph (c)(9), by redesignating paragraphs (c)(12) through (c)(24) as (c)(14) through (c)(26), by revising paragraphs (c)(10) and (c)(11), and by adding new paragraphs (c)(12) and (c)(13) to read as follows:

### Subpart C—Approved American Viticultural Areas

**§ 9.66 Russian River Valley.**

* * * * *

(c) Boundaries. * * *

(10) Proceed north on Wright Avenue, which becomes Fulton Road, for approximately 3.8 miles to an unnamed unimproved road running to the east in Section 5 of T7W, R8W, which becomes a light duty road locally known as Francisco Avenue, and continue east on Francisco Avenue for about 0.6 mile to its intersection with the eastern boundary line of Section 5 in T7W, R8W, at a point where Francisco Avenue makes a 90° turn to the south.

(11) Proceed north along that section line for about 500 feet to a point due west of the intersection of Barnes Road and an unnamed light duty road locally known as Dennis Lane.

(12) From that point, proceed east in a straight line to Dennis Lane, continue east on Dennis Lane to its end, and continue due east in a straight line to U.S. Highway 101, passing onto the Santa Rosa map in the process.

(13) Proceed northwest along U.S. Highway 101, passing onto the Sebastopol map, to its intersection with an unnamed medium duty road locally known as River Road west of U.S. Highway 101 and as Mark West Springs Road east of U.S. Highway 101.

* * * * *

Signed: December 20, 2002.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 03–286 Filed 1–7–03; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1910, 1915, and 1926

**[Docket No. S–778–A]**

**RIN 1218–AB 81**

## Standards Improvement Project—Phase II

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

**ACTION:** Extension of comment period.

**SUMMARY:** On October 31, 2002, OSHA published a proposed rule entitled ''Standards Improvement Project—Phase II''. The proposal provided for a period to receive public comment to end on December 30, 2002. OSHA is extending the deadline for receipt of public comment until January 30, 2003. This action is in response to interested parties who have requested additional time to submit their comments to the record.

**DATES:** Comments and data must be submitted by January 30, 2003.

**ADDRESSES:** Submit three copies of written comments to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–2350). Commenters may transmit written comments of 10 pages or less by fax to the Docket Office at (202) 693–1648.

You may submit comments electronically to *http://ecomments.osha.gov.* Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach the materials to your electronic comments.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact Ms. Bonnie Friedman, Director, OSHA Office of Information and Consumer Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). For technical inquiries, contact Mr. Robert Manware, Office of Physical Hazards, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210

(telephone (202) 693–2299; fax: (202) 693–1678). For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website on the Internet at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:** In 1995, the Agency identified a number of provisions in its regulations and standards that were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In 1998, as part of the process of correcting such provisions, OSHA made several substantive revisions to its health and safety standards that reduced the regulatory obligations of employers while maintaining the safety and health protection afforded to employees (63 FR 33450, June 18, 1998). During and after this rulemaking, the Agency identified several other regulatory provisions in its safety and health standards involving notification of use, frequency of exposure monitoring and medical surveillance, and similar provisions that it believes are unnecessary or ineffective in protecting employee safety and health. OSHA proposed to make substantive revisions to a number of the health standard provisions identified in this process on October 31, 2002 (67 FR 66494). The period for filing public comment on the proposal was to end on December 30, 2002. Interested parties, including the AFL–CIO, have requested an extension of the deadline for submitting comments based on the need for additional time to provide a thorough review and response to the substantive provisions proposed for revision in the notice. OSHA, therefore, is extending the deadline for submitting comments from December 30, 2002, until January 30, 2003.

## Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 29 CFR part 1911.

Signed in Washington, DC on January 2, 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 03–316 Filed 1–7–03; 8:45 am]

**BILLING CODE 4510–26–M**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[I.D. 010203A]**

## Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna; Commercial Shark Management Measures

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

**ACTION:** Notice of public hearings; request for comments.

**SUMMARY:** NMFS will conduct four public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to reduce dead discards of Atlantic bluefin tuna (BFT) in the Atlantic pelagic longline fishery and emergency regulations in the Atlantic shark fisheries that implemented commercial quotas for 2003 and suspended the commercial minimum size limit. NMFS previously published the proposed rule regarding incidental catch requirements of BFT on December 24, 2002. NMFS previously published the emergency rule regarding Atlantic sharks on December 27, 2002.

**DATES:** Written comments on the proposed rule regarding BFT must be received by 5 p.m. on February 7, 2003. Written comments on the emergency rule regarding Atlantic sharks must be received by 5 p.m. on February 14, 2003. The public hearings will be held from January 22 to January 30, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Barnegat Light, NJ; Manteo, NC; Treasure Island, FL; and Fairhaven, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Dianne Stephan at 978–281–9260 regarding the proposed rule on BFT and Karyl Brewster-Geisz at 301–713–2347 regarding the emergency rule on commercial shark management measures.

**SUPPLEMENTARY INFORMATION:** NMFS proposes to amend regulations governing the BFT fishery to reduce discards of BFT in the Atlantic pelagic longline fishery. The intent of these actions is to minimize dead discards of BFT and improve management of the Atlantic pelagic longline fishery, while complying with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and allowing harvest of BFT consistent with recommendations of the International Commission for the Conservation of Atlantic Tunas. The December 24, 2002, proposed rule (67 FR 78404) contains the background information for this measure and that information is not repeated here.

NMFS issued an emergency rule, effective December 31, 2002, that set the 2003 commercial quotas for large and small coastal sharks, suspended the commercial minimum size limit, and allowed regulations on season-specific quota adjustments and counting dead discards and state landings after a Federal closure against the commercial quotas to go into effect. These regulations are necessary to ensure that the regulations in force are based on the best available science. The December 27, 2002, emergency rule (67 FR 78990) contains the background information for these measures and that information is not repeated here.

## Hearing and Meeting Dates, Times, and Locations

The hearings for the proposed and emergency rules will be conducted jointly at the identified locations. NMFS intends to dedicate half of the hearing time to each rule. The public hearing schedule is as follows:

*Wednesday, January 22, 2003 - Barnegat Light, NJ, 7 - 9 p.m.*

Barnegat Light Fire House
10th Boulevard Street
Long Island Beach
Barnegat Light, NJ 08006

*Monday, January 27, 2003 - Manteo, NC, 7 - 9 p.m.*

North Carolina Aquarium
Airport Road
Manteo, NC 27954

*Tuesday, January 28, 2003 - Treasure Island, FL, 7 - 9 p.m.*

Garden Room
City of Treasure Island Community Center
1 Park Place at 106th Avenue
Treasure Island, FL 33706

*Thursday, January 30, 2003 - Fairhaven, MA, 7 - 9 p.m.*

Holiday Inn Express
110 Middle Street
Fairhaven, MA 02719

**Special Accommodations**

These public hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed Brad McHale (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Dated: January 2, 2003.

**Bruce C. Morehead,**

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

[FR Doc. 03–323 Filed 1–7–03; 8:45 am]

**BILLING CODE 3510–22–S**

# Notices

Federal Register

Vol. 68, No. 5

Wednesday, January 8, 2003

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Resource Advisory Committee Meeting

**AGENCY:** Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, January 9, 2003, Susanville, California for a business meeting. The meetings are open to the public.

**SUPPLEMENTARY INFORMATION:** The business meeting January 9, 2003 begins at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room, 2550 Riverside Drive, Susanville, CA 96130. Agenda topics will include: Review previous meeting minutes and approve, RAC member/subcommittee reports, Proxy votes and absent voting members/Quorum, Overhead Discussion and Decision, Review Sierra RAC Rating Method, and Funding Multiple Year Projects. Time will also be set aside for public comments at the end of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Robert Andrews, Eagle Lake District Ranger and Designated Federal Officer, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (530) 252–6604.

**Heidi L. Perry,**

*Acting Forest Supervisor.*

[FR Doc. 03–329 Filed 1–7–03; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AB88**

### National Environmental Policy Act Documentation Needed for Limited Timber Harvest

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed interim directive; request for comment.

**SUMMARY:** The Forest Service gives notice of and requests comment on proposed revisions to its directives for implementing the National Environmental Policy Act and Council on Environmental Quality regulations contained in Forest Service Handbook 1909.15, Chapter 30, which addresses categorical exclusions from requirements to prepare environmental disclosure documents. The proposal would add three categorical exclusions to Section 31.2 that are applicable to small timber harvesting projects. These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat, wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites. The intended effect is to facilitate the implementation of limited timber harvest projects that do not have significant effects on the human environment. Public comment is invited and will be considered in development of the final directive.

**DATES:** Comments must be received in writing by March 10, 2003.

**ADDRESSES:** Send written comments via the U.S Postal Service to: Limited Timber Harvest, Forest Service—CAT, USDA, P.O. Box 221090, Salt Lake City, Utah 84122.

Comments also may be submitted via facsimile to (801) 517–1014 or by e-mail to *limitedtimber@fs.fed.us*. If comments are sent via facsimile or e-mail, the public is requested not to send duplicate written comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Dave Sire, Ecosystem Management Coordination Staff, (202) 205–0895, or Darci Birmingham, Forest and Rangeland Management Staff, (202) 205–1759. 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 4 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Need for the Proposed Direction

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1507.3 provide that agencies may, after notice and comment, adopt categories of actions that do not have significant impacts on the human environment and, consequently, do not require preparation of an environmental assessment or an environmental impact statement. The agency's first timber harvest related categorical exclusion, published in 1981, broadly identified actions of limited size or magnitude. Since 1981, the agency's categorical exclusion concerning small timber harvest activities has been revised several times to better define the category and to add size or volume limits. The agency's most recent revision to the timber harvest-related category occurred in 1992, when the category's limits of 100,000 board feet or 10 acres, were expanded to allow harvest of green timber up to 250,000 board feet and salvage harvest of up to 1 million board feet (57 FR 43180; September 18, 1992). This 1992 revision also allowed up to one mile of low-standard road construction.

Current Forest Service procedures for complying with and implementing the National Environmental Policy Act (NEPA) are set out in Forest Service Handbook (FSH) 1909.15. Chapter 30 of FSH 1909.15 establishes two types of categorical exclusions. The first, set out at section 31.1, consists of categories of actions that are so routine and limited that a record is not required. The second type, set out at section 31.2, consists of categories of routine actions that require documentation in a Decision Memo of the rationale for not preparing an environmental assessment or an environmental impact statement. The agency is proposing three new categorical exclusions that would fall within this second type of categorical exclusion that requires a Decision Memo.

On September 18, 1998, a lawsuit was filed against the Forest Service arguing that the 1992 categorical exclusions were improperly promulgated. On September 28, 1999, the United States District Court for the Southern District of Illinois found that the categorical exclusions were properly promulgated. However, the court found insufficient evidence in the record to support the agency's decision to set the volume limits in Categorical Exclusion 4 at 250,000 board feet of merchantable wood products for timber harvest and 1 million board feet of merchantable wood products for salvage. Accordingly, the court declared Categorical Exclusion 4 in section 31.2 of Chapter 30 FSH 1909.15 null and void and enjoined the agency from its further use.

In an October 1, 1999, letter, the Associate Chief for Natural Resources notified the Regional Foresters of the court's injunction and instructed them to refrain from further use of Categorical Exclusion 4. The agency has recently issued Interim Directive No. 1909.15–2002–1 to formally notify employees to discontinue use of Categorical Exclusion 4 in Forest Service Handbook 1909.15, Environmental Policy and Procedures.

Most timber harvest projects that were originally excluded under Categorical Exclusion 4 were subsequently reconsidered, analyzed, and documented in environmental assessments. However, field offices reported that the level of documentation and analysis required for these environmental assessments forced agency personnel to extend timeframes and expend undue energy and funding in order to complete minor harvesting projects.

In response to field concerns during the fall of 2001, the Associate Deputy Chief for the National Forest System requested field units to monitor selected timber harvests that would have qualified under former Categorical Exclusion 4. In response, field units collected data on 154 randomly selected timber harvests. The review's objective was to determine if these harvests did or did not have significant effects on the human environment. The review concluded that none of the 154 projects had a significant effect on the human environment.

Based on this review and the agency's extensive experience with small timber harvest projects, the Forest Service proposes to add three new categorical exclusions to its Environmental Policy and Procedures Handbook (FSH 1909.15). These categories would appear in section 31.2, Categories of Actions for Which a Project or Case File and Decision Memo Are Required, and would provide specific, narrow categorical exclusions for limited timber harvest. For each of the proposed categories, examples of potential actions that fit the category are provided. These examples are intended to be illustrative only and are not intended to be either constraining or all-inclusive.

It is important to note that the proposed categorical exclusions are not intended to replace the former Categorical Exclusion 4. They are limited by size and are more specific about the types of harvest methods, when compared to the agency's former Categorical Exclusion 4. The proposed categorical exclusions are, therefore, much more limited in scope than the former Categorical Exclusion 4.

**Description of Proposed New Categorical Exclusions**

The first new proposed categorical exclusion (Categorical Exclusion 10) would allow harvest of live trees not to exceed 50 acres with no more than ½ mile of temporary road construction. This category could not be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another, such as converting a timber stand to an open field. Proposed Categorical Exclusion 10 would not include these types of treatments. This category would allow incidental removal of trees for temporary roads, landings, and skid trails. It would allow low-impact silvicultural treatments by timber purchasers.

Examples of projects that could be implemented under proposed Categorical Exclusion 10 are removal of individual trees to reduce fuels adjacent to a residential area and removal of scattered trees to improve the health and vigor of a remaining stand.

The next category that the agency proposes (Categorical Exclusion 11) would allow salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction. This categorical exclusion would permit salvage harvest in areas where trees have been severly damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product.

Categorical Exclusion 11 would be limited to salvage of dead and dying trees by timber purchasers and may also allow incidental removal of green trees for temporary roads, landings, and skid trails.

The final new category (Categorical Exclusion 12) proposed by the Forest Service would allow removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. This category may allow incidental removal of green trees for temporary roads, landings, and skid trails.

In all three proposed categories, trees could be sold as sawlogs, fuelwood, or specialty products.

**Rationale for the Proposal**

The scope of the proposed new categories is consistent with the scope of the 154 projects examined in the 2001 review, each of which had no significant environmental effects. Consequently, the level of effects associated with these proposed new categories would also be below the level of significant environmental effects. Green tree harvests monitored in the 2001 review averaged 70 acres in size while sanitation and salvage harvests averaged 253 acres in size. Having reconsidered the basis for establishing categorical exclusions for small timber harvests, the Forest Service now believes that acreage is a more useful measure of project magnitude than timber volume. Acreage is easily delineated and quantified when developing a proposal, while estimating timber volume within a given acreage may vary considerably based on statistical samples, merchantability standards, and condition of the timber.

With regard to road construction that would fall within these new categorical exclusions, it is important to note that only temporary road construction would be permitted. As defined in Forest Service Manual 7705, temporary roads are not intended to be a part of the forest transportation system and are not necessary for long-term resource management. The Forest Service anticipates that only a small percentage of projects would require any temporary road construction. The 2001 review data indicates that for each project that would have qualified under Categorical Exclusion 4 an average of ½ mile of temporary road was built. Therefore, the agency has selected ½ mile as the upper limit of temporary road construction.

These categorical exclusions will not apply where there are extraordinary circumstances, such as adverse effects on threatened and endangered species or their designated critical habitat,

wilderness areas, inventoried roadless areas, wetlands, and archeological or historic sites.

It is important to note that categorical exclusions do not absolve Responsible Officials from scoping. The CEQ regulations at 40 CFR 1501.7 define scoping as a process for determining the scope of issues to be addressed and for identifying significant issues to be documented in an environmental impact statement. The Forest Service conducts scoping on all proposed actions, including those covered by categorical exclusions. Guidance to Forest Service employees on scoping is set out in Chapter 10 of FSH 1909.15. As provided in Chapter 10, part of scoping may involve inviting participation from interested and affected agencies and citizens. Furthermore, FSH 1909.15, section 11 states that in determining whether a proposed action can be categorically excluded, the Responsible Official must consider the following: (1) The nature of the proposal; (2) preliminary issues; (3) interested and affected agencies, organizations, and individuals, and; (4) the extent of existing documentation.

Categorical exclusions also do not absolve the Responsible Official from conducting appropriate consultations with Federal and State regulatory agencies such as those required by the Endangered Species Act and the National Historic Preservation Act.

One important consideration in the development of any category for limited timber harvest is cumulative effects. The CEQ regulations state that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's 2001 review of 154 small timber harvests did not show any instance where projects similar in scope and limits to the three categories proposed in this notice resulted in significant cumulative effects on the human environment.

The quantity and geographic extent of actions that might be implemented under these three proposed categorical exclusions are not anticipated to change much from historic levels. Slightly over 300 projects were implemented using Categorical Exclusion 4 in 1998, the last year it was in effect. These projects involved approximately 8,200 acres of green tree harvest and approximately 41,100 acres of salvage, representing less than .03% of the 192 million acres of National Forest System lands on the continental United States and Alaska.

It is also important to note that any timber harvest performed using the proposed categorical exclusions must meet all applicable Federal, State, and local laws, as well as land and resource management plan standards and guidelines. It is the combination of these standards and guidelines, the limited scope of the proposed categorical exclusions, the results of the 2001 review, and the agency's long experience dealing with low-impact silvicultural treatments that leads the agency to conclude that implementation of the proposed categories would not result in cumulatively significant effects on the human environment.

While some small fuel reduction projects may fit the proposed categorical exclusions, most fuel reduction projects applying the principles of the National Fire Plan will be larger in scope, both in size and types of activities than would be allowed under the proposed categories. Similarly, most projects implementing the National Fire Plan involve a combination of activities such as thinning, pruning, and prescribed burning, which would take them beyond the scope of these proposed categorical exclusions.

The agency's categorical exclusions for small timber harvest projects have evolved since 1981 when the Forest Service NEPA procedures in FSH 1909.15, chapter 30, first provided for categorical exclusion of actions of limited size or magnitude, which included some timber sales. A categorical exclusion was added to chapter 30 in the 1985 review of NEPA procedures to provide for ''[l]ow-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood sales, salvage, thinning, and small harvest cuts * * * '' From 1987 through 1992, the agency conducted small timber harvest projects through a categorical exclusion which allowed salvage, thinning, and harvest cuts to less than 100,000 board feet or less than 10 acres. As previously noted, in 1992, a revised category (Categorical Exclusion 4) was established, allowing up to 1 million board feet of salvage and 250,000 board feet of merchantable wood products.

In 1993, the Forest Service issued regulations at 36 CFR part 215 (58 FR 58910) which stated that, with the exception of Categorical Exclusion 4, all other categorically excluded actions are not subject to notice, comment, and administrative appeal. The agency believed that public interest in timber harvest activities of the magnitude allowed under Categorical Exclusion 4 warranted providing opportunities for administrative appeal. Because of their limited scope, activities subject to the remaining categorical exclusions were not made appealable under 36 CFR part 215.

The categorical exclusions being proposed in this notice are limited by size and the type of activity allowed. Additionally, a review of timber harvests categorically excluded in 1998 shows that 15% of these projects were appealed. Six percent of the projects that were appealed (one percent of the total number of projects) were sent back to the Responsible Official for additional analysis and documentation. Consequently, the agency concludes that timber sales within the limits of Categorical Exclusion 4 are not as controversial as originally contemplated during promulgation of the agency's appeal regulations at 36 CFR part 215. Therefore, the proposed new categorical exclusions would fall under 36 CFR 215.8, Decisions Not Subject to Appeal, paragraph (a)(4).

**Conclusion**

Based upon an analysis of field data, the agency proposes three new categorical exclusions for limited timber harvest. Actions identified in the proposed categories are limited in scope, would not have significant impacts on the human environment, and would not require preparation of an environmental assessment or an environmental impact statement.

These categorical exclusions would permit timely response to small timber harvest requests and to forest health problems involving small areas of National Forest System land. Additionally, they would conserve limited agency funds.

These proposed categorical exclusions would be implemented through the issuance of an interim directive to FSH 1909.15, Environmental Policy and Procedures Handbook, Chapter 30. Although an interim directive (ID) expires in 18 months from its issue date, the establishment of these three new categorical exclusions is intended to be a permanent revision. The agency is issuing an interim directive solely for administrative efficiency. The text of the final interim directive along with other interim directives will be incorporated into a revision of the entire Chapter 30 sometime in the next year or so.

Public comment is invited on this proposal and will be considered in adopting a final policy.

The text of the proposed categorical exclusions is set out at the end of this notice.

**Environmental Impact**

These proposed revisions to Forest Service Handbook 1909.15 would add direction to field employees regarding

requirements for NEPA documentation. FSH 1909.15, section 31.1b (57 FR 43180) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this proposed interim directive falls within this category of actions and that no extraordinary circumstances exist that would require preparation of an environmental impact statement or environmental assessment. A final determination will be made upon adoption of the final interim directive. In addition, pursuant to 40 CFR 1505.1 and 1507.3, the agency is consulting with the Council on Environmental Quality to ensure full compliance with the purposes and provisions of NEPA and the CEQ implementing regulations.

**Regulatory Impact**

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, OMB has reviewed this proposed interim directive.

The primary economic effects of the proposed categorical exclusions for limited timber harvest are changes in costs of conducting environmental analysis and preparing NEPA documents. The proposed categorical exclusions would reduce agency administrative costs by reducing the analysis and documentation requirements for small timber harvest projects. An analysis of costs and benefits compared the cost of documenting categorical exclusions to that of preparing environmental assessments. Using the number of small timber harvest activities categorically excluded in 1998, the last year such actions could be categorically excluded, savings were averaged over a ten-year period. Based on this approach, the average annual cost savings of the proposed categorical exclusions are estimated to be $6 million compared with continued use of environmental assessments for small timber harvest projects. The application of these Categorical Exclusions would have no quantifiable effect on the government's timber sale receipts.

The analysis of costs and benefits was performed in accordance with the direction in OMB Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements (Office of Management and Budget Memorandum 00–08).

This proposed interim directive has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that it would not have a significant economic impact on a substantial number of small entities as defined by the act because it would not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

The agency believes small businesses in general may benefit from a potential increase in small timber sale opportunities as a result of the proposed interim directive. Although the Forest Service finds this increase difficult to quantify, it believes that more small sales may be prepared when using a categorical exclusion rather than an environmental assessment, resulting in an increase in the number of sales available for small businesses and local mills. The Forest Service assumes that all qualified potential purchasers would, consistent with the rules at 36 CFR part 223 for advertising, awarding, and administering sales, have equal opportunity to accrue benefits from any increase in sale opportunities. Additionally, some of these sales are likely to be set aside for small businesses under the agency's small business timber sale set-aside program.

A civil rights impact analysis was prepared for the proposed interim directive. No adverse effects are identified for groups of people who fall within the scope of Civil Rights legislation or the Executive Order on Environmental Justice (E.O. 12898), although some potential beneficial impacts have been noted.

**Federalism**

The agency has considered this proposed interim directive under the requirements of Executive Order 13132 on Federalism and has made an assessment that the proposed interim directive conforms with the federalism principles set out in this Executive order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary at this time.

**Consultation and Coordination With Indian Tribal Governments**

This proposed interim directive does not have tribal implications as defined by Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments and, therefore, advance consultation with tribes is not required.

**No Takings Implications**

This proposed interim directive has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 on Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed interim directive does not pose the risk of a taking of Constitutionally protected private property.

**Energy Effects**

This proposed interim directive has been reviewed under Executive Order 13211 on Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed interim directive does not constitute a significant energy action as defined in the Executive order.

**Controlling Paperwork Burdens on the Public**

This proposed interim directive does not contain any additional recordkeeping or reporting requirements associated with the timber harvest program or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: December 30, 2002.

**Dale N. Bosworth,**

*Chief.*

**Text of Proposed Interim Directive**

**Note:** The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with planning and administering small timber harvest projects. Selected headings and existing text are included to assist the reader in placing the proposed interim directive in context. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy from the address shown earlier in this notice and from the Forest Service home page on

the Internet at *http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15,30.txt.*

**FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion From Documentation**

(To provide context for understanding the proposed new categorical exclusions that would be established as paragraphs 10, 11, and 12 in section 31.2, the introductory text of section 31.2 (identified by italics) follows:

*31.2—Categories of Action for Which a Project or Case File and Decision Memo Are Required.*

*Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as (1) the names of interested and affected people, groups, and agencies contacted; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec 30.5 (2); (4) a list of the people notified of the decision; (5) a copy of the notice required by 36 CFR Part 217, or any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories.*

* * * * *

10. *Harvest of live trees not to exceed 50 acres, requiring no more than ½ mile of temporary road construction.* Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Removal of individual trees for sawlogs, specialty products, or fuelwood.

b. Harvest of trees to reduce the fuel loading in an overstocked stand adjacent to a residential area and construction of a short temporary road to access the stand.

c. Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

11. *Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction.* The proposed action may include incidental removal of green trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.

b. Harvest of fire damaged trees.

12. *Sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent green trees up to two tree lengths away if determined necessary to control the spread of insects or disease.* The proposed action may include incidental removal of green trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Felling and harvest of trees infested with southern pine beetles and immediately adjacent green trees to control expanding infestations.

b. Harvest of green trees infested with mountain pine beetle and trees already killed by beetles.

[FR Doc. 03–311 Filed 1–7–03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838, C–122–839]**

## Certain Softwood Lumber From Canada: Notice of Initiation of Antidumping Duty New Shipper Review for the Period May 22, 2002, Through October 31, 2002; Notice of Initiation of Countervailing Duty New Shipper Review for the Period January 1, 2002, Through December 31, 2002; and Rescission of Countervailing Duty Expedited Review

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

**ACTION:** Notice of initiation of antidumping and countervailing duty new shipper reviews and rescission of countervailing duty expedited review in certain softwood lumber from Canada.

**EFFECTIVE DATE:** January 8, 2003.

**SUMMARY:** The Department of Commerce (the Department) has received requests to conduct new shipper reviews of the antidumping (AD) and countervailing duty (CVD) orders on certain softwood lumber from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2002), we are initiating AD and CVD new shipper reviews for Scierie La Pointe & Roy Ltée.

**FOR FURTHER INFORMATION CONTACT:** Vicki Schepker or Keith Nickerson (AD review) at (202) 482–1756 and (202) 482–3813, respectively; Gayle Longest or Eric B. Greynolds (CVD review) at (202) 482–3338 and (202) 482–0671, respectively; Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

### Background

On November 26, 2002, the Department received timely requests from Scierie La Pointe & Roy Ltée (La Pointe & Roy), in accordance with 19 CFR 351.214(c) (2002), for new shipper reviews of the AD and CVD orders on certain softwood lumber from Canada, which have a May anniversary month.[1]

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), La Pointe & Roy certified that it did not export certain softwood lumber to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported certain softwood lumber during the POI.[2] Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments, the date of the first sale to an unaffiliated customer in the United States, and that it has informed the Governments of Canada and Quebec, through counsel, that they will be required to provide a full response to the Department's questionnaire.[3]

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b), and based on information on the record, we are initiating AD and CVD new shipper reviews for La Pointe & Roy.

### Initiation of Reviews

On December 12, 2002, the Coalition for Fair Lumber Imports Executive Committee (the petitioners) submitted comments regarding the new shipper review requests of La Pointe & Roy. The petitioners allege that La Pointe & Roy should not be considered a new shipper because it was allocated quota under the 1996 U.S./Canada Softwood Lumber Agreement. According to the petitioners, as a holder of quota, La Pointe & Roy had a strong incentive to sell subject merchandise to the United States either directly or indirectly.[4]

Furthermore, the petitioners assert that even if La Pointe & Roy did not export subject merchandise during the POI, there is no valid reason to initiate a CVD new shipper review, since the company has requested an expedited review. According to the petitioners, La Pointe & Roy is withdrawing its request for expedited review because the company did not export subject merchandise to the United States during the POI. The petitioners argue that a company does not have to export the

[1] (*See Certain Softwood Lumber Products from Canada,* 67 FR 36068, 36070 (May 22, 2002).

[2] *See* submission from Alston & Bird LLP to the Department, dated November 26, 2002, at Exhibits 1 and 2.

[3] *See Id.,* at Exhibits 3, 4, and 5.

[4] *See* submission from Dewey Ballantine LLP to the Department, dated December 12, 2002, at 5.

subject merchandise during the POI to be a part of the expedited review process and that a CVD new shipper review would have the same focus as a CVD expedited review—whether and to what extent a particular product benefitted from subsidies. Therefore, the petitioners assert that there is no reason for the Department to initiate a CVD new shipper review as the same result can be obtained through the expedited review process.

On December 19, 2002, La Pointe & Roy submitted rebuttal comments to the issues raised by the petitioners; the petitioners responded on December 24, 2002. Although on December 19, 2002, La Pointe & Roy stated that transfer of its allocated quota during the POI was done without the specific knowledge of what the ultimate use of the quota would be by the customer, on December 27, 2002, it corrected its statement to indicate that, in fact, it ''was not allocated any quota by the Canadian government between April 1, 2000 and March 31, 2001,'' [5] the POI.

In addition, on December 31, 2002, La Pointe and Roy clarified that the quota it received in 1998 and 1999 was transferred to other companies in 1998 and 1999 and was not carried over into the POI. Furthermore, the company stated that the transfers of quota described as occurring during the POI in its December 19, 2002, submission occurred prior to, not during, the POI.

After reviewing the submissions of all parties, we have determined that La Pointe & Roy's certifications that during the POI (1) it did not export to the United States and (2) it did not receive any quota which would have allowed it to export to the United States, are sufficient, for purposes of initiation. Moreover, there is no conflict with any expedited review because La Pointe & Roy is withdrawing its request for expedited review on the grounds that it did not export during the POR, as stated in their November 26, 2002, submission. In sum, we have considered La Pointe & Roy's requests and find that they meet the requirements set forth in the Department's regulations. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the AD and CVD orders on certain softwood lumber from Canada. We intend to issue the preliminary results of these new shipper reviews not later than 180 days after initiation of these reviews. In addition, we are granting La Pointe & Roy's request to rescind the ongoing expedited review.

| New shipper review proceeding | Period to be reviewed |
|---|---|
| Scierie La Pointe & Roy Ltée. | 05/22/02—10/31/02 (AD)<br>01/01/02—12/31/02 (CVD) |

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the reviews, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above-listed company in accordance with 19 CFR 351.214(e). Because La Pointe & Roy certified that it both produces and exports the subject merchandise, the sale of which was the basis for these new shipper review requests, we will apply the bonding privilege only to subject merchandise for which La Pointe & Roy is both the producer and exporter. Interested parties that need access to proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: December 31, 2002.

**Bernard T. Carreau,**

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

[FR Doc. 03–348 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* submission from Alston & Bird LLP to the Department on behalf of La Pointe & Roy, dated December 27, 2002.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-570–846]**

### Brake Rotors from the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of the Fifth Antidumping Duty Administrative Review and Preliminary Results of the Seventh New Shipper Review

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

**ACTION:** Notice of preliminary results and preliminary partial rescission of the fifth antidumping duty administrative review and preliminary results of the seventh new shipper review.

**SUMMARY:** The Department of Commerce is currently conducting the fifth administrative review and the seventh new shipper review of the antidumping duty order on brake rotors from the People's Republic of China (''PRC'') covering the period April 1, 2001, through March 31, 2002. The administrative review examines 16 exporters, five of which are exporters included in three exporter/producer combinations. The new shipper review covers two exporters.

We have preliminarily determined that no sales have been made below normal value with respect to the exporters subject to these reviews, with the exception of one exporter determined to be part of the PRC non-market economy (''NME'') entity. If these preliminary results are adopted in our final results of these reviews, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise during the period of review, for which the importer-specific assessment rates are above *de minimis*. We are also preliminarily rescinding the administrative review with respect to five exporters included in the three exporter/producer combinations because none of those respondents made shipments of the subject merchandise during the period of review.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Terre Keaton or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1280, and (202) 482–1766, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 26, 2002, the petitioner[1] requested an administrative review pursuant to 19 CFR 351.213(b) for 15 exporters,[2] five of which are included in

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The names of these exporters are as follows: (1) China National Industrial Machinery Import & Export Corporation (''CNIM''); (2) Laizhou Automobile Brake Equipment Company, Ltd. (''LABEC''); (3) Longkou Haimeng Machinery Co., Ltd. (''Haimeng''); (4) Laizhou Hongda Auto Replacement Parts Co., Ltd. (''Hongda''); (5) Hongfa Machinery (Dalian) Co., Ltd. (''Hongfa''); (6) Qingdao Gren (Group) Co. (''GREN''); (7) Qingdao Meita Automotive Industry Company, Ltd. (''Meita''); (8) Shandong Huanri (Group) General Company (''Huanri General''); (9) Yantai Winhere Auto-Part Manufacturing Co., Ltd. (''Winhere''); and

Continued

three exporter/producer combinations[3] that received zero rates in the less-than-fair-value (''LTFV'') investigation and thus were excluded from the antidumping duty order only with respect to brake rotors sold through the specified exporter/producer combinations.

On April 30, 2002, the Department received timely requests from Shanxi Fengkun Metallurgical Ltd. Co. (''Shanxi Fengkun'') and Zibo Golden Harvest Machinery Limited Company (''Golden Harvest'') for a new shipper review of this antidumping duty order in accordance with 19 CFR 351.214(c). On this same date, Beijing Concord Auto Technology Inc. (''Beijing Concord'') requested that the Department conduct an administrative review of its exports of subject merchandise for the period April 1, 2001, through March 31, 2002.

On May 7, 2002, both Shanxi Fengkun and Golden Harvest agreed to waive the time limits applicable to the new shipper review and to permit the Department to conduct the new shipper review concurrently with the administrative review.

On May 23, 2002, the Department initiated an administrative review covering the companies listed in the petitioner's April 26, 2002, request, as well as Beijing Concord (*see Initiation or Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 67 FR 36148).

On May 24, 2002, the Department initiated a new shipper review of Shanxi Fengkun and Golden Harvest (*see Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 38642 (June, 5, 2002)).

On June 3, 2002, we issued a questionnaire to each company listed in the above-referenced initiation notices. Also on June 3, 2002, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results.

On June 19, 2002, each of the exporters that received a zero rate in the LTFV investigation stated that during the period of review (''POR'') it did not make U.S. sales of brake rotors produced by companies other than those included in its respective excluded exporter/producer combination.

We received responses to the Department's questionnaire in July and August 2002. We issued supplemental questionnaires in August 2002, and received responses in September, October, and November 2002.

Beijing Concord did not respond to the Department's June 3, 2002, antidumping questionnaire. Consequently, on October 16, 2002, we informed Beijing Concord that since the Department had not received a questionnaire response from it by the deadline granted to it, we would have to resort to facts available in accordance with section 776(b) of the Act (*see* ''Facts Available'' section of this notice below for further discussion).

On October 2, 2002, the Department conducted a data query on brake rotor entries made during the POR from all exporters named in the excluded exporter/producer combinations in order to substantiate their claims that they made no shipments of subject merchandise during the POR. As a result of the data query, the Department requested that the Customs Service confirm the actual manufacturer for 25 specific entries associated with the excluded exporter/producer combinations. On December 31, 2002, the Department issued a memorandum stating that it preliminarily found no evidence that shipments of merchandise subject to the order were made by the five exporters included in the three exporter/producer combinations during the POR. For further discussion, *see* the section of this notice entitled ''Preliminary Partial Rescission of Administrative Review.''

Also in October 2002, we issued verification outlines to Golden Harvest, GREN, and Shanxi Fengkun. We conducted verification of the responses submitted by Golden Harvest, GREN and its U.S. subsidiary, and Shanxi Fengkun during October and November 2002. We issued verification reports in December 2002. (*See* December 13, 2002, verification reports for Golden Harvest and Shanxi Fengkun in the Seventh Antidumping Duty New Shipper Review and December 20, 2002, verification report for GREN in the Fifth Antidumping Duty Administrative Review.)

On December 23, 2002, GREN submitted revised U.S. sales and factors of production listings, pursuant to the Department's instructions, reflecting data corrections based on verification findings.

**Scope of the Order**

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in the order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are currently classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

**Period of Review**

The POR covers the period April 1, 2001, through March 31, 2002.

**Verification**

As provided in section 782(i)(2) of the Act, we verified information provided by GREN, Golden Harvest, and Shanxi Fengkun. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Our verification

(10) Zibo Luzhou Automobile Parts Co., Ltd. (''ZLAP''); (11) China National Machinery and Equipment Import & Export (Xianjiang) Corporation (''Xianjiang''); (12) China National Automotive Industry Import & Export Corporation (''CAIEC''); (13) Laizhou CAPCO Machinery Co., Ltd. (''Laizhou CAPCO''); (14) Laizhou Luyuan Automobile Fittings Co. (''Laizhou Luyuan''); and (15) Shenyang Honbase Machinery Co., Ltd. (''Shenyang'').

[3] The excluded exporter/producer combinations are: (1) Xianjiang/Zibo Botai; (2) CAIEC or Laizhou CAPCO/Laizhou CAPCO; and (3) Laizhou Luyuan or Shenyang/Laizhou Luyuan or Shenyang.

results are outlined in the verification report for each of these companies (*see* December 2002 verification reports for Golden Harvest, Shanxi Fengkun and GREN for further discussion).

**Preliminary Partial Rescission of Administrative Review**

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that the exporters which are part of the three exporter/producer combinations which received zero rates in the LTFV investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, (1) neither Laizhou CAPCO nor CAIEC exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; ((2) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo Botai, (3) Shenyang did not export brake rotors to the United Stated that were manufactured by producers other than Shenyang or Laizhou Luyuan, and (4) Laizhou Luyuan did not export brake rotors to the United States that were manufactured by producers other than Laizhou Luyuan or Shenyang.

In order to make this determination, we first examined PRC brake rotor shipment data maintained by the Customs Service. We then selected entries associated with each exporter and requested the Customs Service to provide documentation which would enable the Department to determine who manufactured the brake rotors included in those entries. On December 31, 2002, we placed on the record of this review a memorandum which summarized the data provided by the Customs Service in response to our query. Based on the results of our query, in accordance with 19 CFR 351.213(d)(3), we are preliminarily rescinding the administrative review because we found no evidence that the exporters in question made U.S. shipments of the subject merchandise during the POR. Although we still have not received manufacturer confirmation on some of the entries we selected in our sample, we will continue to pursue this matter with the Customs Service and seek to obtain the necessary data for consideration in our final results.

**Facts Available**

We issued Beijing Concord the Department's antidumping duty questionnaire on June 3, 2002. Although we provided Beijing Concord with three extensions of time for submitting its questionnaire response, it failed to provide its response by the final extended deadline date of August 9, 2002. As a result of not receiving a questionnaire response from it and in light of its counsel withdrawing its appearance on its behalf (*see* letter from counsel dated August 9, 2002), we issued Beijing Concord a letter on August 22, 2002, which informed the company that we assumed that it did not intend to participate in this review. On September 3, and 16, 2002, Beijing Concord stated that it would not be able to participate in this review based on its decision to no longer retain counsel, particularly given its alleged lack of experience with our administrative process. However, in those same letters, Beijing Concord stated that it was willing to respond to the questionnaire if the Department wanted it to do so. In response to the September 3, and 16, 2002, letters submitted by Beijing Concord, we informed the company on October 16, 2002, that the deadline (which had been extended three times pursuant to its request) for submitting a response to the Department's June 3, 2002, antidumping questionnaire had long passed and that we would not be able to provide it with another opportunity to respond to the questionnaire in this review. In addition, we informed Beijing Concord that we would have to apply facts available to it in accordance with section 776(b) of the Act.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' Beijing Concord's September 3, and 16, 2002, letters documented for the record the company's decision not to provide this information in a timely manner and it has otherwise failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine that Beijing Concord failed to cooperate to the best of its ability, making the use of an adverse inference appropriate. Consequently, Beijing Concord is not eligible to receive a separate rate and continues to be part of the PRC NME entity, subject to the PRC-wide rate.

In this segment of the proceeding, in accordance with Department practice (*see, e.g.*, *Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review of Brake Rotors from the People's Republic of China*, 64 FR 61581, 61584 (November 12, 1999)), as adverse facts available, we have assigned to exports of the subject merchandise by Beijing Concord the PRC-wide rate of 43.32 percent, a rate that was calculated based on information contained in the petition. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce a respondent to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932, February 23, 1998.

Section 776 of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''[i]nformation derived from the petition that gave rise to the investigation or review under section 751 concerning the subject merchandise.''

With respect to the relevance aspect of corroboration, the Department stated 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) (''TRBs''), that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *See* also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin).

We corroborated the petition information in subsequent reviews to the extent that we noted the history of corroboration and found that we had not received any information that warranted revisiting the issue. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 48464 (August 8, 2000). Similarly, no information has been presented in

the current review that calls into question the reliability or the relevance of the information contained in the petition. We thus find that the information is reliable; therefore, we have applied, as adverse facts available, the PRC-wide rate from prior administrative reviews of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as the adverse facts available in the current review). We have determined that this rate has probative value and, therefore, is an appropriate rate to be applied in this review to exports of subject merchandise by Beijing Concord as facts otherwise available.

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate (*i.e.*, a PRC-wide rate).

Of the 12 respondents that submitted questionnaire responses, three of the PRC companies (*i.e.*, Hongfa, Meita, and Winhere) are wholly foreign-owned. Thus, for these three companies, because we have no evidence indicating that they are under the control of the PRC government, a separate rates analysis is not necessary to determine whether they are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999); *Preliminary Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 66703, 66705 (November 7, 2000); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China (''Bicycles'')* 61 FR 19026 (April 30, 1996)).

The remaining nine respondents (*i.e.*, Golden Harvest, Haimeng, Hongda, ZLAP, CNIM, GREN, Huanri General, LABEC and Shanxi Fengkun) are either joint ventures between PRC and foreign companies, collectively-owned enterprises and/or limited liability companies in the PRC. Thus, for these nine respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (see Bicycles at 61 FR 56570). To establish whether a firm is sufficiently independent in its export activities from government control to be entitled to a separate rate, the Department utilizes a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), and amplified 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 the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each placed on the administrative record documents to demonstrate absence of *de jure* control, including the ''The Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 3, 1988; the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC;'' and the 1994 ''Foreign Trade Law of the People's Republic of China.''

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of collectively-owned enterprises, joint ventures between PRC and foreign companies, and/or limited liability companies. *See*, *e.g.*, *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* (''*Furfuryl Alcohol*'') 60 FR 22544 (May 8, 1995), and *Preliminary 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 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to CNIM, Golden Harvest, GREN, Haimeng, Huanri General, Hongda, LABEC, Shanxi Fengkun, and ZLAP.

2. *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

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 management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (*see Silicon Carbide and Furfuryl Alcohol*).

CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun, and ZLAP have each asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, each of these companies' questionnaire responses indicates that its pricing during the POR does not suggest coordination among exporters.

In this segment of the proceeding, the Department selected three of the 12 respondents for verification, namely Golden Harvest, GREN, and Shanxi Fengkun. The Department did not select the other nine respondents (*i.e.*, CNIM, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Winhere, and ZLAP) for verification.

For Golden Harvest, GREN, and Shanxi Fengkun, the Department found no evidence at verification of government involvement in any of these companies' business operations. Specifically, Department officials examined sales documents that showed that each of these three respondents negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that each of these three respondents received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department

examined internal company memoranda, such as appointment notices and election results, which demonstrated that each of these three companies selected its own management. *See* pages five through seven of the Department's verification report for Golden Harvest; pages 10 through 12 of the Department's verification report for GREN; and pages six and seven of the Department's verification report for Shanxi Fengkun. This information, taken in its entirety, supports a finding that there is a *de facto* absence of governmental control of each of these companies' export functions.

With regard to CNIM, Haimeng, Hongda, Huanri General, LABEC, and ZLAP (*i.e.*, the other six respondents subject to the separate rates test in this review), the Department elected not to verify these companies' responses in accordance with section 351.307(b)(3). Based on documentation contained in each company's response, the Department also finds that each of these six respondents (1) negotiated its contracts and set its own sales prices with its customers; (2) received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention; (3) retained its profits and, where applicable, arranged its own financing; and (4) selected its own management (see each respondent's questionnaire responses).

Consequently, we have determined that CNIM, Golden Harvest, GREN, Haimeng, Hongda, Huanri General, LABEC, Shanxi Fengkun and ZLAP have each met the criteria for the application of separate rates either through documentation submitted on the record subject to verification or through actual verification. *See Notice of Final Determination at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222 (May 19, 1997).

**Normal Value Comparisons**

To determine whether sales of the subject merchandise by CNIM, Golden Harvest, GREN, Haimeng, Huanri General, Hongda, Hongfa, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP to the United States were made at prices below normal value (''NV''), we compared each company's export prices to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice, below.

**Export Price**

For 11 of the 12 respondents (*i.e.*, CNIM, Golden Harvest, Haimeng, Huanri General, Hongda, Hongfa, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP), we used export price methodology in accordance with section 772(a) of the Act because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

1. CNIM, Golden Harvest, Hongfa, Meita, Shanxi Fengkun, Winhere, and ZLAP

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we based those charges on surrogate rates from India (*see* ''Surrogate Country'' section below). To value foreign inland trucking charges, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies. Based on our verification findings, we revised the reported distance from Golden Harvest to the port of exportation (*see* page 13 of the Golden Harvest verification report). To value foreign brokerage and handling expenses, we relied on public information reported in the 1997–1998 new shipper review of the antidumping duty order on stainless steel wire rod from India.

2. Haimeng, Hongda, Huanri General, and LABEC

We calculated EP based on packed, CIF, CFR or FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling charges in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information that was used in the 2000–2001 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. For international freight (*i.e.*, ocean freight and U.S. inland freight expenses from the U.S. port to the warehouse (where applicable)), we used the reported expense because each of these four respondents used market-economy freight carriers and paid for those expenses in a market-economy currency (*see*, *e.g.*, *Brake Rotors from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 64 FR 9972, 9974 (March 1, 1999)).

**Constructed Export Price**

For GREN, we calculated constructed export price (''CEP'') in accordance with section 772(b) of the Act. We found that GREN made CEP sales during the POR because the sales were made for the account of GREN by the respondent's subsidiary in the United States to unaffiliated purchasers. We based CEP on packed, delivered or ex-warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight and foreign brokerage and handling charges in the PRC, international freight (*i.e.*, ocean freight and U.S. inland freight from the U.S. port to the warehouse), marine insurance, U.S. customs duties and fees (including harbor maintenance fees, merchandise processing fees, and brokerage and handling), and U.S. inland freight expenses (*i.e.*, freight from the plant to the customer). As all foreign inland freight, foreign brokerage and handling, and marine insurance expenses were provided by NME service providers or paid for in an NME currency, we valued these services using the Indian surrogate values discussed above. For international freight (*i.e.*, ocean freight and U.S. inland freight expenses from the U.S. port to the warehouse (where applicable)), we used the reported expense because the respondent used a market-economy freight carrier and paid for those expenses in a market-economy currency.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and credit expenses), and indirect selling expenses (including inventory carrying costs) incurred in the United States. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

**Normal Value**

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority (*see Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 66 FR 52100, 52103 (October 12, 2001)). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India and Indonesia are among the countries comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Irene Darzenta Tzafolias, dated May 29, 2002). In addition, based on publicly available information placed on the record, India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we used values from Indonesia.

3. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used the factors reported by each of the 12 respondents which produced the brake rotors it exported to the United States during the POR. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian or Indonesian values.

Based on our verification findings at Golden Harvest, we revised the following data in its response: (1) the reported per-unit weight for tin clamps and steel strap for all models; (2) the reported per-unit weight for corrugated paper cartons reported for two models; (3) the per-unit factor amounts for direct labor for all models; and (4) the distances from Golden Harvest to three of its suppliers (*see* pages 17, 19, and 20 of the Golden Harvest verification report). Based on our verification findings at Shanxi Fengkun, we revised the reported per-unit weight for five of its packing materials (*i.e.*, corrugated paper cartons, nails, plastic bags, tape, and steel strap) (*see* page 18 of the Shanxi Fengkun verification report). Based on our verification findings at GREN, we revised the distances reported from GREN to four of its suppliers (*see* page 7 of the GREN verification report).

The Department's selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency or in U.S. dollars, we made adjustments for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics*.

To value pig iron, steel scrap, ferrosilicon, ferromanganese, limestone, lubrication oil, ball bearing cups, coking coal and firewood, we used April 2001-December 2001 average import values from *Monthly Statistics of the Foreign Trade of India* (''*Monthly Statistics*''). We relied on the factor specification data submitted by the respondents for the above-mentioned inputs in their questionnaire and supplemental questionnaire responses for purposes of selecting surrogate values from *Monthly Statistics*. Because we could not obtain a product-specific price from India to value lug bolts, we used a January-November 1999 product-specific import value from the Indonesian government publication *Indonesian Foreign Trade Statistical Bulletin* (*see Bicycles*, 61 FR at 19040 (Comment 17)). Certain respondents (*i.e.*, Golden Harvest, Haimeng, Huanri General, LABEC, and ZLAP) stated in their responses they did not incur an expense for bearing cups and lug bolts because their U.S. customer provided these items to them free of charge. In support of their claim that they incurred no expense for these items, the respondents provided either the sales agreement or purchase order from their U.S. customers. Therefore, for the preliminary results, we have not valued these items for those respondents.

We also added an amount for loading and additional transportation charges associated with delivering coal to the factory based on June 1999 Indian price data contained in the periodical *Business Line*.

We based our surrogate value for electricity on data obtained from *Energy Data Directory & Yearbook (1999–2000)*.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general, and administrative (''SG&A'') expenses, factory overhead and profit, we used the 2000–2001 financial data of Kalyani Brakes Limited (''Kalyani'') and Rico Auto Industries Limited (''Rico'').

Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports. We made certain adjustments to the ratios calculated as a result of reclassifying certain expenses contained in the financial reports. For further discussion of the adjustments made, *see* the Preliminary Results Valuation Memorandum, dated December 31, 2002.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used a November 1999 average truck freight value based on price quotes from Indian trucking companies.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. We have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an input-specific basis.

To value corrugated paper cartons, nails, plastic bags and sheets/covers, steel strip, tape, clamps, and labels, we used April 2001-December 2001 average import values from *Monthly Statistics*. All respondents included the weight of the clamp in their reported steel strip weights. With the exception of one respondent (*i.e.*, Golden Harvest), because the material of the clamp and steel strip was the same for both inputs, we valued these factors using the combined weight reported by those respondents. For Golden Harvest, we separately valued the two packing

material inputs since the clamps were made out of tin.

To value pallet wood, we used a January 1999-November 1999 pallet wood value from the Indonesian publication *Indonesian Foreign Trade Statistical Bulletin* because we consider the value for this input from Monthly Statistics to be unreliable (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953, 1955 (January 10, 2001) and accompanying decision memorandum at Comment 10, and *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review*, 65 FR 46691 (July 31, 2000)).

**Preliminary Results of the Review**

We preliminarily determine that the following margins exist during the period April 1, 2001, through March 31, 2002:

| Manufacturer/producer/exporter | Margin Percent |
|---|---|
| PRC NME entity (which includes Beijing Concord) | 43.32 |
| China National Industrial Machinery Import & Export Corporation | 0.43 (*de minimis*) |
| Hongfa Machinery (Dalian) Co., Ltd. | 0.00 |
| Laizhou Automobile Brake Equipment Company, Ltd. | 0.18 (*de minimis*) |
| Longkou Haimeng Machinery Co., Ltd. | 0.07 (*de minimis*) |
| Laizhou Hongda Auto Replacement Parts Co., Ltd. | 0.00 |
| Qingdao Gren (Group) Co. | 0.09 (*de minimis*) |
| Qingdao Meita Automotive Industry Company, Ltd. | 0.12 (*de minimis*) |
| Shanxi Fengkun Metallurgical Ltd. Co. | 0.00 |
| Shandong Huanri (Group) General Company | 0.03 (*de minimis*) |
| Yantai Winhere Auto-Part Manufacturing Co., Ltd. | 0.00 |
| Zibo Golden Harvest Machinery Limited Company | 0.00 |
| Zibo Luzhou Automobile Parts Co., Ltd. | 0.16 (*de minimis*) |

We will disclose the calculations used in our analysis to the parties to this proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held on March 31, 2003.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, 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 issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than February 21, 2003. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than February 28, 2003. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value for those sales where this information was unavailable, we will subtract applicable movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to the Customs Service upon completion of this review. For entries of the subject merchandise during the POR from companies not subject to this review, we will instruct the Customs Service to liquidate them at the cash deposit rate in effect at the time of entry.

**Cash Deposit Requirements**

Upon completion of these reviews, for entries from CNIM, Golden Harvest, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP, we will require cash deposits at the rate established in the final results as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for CNIM, Golden Harvest, GREN, Haimeng, Hongda, Hongfa, Huanri General, LABEC, Meita, Shanxi Fengkun, Winhere, and ZLAP will be the rate determined in the final results of review (except that if the rate is *de minimis*, *i.e.*, less than 0.50 percent within the meaning of 19 CFR 351.106(c)(1), a cash deposit rate of zero will be required); (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity (*e.g.*, which includes Beijing Concord) will continue to be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate

regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1) and (2)(B) of the Act.

Dated: December 31, 2002.

**Susan Kuhbach,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–346 Filed 1–7–03; 8:45 am]

**BILLING CODE 3510–DS–S**

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## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–570–849; A–821–808; A–791–804]**

## Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa; Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations

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

**ACTION:** Notice of final results of expedited sunset review: cut-to-length carbon steel plate from the People's Republic of China, the Russian Federation, and South Africa.

**SUMMARY:** On September 3, 2002, the Department of Commerce (''the Department'') published the notice of initiation of sunset reviews of the suspended antidumping duty investigations on cut-to-length carbon steel plate from the People's Republic of China (the ''PRC''), the Russian Federation (''Russia''), and South Africa (''Africa''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited (120-day) reviews. As a result of these reviews, we find that termination of the suspended antidumping duty investigations would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.''

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Jr., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 3, 2002, the Department published the notice of initiation of the sunset reviews of the suspended antidumping duty investigations on cut-to-length carbon steel plate (''CTL Steel Plate'') from the PRC, Russia, and South Africa (67 FR 56268). The Department received Notices of Intent to Participate on behalf of Bethlehem Steel Corporation, United States Steel Corporation, IPSCO Steel Inc., and Nucor Corporation (collectively ''domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under Section 771(9)(C) of the Tariff Act of 1930 (the ''Act''), as U.S. manufacturers and producers of a domestic like product. We received complete substantive responses, in the Chinese, Russian, and South African reviews, from the domestic interested parties, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). Bethlehem Steel Corporation and the United States Steel Corporation have been active participants in the Russian and South African proceedings since the petition was filed. IPSO participated in the original investigation through questionnaire responses to the International Trade Commission. Nucor did not participate in the initial investigation. The domestic interested parties are committed to full participation in this five-year review.

We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to Section 751(c)(3)(B) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department conducted expedited, 120-day, reviews of these suspended investigations.

### Scope of Reviews

The products covered under the suspension agreements are hot-rolled iron and non-alloy steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non-alloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this petition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of the petition is grade X–70 plate. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

These reviews cover all imports from all manufacturers, producers, and exporters of CTL Steel Plate from the PRC, Russia, and South Africa.

### Analysis of Comments Received

All issues raised in these cases by parties to these sunset reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated January 2, 2003, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the suspended investigation be terminated. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in

room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''January 2003.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of Reviews**

We determine that termination of the antidumping duty suspension agreement on CTL Steel Plate from the PRC, Russia, and South Africa would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| | Margin (percent) |
|---|---|
| **Chinese Manufacturers/Producers/Exporters** | |
| Anshan (AISCO/Anshan International/Sincerely Asia Ltd.) | 30.68 |
| Baoshan (Bao/Baoshan International Trade Corp./Bao Steel Metals Trading Corp.) | 30.51 |
| Liaoning | 17.33 |
| Shanghai Pudong | 38.16 |
| WISCO (Wuhan/International Economic and Trading Corp./Cheerwu Trader Ltd.) | 128.59 |
| China-Wide | 128.59 |
| **Russian Manufacturers/Producers/Exporters** | |
| Severstal | 53.81 |
| Russia-Wide | 185.00 |
| **South African Manufacturers/Producers/Exporters** | |
| Highveld | 26.01 |
| Iscor | 50.87 |
| All Others | 38.36 |

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 2, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–350 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–846]**

### Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan: Rescission of Antidumping Duty Administrative Review

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

**SUMMARY:** In accordance with 19 CFR 351.213(b)(1), the Department of Commerce (the Department) received a timely request from petitioners, Bethlehem Steel Corporation and United States Steel Corporation, to conduct an administrative review of the sales of subject merchandise made by producers Sumitomo Metal Industries, Ltd. (Sumitomo), and Kawasaki Steel Corporation (Kawasaki). On July 24, 2002, the Department initiated an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel products from Japan for the period of review (POR) from June 1, 2001 to May 31, 2002. Because petitioners have withdrawn their request for review within 90 days of the notice of initiation's publication date, and because no other parties requested a review, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3148.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 29, 1999, the Department published in the **Federal Register** the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel flat products from Japan. *See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 34778. In response to a timely request from petitioners, Bethlehem Steel Corporation and United States Steel Corporation, filed in accordance with 19 CFR 351.213(b), the Department initiated an administrative review of this antidumping duty order, covering the period of June 1, 2001 through May 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). The request covered two manufacturers/exporters of the subject merchandise, Kawasaki and Sumitomo. Kawasaki submitted a letter to the Department on September 10, 2002 stating that it did not have any reviewable or reportable U.S. sales, entries, or shipments of subject merchandise during the POR. On October 22, 2002, petitioners withdrew their request for an administrative review with respect to both Kawasaki and Sumitomo.

**Rescission of Review**

Pursuant to our regulations, the Department will rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). This section further

provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* CFR 351.213(d)(1). In this case, petitioners' withdrawal of their request for review was within the 90-day time limit, and there were no other requests for review. Therefore, the Department is rescinding this administrative review for the period June 1, 2001 through May 31, 2002. The Department will issue appropriate assessment instructions to the U.S. Customs Service. This notice is published in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: December 24, 2002.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03–349 Filed 1–7–03; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–808]**

### Stainless Steel Wire Rods from India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

**ACTION:** Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review.

**SUMMARY:** The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel wire rods (''SSWR'') from India in response to a request by the Viraj Group, Limited (''Viraj Group''), and by petitioners, who requested a review of the following companies: Panchmahal Steel Limited (''Panchmahal''), Mukand Limited (''Mukand'') and Isibars Steel (''Isibars''). The period of review (''POR'') is December 1, 2000, through November 30, 2001.

We have preliminarily determined that Mukand and the Viraj Group have sold subject merchandise at less than normal value (''NV'') during the POR. In addition, we have determined to rescind the review with respect to Isibars based on the withdrawal of the only request for review of the company. Lastly, we have preliminarily determined to apply an adverse facts available (''AFA'') rate to all sales and entries of Panchmahal's subject merchandise during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above de minimis.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** January 8, 2003

**FOR FURTHER INFORMATION CONTACT:** For the Viraj Group contact Stephen Bailey at (202) 482–1102, for Panchmahal contact Marlene Hewitt at (202) 482–1385, for Mukand contact Jonathen Herzog at (202) 482–4271, and for Isibars contact Lilit Astvatsatrian at (202) 482–6412, or Robert Bolling at (202) 482–3434. AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 C.F.R. Part 351 (2001).

#### Background

On October 20, 1993, the Department published the final determination in the **Federal Register** that resulted in the antidumping duty order on certain stainless steel wire rod from India. *See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India*, 58 FR 54110 (October 20, 1993) (''*Antidumping Duty Order*''). On December 3, 2001, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 66 FR 60183, (December 3, 2001) (''*Opportunity to Request Administrative Review*'').

On December 27, 2001, the Viraj Group requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. *See* the Viraj Group's December 27, 2001 submission. On December 28, 2001, petitioners requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India for Isibars, Mukand, and Panchmahal. *See* petitioner's December 28, 2001 submission. In accordance with 19 C.F.R. 351.221(b), we published a notice of initiation of the review of Isibars, Mukand, Panchmahal and the Viraj Group on January 29, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 4236, (January 29, 2002).

On January 29, 2002, the Department issued a questionnaire to the Viraj Group, Panchmahal, Mukand, and Isibars. The Department initiated a cost of production inquiry and requested that Isibars and the Viraj Group respond to section D of the questionnaire in addition to sections A, B, and C.[1]

Isibars, Mukand, and the Viraj Group submitted their Section A questionnaire responses on February 26, 2002. On March 15, and 20, 2002, Panchmahal submitted its Section A questionnaire response in two submissions.

On March 26, 2002, petitioners submitted comments regarding Isibars' Section A questionnaire response. On April 5, 2002, Isibars and Mukand submitted their Sections B and C questionnaire responses. On April 8 and 9, 2002, the Viraj Group submitted its Sections B, C, and D questionnaire responses, respectively. On April 9, 2002, Panchmahal submitted its Sections B and C questionnaire responses. On May 9, 2002, petitioners withdrew their request for an administrative review for Isibars.

On April 23 and 25, 2002, petitioners submitted allegations that Panchmahal and Mukand were selling subject merchandise below their costs of production, respectively. *See petitioners April 23, 2002 submission at 2 and April 25, 2002 at 2*. On May 30, 2002, the Department initiated a cost of production inquiry with respect to Mukand, and issued its Section D questionnaire to Mukand. On June 11, 2002, the Department initiated a cost of production inquiry with respect to Panchmahal, and issued its Section D questionnaire to Panchmahal. On June 27, 2002, Mukand submitted its Section

[1] Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that the Viraj Group made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results*; and section 773(b)(2)(A)(ii) of the Act.

D questionnaire response. On August 1, 2002, Panchmahal submitted its Section D questionnaire response.

The Department issued its first Sections A, B, and C supplemental questionnaire to Mukand on July 3, 2002. The Department received a response to this questionnaire on July 17, 2002. The Department issued a second Sections A, B, C and a first Section D supplemental questionnaire to Mukand on August 7, 2002, and received a response to this questionnaire on August 23, 2002, with accompanying exhibits submitted on August 26, 2002. The Department issued its third supplemental questionnaire for Sections A, B, C and D to Mukand on September 9, 2002, and received a response on September 26, 2002. On October 4, 2002, the Department issued its fourth Sections A, B, C and D supplemental questionnaire to Mukand and received a response on October 11, 2002. On October 17, 2002, the Department issued a fifth supplemental questionnaire concerning Sections A and C to Mukand. The Department received a response to this questionnaire on October 21, 2002. The Department issued a sixth supplemental questionnaire concerning Sections B, C, and D on November 26, 2002, to Mukand and received a response to this questionnaire on December 4, 2002. The Department issued a seventh supplemental questionnaire to Mukand concerning Section C on November 26, 2002, and received a response to this questionnaire on December 13, 2002.

The Department issued a Section A supplemental questionnaire to Panchmahal on May 7, 2002. The Department received a response to this questionnaire on May 29 and 30, 2002. The Department issued to Panchmahal a Sections B and C supplemental questionnaire on July 16, 2002, and received a response to this questionnaire on July 29, 2002. The Department issued to Panchmahal a Sections A, B, C, and D supplemental questionnaire on August 27, 2002, and received a response on September 19, 2002, with additional material and exhibits on September 23, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on September 12, 2002, and received a response on September 23, 2002. The Department issued to Panchmahal a Sections B, C, and D supplemental questionnaire on October 1, 2002, and received a response to this questionnaire on October 18, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on October 23, 2002, and received a response to this questionnaire on October 25, 2002. The Department issued to Panchmahal a Sections B, C, and D supplemental questionnaire on October 28, 2002, and received a response to this questionnaire on November 5, 2002. The Department issued to Panchmahal a Section D supplemental questionnaire on November 7, 2002, and received a response to this questionnaire on November 12, 2002.

The Department issued its first Sections A, B, C, and D supplemental questionnaire to the Viraj Group on June 12, 2002. The Department received a response to this questionnaire on July 23, 2002. The Department issued a second Sections A, B, C, and D supplemental questionnaire to the Viraj Group on September 13, 2002, and received a response to this questionnaire from the Viraj Group on October 4, 2002, with the accompanying exhibits submitted on October 7, 2002. The Department issued a third supplemental questionnaire to Viraj for Sections B and C on September 20, 2002, in which we asked for a revised database for the home and U.S. markets. The Department received a response to this supplemental questionnaire on October 7, 2002. The Department issued a fourth supplemental questionnaire for Sections A, B, C, and D to the Viraj Group on November 18, 2002. The Department received a response to this questionnaire on December 2, 2002.

On July 9, 2002, due to the reasons set forth in the *Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 45481, the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results 60 days, from the original due date of September 2, 2002, to November 1, 2002. *See Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 45481 (July 9, 2002).

Additionally, on September 17, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 30 days, from the revised due date of November 1, 2002 to December 1, 2002. *See Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from India*, 67 FR 58585 (September 17, 2002).

Further, on November 13, 2002, in accordance with section 751(a)(3)(A) of the Act, the Department again extended the due date for the notice of preliminary results an additional 30 days, from the revised due date of December 1, 2002 to December 31, 2002. *See Stainless Steel Wire Rod from India: Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 68834 (November 13, 2002).

**Period of Review**

The period of review (''POR'') is December 1, 2000, through November 30, 2001.

**Scope of the Review**

The merchandise under review is certain SSWR, which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0030, 7221.00.0045, and 7221.00.0075 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive of whether or not the merchandise is covered by the review.

**Verification**

As provided in section 782(i) of the Act, we verified sales and cost information provided by Mukand from October 21 through October 31, 2002, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

**Partial Rescission of Review**

Section 351.213(d)(1) of the Department's regulations provides that a party which requests an administrative

review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. The Department may extend this deadline if it is reasonable to do so. On May 9, 2002, petitioners withdrew their request for an administrative review of Isibars. Although petitioners withdrew their request for the review after the 90–day period had expired, the Department is rescinding the administrative review of Isibars for the order on SSWR from India for the period December 1, 2000 through November 30, 2001, because the review for this company had not yet progressed beyond a point where it would have been unreasonable to allow the petitioners to withdraw their request for review, no other party requested a review of Isibars, and no party objected; it is therefore reasonable for the Department to rescind the review with respect to Isibars. This action is consistent with the Department's practice. *See Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002) and *Antifriction Bearings and Parts Thereof From France, Germany, Japan, and the United Kingdom: Partial and Full Rescissions of Antidumping Duty Administrative Reviews*, 67 FR 65089 (October 23, 2002) where, pursuant to a request filed after the 90 day deadline, the Department rescinded the review with respect to one respondent because the review of that respondent had not progressed beyond a point where it would have been unreasonable to grant the request for rescission. Therefore, in accordance with 19 C.F.R. 351.213(d)(1) and consistent with the Department's practice, the Department is rescinding the review with respect to Isibars.

**Facts Available**

In the instant review, despite numerous requests and clarifications from the Department, Panchmahal failed to provide or withheld the information the Department requested. As explained in detail below, because the Department received inadequate responses to the questionnaire and multiple supplemental questionnaires from Panchmahal, the Department could not verify the incomplete information that Panchmahal did provide, which is necessary for the margin analysis.

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782 (c) and (e); (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to Section 782(d), use the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner, and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If the person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is ''deficient'' under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this investigation, Panchmahal failed to provide or withheld the information necessary to properly calculate a dumping margin, in the form and manner requested by the Department, which prevented the Department from conducting verification. Despite numerous requests and extra assistance from the Department, Panchmahal failed to provide cost reconciliations, that is, an explanation as to how it compiled its POR per-unit costs as derived from its cost accounting system/financial statements. Furthermore, Panchmahal is aware of the Department's requirements given that it has participated in other reviews in other proceedings in which the Department verified Panchmahal's cost and sales information. *See Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review* 66 FR 8939, (February 5, 2001).

The Department specifically requested the cost reconciliations in the original questionnaire sent to Panchmahal on January 29, 2002. The Department offered Panchmahal the opportunity to supplement its questionnaire response pursuant to section 782(d) of the Act to address the deficiencies and omissions of data which rendered its previous response inadequate for use in the preliminary determination. In particular, the Department issued six supplemental questionnaires for section D (*i.e.*, August 27, 2002; September 12, 2002; October 1, 2002; October 23, 2002; October 28, 2002; and November 7, 2002). Five of these supplemental questionnaires requested that Panchmahal reconcile its reported POR per-unit costs to its financial statements. In the supplemental questionnaires, the Department also requested Panchmahal to calculate its cost of production figures based on actual costs incurred by Panchmahal during the POR. Moreover, in accordance with section 782(c) the Department also considered Panchmahal's difficulties in submitting the requested information and provided additional telephone and electronic-mail clarifications.

Although Panchmahal eventually provided what it alleged were its reported cost data on a POR basis in the fifth supplemental questionnaire response, Panchmahal still failed to explain the methodology it used to derive its POR per-unit costs from its cost accounting system. *See* fifth Supplemental Questionnaire Response, received November 4, 2002. Panchmahal's failure to reconcile its financial statements to its POR per-unit costs as requested by the Department in its original and six supplemental questionnaires constitutes a failure because Panchmahal did not provide the required information without

explanation and because Panchmahal also withheld the information although it knew the requirements of the Department for cost verification based on its own previous experience and declined to comply to the best of its ability under sections 776(a)(2)(A) and (B). Most importantly, this failure to provide or withholding of the requested information by Panchmahal has resulted in an inadequate response that prevented the Department from conducting verification and using its data in the preliminary results. *See* Cancellation of Verification Memorandum to the File from Stephen Bailey to Edward Yang, dated November 18, 2002. Thus, pursuant to sections 776(a)(2)(A) and (B) of the Act, and having satisfied sections 782(c)(2), (d), and (e) of the Act, the Department must apply facts otherwise available in this case.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. 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 Uruguay Round Agreements Act (''URAA''), H.R. Doc. No. 103–316, Citation No. (1994), at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See* also *Antidumping Duties, Countervailing Duties; Final Rule*, 62 FR 27340 (May 17, 1997).

In this case, Panchmahal has failed to cooperate by not acting to the best of its ability to comply with the request for information. As discussed above, despite the numerous requests by the Department, Panchmahal failed to provide or withheld requested information from the Department. In response to Panchmahal's request for assistance via a telephone call from Mr. Pratik of Panchmahal, the Department clarified to Panchmahal the Department's cost reconciliation requests both in the telephone conversation and in a follow-up e-mail. See Memorandum to the File dated November 1, 2002. Panchmahal was provided numerous opportunities and supplemental questionnaires to fully respond to the Department's request for a cost reconciliation and to correct response deficiencies, in accordance with section 782(d) of the Act. *See* Cancellation of Verification Memorandum to the File from Stephen Bailey to Ed Yang, dated November 18, 2002. However, despite the assistance offered and provided by the Department's staff, Panchmahal failed to submit a questionnaire response that addressed the most important deficiency identified by the Department in each of the six supplemental questionnaires, the cost reconciliation.

Due to Panchmahal's failure to provide the necessary requested information that the Department had identified as necessary for the verification, the Department was precluded from conducting verification by the inadequacy of information on the record. Moreover, Panchmahal failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Panchmahal did not act to the best of its ability to provide the information requested, despite the extensive assistance provided by the Department. As facts available, we have preliminarily assigned Panchmahal the all others rate of 48.80 percent.

**Collapsing**

In the previous administrative review, the Department decided to collapse Viraj Forgings Limited (''VFL''), Viraj Alloys Limited (''VAL'') and Viraj Impoexpo Limited (''VIL'') because the companies were found capable, through their sales and production operations, of manipulating prices or affecting production decisions (of each other). *See Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002). In this case, the Viraj Group reported that there were no operational or legal changes to the Viraj Group during this POR. *See* the Viraj Group's July 23, 2002 submission at page 1. Based on the decision in the previous administrative review and because no information on the record deviates from the facts of the previous administrative review with respect to the factors which are used to determine collapsing, the Department will continue to treat VFL, VAL, and VIL as one entity for purposes of this administrative review, called ''Viraj Group.''

**Normal Value Comparisons**

To determine whether Mukand's and the Viraj Group's sales of subject merchandise from India to the United States were made at less than normal value, we compared the export price (''EP'') and constructed export price (''CEP''), as appropriate, to the normal value (''NV''), as described in the ''Export Price/Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP and CEP transactions.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by Mukand and the Viraj Group in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

*Mukand*

Mukand submitted information on the record which claimed that all of its grades should be treated as distinct grades for calculation purposes. *See Mukand's July 17, 2002 submission* at 2. To verify this claim, the Department requested that Mukand provide a chemical breakdown of each of its grades. After analyzing the data presented by Mukand, the Department has determined that there is insufficient record evidence to support Mukand's position that grade 304M is a distinct grade from 304, that grade 304LN is a distinct grade from 304L and that grade 420 is a distinct grade from grade 410. Therefore, the Department has preliminarily determined to combine the above grades; specifically, the Department has determined that grade 304M should be treated as grade 304, grade 304LN should be treated as grade 304L, and grade 420 should be treated as grade 410.

The grade chemistries provided on the record by Mukand indicate that grade 304M is a subset of grade 304, because they have similar chemistries and compositions; thus, Mukand's grades 304 and 304M have been treated by the Department as one grade for purposes of the model match program. Further, when the Department compared the chemistries of Mukand's grades 410 and 420 only slight differences existed, but when compared to the grade standards set out by the American Iron and Steel Institute (''AISI''), the reported chemistry for Mukand's grade 420 is more similar to the grade chemistry of AISI grade 410

than the grade chemistry for AISI grade 420; thus, Mukand's grades 420 and 410 have been treated by the Department as one grade for purposes of the model match program. Finally, the chemistry ranges reported by Mukand for graded 304L and 304LN indicate that grade 304LN has a similar chemistry and composition to grade 304L; thus, Mukand's grades 304LN and 304L have been treated by the Department as one grade for purposes of the model match program.

It is the Department's practice not to create additional categories unless the physical characteristics are significantly different from an existing known category. *See Certain Cold-Rolled Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781 (January 7, 1998). Therefore, for the purposes of these preliminary results, the Department has combined the grades as follows in its model match program: grade 304M should be treated as grade 304, grade 304LN should be treated as grade 304L, and grade 420 should be treated as grade 410.

**Export Price and Constructed Export Price**

In accordance with section 772(a) of the Act, export price (''EP'') is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

For purposes of this review, Mukand has classified certain sales as EP sales and certain sales as CEP sales. Based on the information on the record, we are using both export price and constructed export price as defined in section 772(a) and (b) of the Act.

For purposes of this review, the Viraj Group has classified all sales as CEP sales. Based on the information on the record, we are using constructed export price as defined in section 772(b) of the Act.

*Mukand*

Mukand reported both EP and CEP sales during the POR in the United States. Mukand originally reported all of its U.S. sales as EP sales. Mukand explained that it had reported its sales as EP sales because in the ordinary course of trade, Mukand International Limited (''MIL''), Mukand's wholly-owned subsidiary, which was based in the United Kingdom during the POR, sells to one unaffiliated U.S. customer (''U.S. customer''), a trading company, prior to importation, thus meeting the definition of an EP transaction.

At verification, the Department found that in an ordinary sale, the unaffiliated U.S. customer initiates a sale by sending a purchase order to MIL. *See Sales and Cost Verification of Mukand Limited in the Antidumping Administrative Review of Stainless Steel Wire Rod from India* (''*Mukand Verification Report*'') at page 32. MIL acknowledges the customer's order and then sends the order information on to Mukand. *See Mukand Verification Report* at 32. Mukand produces the subject merchandise and upon completion of the order, invoices MIL and MIL invoices the unaffiliated U.S. customer in a back-to-back transaction. *See Mukand Verification Report* at 32. Mukand then ships the subject merchandise to the unaffiliated U.S. customer. *See Mukand Verification Report* at 32. Mukand arranges for shipping from its production facilities in Mumbai, India, and MIL becomes the importer of record in the U.S. *See Mukand Verification Report* at 32. MIL plays no further role with regard to sales between the unaffiliated U.S. customer and its customers once the subject merchandise is entered into the U.S. *See Mukand Verification Report* at page 32.

During the POR, however, the U.S. customer rejected several shipments, in full or in part, made pursuant to several purchase orders, because the merchandise was shipped late and therefore did not meet the terms of sale. Until this rejection, these sales had occurred in the manner described above. Upon further discussion between MIL and the U.S. customer, MIL cancelled the sales in its books and issued credit notes for the amount of merchandise rejected. *See Mukand Verification Report*at page 31. In addition, MIL and the U.S. customer reached an agreement with unique terms whereby the U.S. customer would hold the rejected subject merchandise at its U.S. warehouse at no expense to MIL until the U.S. customer needed to purchase the merchandise from MIL. *See Mukand Verification Report* at page 30. *See also Mukand's October 21, 2002 supplemental response* at annexure 1.

In accordance with this agreement, MIL's U.S. customer purchased a certain portion from the subject merchandise stored at the U.S. customer's U.S. warehouse during the POR. *See Mukand Verification Report* at page 30. The purchase was made in accordance with the agreement between MIL and the U.S. customer. *See Mukand Verification Report* at page 30. In its original response, Mukand reported these sales as EP sales, however, the Department sought clarification of whether Mukand was claiming that these sales were either EP or CEP sales. In response to the Department's questioning, Mukand reclassified the subject merchandise involved in these sales as CEP sales. Mukand reclassified these sales as CEP sales, because the sale of the subject material was made after its importation to the United States.

The Department has determined that Mukand's EP sales are properly reported sales, because those sales were made in accordance with the definition of an EP sale. In addition, the Department has determined that Mukand properly reported the reclassified EP sales as CEP sales, because those sales were made after the importation of the subject merchandise into the United States to the unaffiliated U.S. customer.

Based on the evidence on the record, the Department has preliminarily determined that those sales classified by Mukand as CEP sales should also be treated as consignment sales (with MIL's U.S. customer as the consignment agent) given the unique terms and circumstances of these sales; in particular, the existence of ''consignment stock.'' Due to the proprietary nature of the information on the record please see the Department's memorandum, *Antidumping Duty Investigation of Stainless Steel Wire Rod from India: Consignment Sales Analysis Memorandum*dated December 3, 2002 (''*Mukand Consignment Memorandum*''), for a detailed explanation of our decision.

On December 5, 2002, the Department formally informed Mukand of its decision to treat the CEP sales as consignment sales and requested Mukand to respond to the Department's November 26, 2002 supplemental questionnaire. *See* Department's Letter of December 5, 2002. Mukand provided its response to the Department's supplemental questionnaire on December 13, 2002, but failed to provide the requested information concerning costs incurred by its unaffiliated U.S. customer related to the downstream consignment sales that are necessary to

calculate a margin. *See Mukand supplemental response dated December 13, 2002* at 1 and 2. Although Mukand provided some pricing information (a few invoices) on these consignment sales, it failed to provide the relevant expense information related to these invoices and it failed to provide the requested and required database the Department needs to calculate a margin. Nevertheless, the Department issued a second supplemental questionnaire on December 17, 2002, requesting the prices and expenses incurred by MIL's unaffiliated U.S. customers relating to these consignment sales. *See Supplemental Questionnaire* dated December 17, 2002.

The Department has preliminarily determined that the use of facts available, in accordance with section 776(a)(2) of the Act, is warranted for the prices and expenses incurred for the unreported consignment sales in the U.S. market. Consistent with section 776(a)(2)(A) and (B) of the Act, Mukand withheld information that had been requested by the Department and failed to provide such information in a timely manner, justifying the use of facts otherwise available in reaching the applicable determination.

In this case, Mukand failed to provide price and expense information for its consignment sales through MIL's unaffiliated U.S. customer (the consignment agent). By not providing the consignment sales information requested by the Department in a database format that provides specific prices and expenses of these consignment sales, Mukand has prevented the Department from calculating an accurate antidumping duty margin, inclusive of the consignment sales.

Given that Mukand provided the Department with some pricing information, but not the requested expense information and the requested database, the Department finds it appropriate to apply facts available to those sales the Department has determined to be consignment sales. As facts available, the Department has used the weighted-average U.S. price and the weighted-average expenses submitted by Mukand in lieu of the prices and expenses of the consignment sales through MIL's unaffiliated U.S. customer. *Nippon Steel Corp. v. United States*, 2001 CIT 136, Slip-Op at 6 (Oct. 12, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: IQE Red Raspberries from Chile*; 67 FR 35790 (May 21, 2002); *Notice of Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*; 67 FR 51210, (August 7, 2002). The Department has determined that the weighted-average of prices and expenses of all U.S. sales by MIL to its unaffiliated U.S. customer during the POR is proper because the Department only recently formally requested that Mukand provide its consignment sales information and Mukand provided some invoices. *See Department's Letter* of December 5, 2002. Additionally, the Department recently issued a supplemental questionnaire on these consignment sales. See Supplemental Questionnaire dated December 17, 2002. Further, the Department finds that the weighted-average is proper because the consignment sales are reflective of a variety of prices, quantities, and expenses. *See Analysis for Mukand Steel Limited for the Preliminary Results of the Administrative Review on Stainless Steel Wire Rod from India for the period December 1, 2000 through November 30, 2001*, December 31, 2002 (''*Mukand Analysis Memorandum*'').

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed CIF prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, and marine insurance. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses.

We recalculated Mukand's inventory carrying cost factor to the total cost of manufacturing rather than the variable cost of manufacturing as reported in the questionnaire response. Finally, we recalculated Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance. *See Mukand Verification Report* and *Mukand Analysis Memorandum*.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

For purposes of this administrative review, Mukand classified the remainder of its sales as EP sales, stating that it sold subject merchandise directly to an unaffiliated importer in the United States during the POR. Therefore, the Department is using EP as defined in section 772(a) of the Act because the merchandise was first sold, prior to importation, by Mukand's affiliate MIL, which was based in London during the POR, to an unaffiliated purchaser in the United States. The Department based EP on packed prices to unaffiliated purchasers in the United States. The Department made deductions for inland freight, marine insurance, and brokerage and handling in accordance with section 772(c) of the Act. Finally, the Department recalculated Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance. *See Mukand Verification Report* and *Mukand Analysis Memorandum*.

As explained in the ''Duty Drawback'' section below, the Department is not making any adjustments for duty drawback for EP or CEP sales.

*The Viraj Group*

For purposes of this review, the Viraj Group has classified all of its sales as CEP sales. Based on the information on the record, we are using constructed export price as defined in section 772(b) of the Act.

The Viraj Group has classified those sales made by VIL and VFL through Viraj USA Inc. (''Viraj USA''), an affiliated reseller that is 100% owned by VFL, as CEP sales. VIL and VFL make the shipment from India on a Cost Insurance Freight (''CIF'') and Ex-Dock Duty Paid (''EDDP'') basis to Viraj USA. Viraj USA clears the goods through customs and oversees customer delivery. Then Viraj USA sells the goods to the unaffiliated U.S. customer who makes payment to Viraj USA.

Based on the evidence on the record, the Department preliminarily determines that VIL's and VFL's U.S. sales through Viraj USA were made ''in the United States'' within the meaning of secton 772(b) of the Act, and thus have been appropriately classified by the Viraj Group as CEP transactions.

The Department calculated CEP, in accordance with section 772(b) of the Act, based on the packed CIF or EDDP prices to the first unaffiliated customer in the United States. The Department made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, brokerage and handling, inland freight, international freight, U.S. customs duties, marine

insurance, customs clearance and delivery arrangements. In accordance with section 772(d)(1) of the Act, we deducted those selling expense associated with economic activities occurring in the United States, including direct selling expenses (bank charges and credit expenses) and indirect selling expenses. As explained in the ''Duty Drawback'' section below, we are not making any adjustment for duty drawback.

We deducted the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home market.

**Duty Drawback**

*The Viraj Group*

In the previous administrative review, the Department denied the Viraj Group's request for an upward adjustment to the U.S. starting price based on duty drawback pursuant to section 772(c)(1)(B) of the Act. *See Stainless Steel Wire Rod from India; Final Results of Antidumping Duty Administrative Review*, 67 FR 37391 (May 29, 2002) (''*Final Results*''). The Department denied the duty drawback adjustment because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test, which states there must be: (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipes Ltd. v. U.S.* (''*Rajinder Pipes*''), 70 F. Supp. 2d 1350, 1358. The Court of International Trade upheld the Department's decision to deny respondent an adjustment for duty drawback because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See Viraj Group, Ltd. v. United States of America and Carpenter Technology, Corp., et al.*, Slip Op. 01–104 (CIT August 15, 2001).

Similarly, in the current review, the Department finds that the Viraj Group has not provided substantial evidence on the record to establish the necessary link between the import duty and the reported rebate for duty drawback. The Viraj Group has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. As in the previous review, the Viraj Group was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

*Mukand*

The Department also finds that Mukand has not provided substantial evidence on the record to establish the necessary link between the import duty and reported rebate for duty drawback. Mukand has reported that it received duty drawback in the form of duty entitlement certificates which are issued by the Government of India to neutralize the incidence of basic custom duty on the import of raw materials used in the production of subject merchandise, but has failed to establish the necessary link between the import duty paid and the rebate given by the Government of India. In this review, Mukand was not able to demonstrate that the import duty paid and the duty drawback rebate were directly linked. *See Mukand Verification Report* at page 21. Therefore, the Department is denying a duty drawback credit for the preliminary results of this review.

**Normal Value**

After testing home market viability, we calculated NV as noted in the ''Price-to-CV Comparisons'' and ''Price-to-Price Comparisons'' sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (''NV'') (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Mukand and the Viraj Group's volume of home market sales of the foreign like product to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because both Mukand and the Viraj Group's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in India, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-Constructed Value (''CV'') Price Comparisons'' sections of this notice.

Additionally, the Viraj Group reported the home market sales of VAL. Since we have preliminarily determined to collapse the companies of the Viraj Group, we included the home market sales of VAL as the basis of NV.

2. Cost of Production Analysis

*Mukand*

Based on the information contained in a timely filed cost allegation by the petitioners on April 25, 2002, the Department found reasonable grounds to believe or suspect that Mukand's sales of the foreign like product in their respective comparison market were made at prices below the cost of production, pursuant to section 773(b)(1) of the Act based on allegations made by petitioners in this case. *See petitioners' Allegation of Sales Below Cost of April 25, 2002.* As a result, the Department initiated a sales below-cost investigation. *See Letter of Initiation of Sales Below Cost Investigation* dated May 30, 2002.

*The Viraj Group*

Because the Department disregarded certain Viraj Group sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that the Viraj Group made sales in the home market at prices below the cost of producing the merchandise in this review. *See Final Results*; and section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on

January 29, 2002, to determine whether the Viraj Group made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

3. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Mukand's and the Viraj Group's respective costs of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs. The Department relied on the COP data submitted by Mukand and the Viraj Group in their original and supplemental cost questionnaire responses.

For the purpose of these preliminary results, we revised the COP information submitted by Mukand as follows: 1) we recalculated Mukand's interest expense ratio to adjust the amount of interest expenses attributed to construction in progress and to eliminate SG&A and interest from the denominator used to determine the interest expense factor; and 2) we recalculated Mukand's general and administrative expenses (''G&A'') to account for errors in the allocation of expenses between indirect selling expenses and G&A. *See Mukand Analysis Memorandum*.

For the purpose of these preliminary results, we revised the COP information submitted by the Viraj Group as follows: 1) we adjusted the Viraj Group's financial expenses to include all of the interest expenses reported in the audited financial statements of all of the Viraj Group companies; 2) we recalculated the Viraj Group's reported G&A to include all depreciation reported on its financial statements; and 3) we re-valued the Viraj Group's direct materials for CV based on the COP of control numbers (''CONNUM'') with identical grades rather then use the transfer price from collapsed entities in the calculation of CV. *See Analysis for the Preliminary Results of Review for Stainless Steel Wire Rod from India for 2000–2001: The Viraj Group, Limited,*dated December 31, 2002 (''*Viraj Analysis Memorandum*'').

4. Test of Home Market Prices

We compared the weighted-average COP for Mukand and the Viraj Group's home 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. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all cost with all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Mukand's or the Viraj Group's sales of a given product were, within an extended period of time, 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 Mukand's or the Viraj Group's sales of a given product were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 C.F.R. 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

**Price-to-Price Comparisons**

*Mukand*

For those products comparisons for which there were sales at prices above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (b), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV. We calculated NV based on prices to unaffiliated home market customers. We applied Mukand's inventory carrying cost factor to the total cost of manufacturing instead of the variable cost of manufacturing as reported by Mukand in its questionnaire response. Finally, we revised Mukand's calculation of credit insurance to account for a decimal error found in Mukand's reported credit insurance calculation at verification. See Mukand Verification Report at 2 and Mukand Analysis Memorandum.

*The Viraj Group*

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to the home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, in accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in differences-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (''COM'') of the U.S. product, we based NV on CV. We calculated NV based on prices to unaffiliated home market customers. We made circumstances of sale adjustments for credit expenses, as appropriate.

**Price-to-CV Comparisons**

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the sum of Mukand's and the Viraj Group's cost of materials, fabrication employed in producing the subject merchandise, and SG&A, including interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the ''Calculation of COP'' section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in India. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses. For CV, we made the same adjustments described in the COP section above.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. *See also* 19 C.F.R. 351.412. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. *See* 19 C.F.R. 351.412(2)(iii). For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. *See* 19 C.F.R. 351.412(2)(i). For CEP, it is the level of the constructed sale from the exporter to the affiliated importer. *See* 19 C.F.R. 351.412(c)(ii).

To determine the LOT of a sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Substantial differences in selling activities are a necessary, but not sufficient condition for determining that there is a difference in the stage of marketing. *See* 19 C.F.R. 351.412(C)(2). If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Mukand and the Viraj Group about the marketing stages involved in their respective U.S. and home market sales, including a description of the selling activities performed by Mukand and the Viraj Group for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different categories of sales, the functions and activities should be dissimilar.

In the present review, while Mukand requested an LOT adjustment, the Viraj Group did not. To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

*Mukand*

In the home market (''HM''), Mukand reported three levels of trade. *See April 5, 2002 Questionnaire Response from Mukand*, at 18. Mukand sold through four channels of distribution in the HM. The Department has preliminarily determined that in each of these four channels of distribution, only minor differences in selling functions existed. *See Antidumping Duty Review of Stainless Steel Wire Rod from India: Level of Trade Analysis*(''*LOT Memo*''). Because the Department has preliminarily determined that only minor differences exist between selling functions in each of the four HM channels of distribution, we preliminarily determine that there is one LOT in the HM. *See LOT Memo*.

For the U.S. market, Mukand reported one level of trade. *See April 5, 2002 Questionnaire Response from Mukand* at 50. For its U.S. sales, Mukand reported two channels of distribution: EP sales made to order to an unaffiliated customer before importation; and CEP sales sold on consignment by an unaffiliated customer after importation. For details of this situation, *See Mukand Consignment Memorandum*. For its EP sales, MIL sold directly to an unaffiliated U.S. customer, and for its CEP sales, MIL sold through a U.S. customer, after importation, which sold the merchandise, or a consignment basis, to other unaffiliated customers in the United States. *See Mukand Consignment Memorandum*. All of Mukand's U.S. sales were made by its wholly-owned subsidiary MIL, which was based in London during the POR. We examined the claimed selling functions performed by MIL for all U.S. sales and have determined that MIL provided the same level of services for both its EP and CEP sales to the United States. *See LOT Memo*.

For EP sales in the U.S. market, Mukand provided the same level of services for both EP and NV sales with only minor differences. *See LOT Memo*. Based on our analysis of the selling functions performed for sales in the HM and EP sales in the U.S. market, we preliminarily determine that there is not a significant difference in the selling functions performed in the home market and U.S. market, and that these sales are made at the same LOT. *See LOT Memo*.

In order to determine whether NV was established at a different LOT than CEP, we examined stages in the marketing process and selling functions along the LOT between Mukand and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transactions, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade then the CEP level of trade. Mukand did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and the Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See LOT Memo*. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is no significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. *See LOT Memo*. Thus, we find that Mukand's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

*The Viraj Group*

In accordance with the principles discussed above, we examined information regarding the Viraj Group's distribution systems in both the United States and Indian markets, including selling functions, classes of customers, and selling expenses for the Viraj group.

The Viraj Group claimed only one level of trade in the home market. *See* the Viraj Group's April 8, 2002 submission at B–6 and October 7, 2002 submission at 1. Additionally, the Viraj Group reported that it sold through one channel of distribution in the home market: directly to unaffiliated customers (trading companies and end-users). *See* Viraj Group's April 8, 2002

submission at B–6. For sales in the home market, the Viraj Group reported that all of its sales are sold ex-works. *See* the Viraj Group's April 8, 2002 submission at B–4. The Viraj Group reported that it performs the following selling functions in the home market: price negotiations, order processing, and customer communication. *See* the Viraj Group's October 7, 2002 submission at 1. Because there is only one channel of distribution in the home market and identical selling functions are performed for all home market sales, we preliminarily determine that there is one LOT in the home market.

The Viraj Group claimed one level of trade in the U.S. market. *See* the Viraj Group's April 8, 2002 submission at C–4. The Viraj Group reported that it sold through one channel of distribution in the U.S. market, directly from its mill to its U.S. affiliate (*i.e.*, Viraj USA). *Id.* We determined the LOT of the Viraj Group's CEP sales based on the CEP starting price, and adjusted for selling expenses identified in section 772(d) of the Act. We found that the selling functions (*i.e.*, price negotiations, order processing, and customer communication) the Viraj Group performs after the section 772(d) adjustments are the same for all of its U.S. sales. See The Viraj Group's February 26, 2002 submission at A–10. Therefore, we preliminarily determine that the Viraj Group has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) the Viraj Group and its home market customers and (2) the Viraj Group and its affiliated U.S. reseller, Viraj USA, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. The Viraj Group did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Indian markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that the Viraj Group provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller Viraj USA as it provided for its home market sales, including price negotiation, order processing, and customer communication. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that the Viraj's NV and CEP sales were made at the some LOT, and no LOT adjustment or CEP offset need be granted.

**Currency Conversion**

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Panchmahal, Mukand, and the Viraj Group for the period December 1, 2000 through November 30, 2001:

| Producer/Manufacturer/Exporter | Weighted-Average Margin |
|---|---|
| The Viraj Group, Limited | 0.82% |
| Panchmahal | 48.80% |
| Mukand, Limited | 32.87% |

The Department will disclose calculations performed for these preliminary results within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 C.F.R. 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 C.F.R. 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. *See* 19 C.F.R. 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See*19 C.F.R. 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 C.F.R. 351.309(d). Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

**Assessment**

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 C.F.R. 251.212(b), the Department has calculated an assessment rate applicable to all appropriate entries. We calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value, or entered quantity, as appropriate, of the examined sales for that importer. Upon completion of this review, where the assessment rate is above de minimis, we will instruct the U.S. Customs Service to assess duties on all entries of subject merchandise by that importer.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of review (except that if the rate for a particular product is de minimis, *i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 48.80 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of the proprietary information disclosed under APO in accordance with 19 C.F.R. 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: December 31, 2002.

**Susan Kuhbach,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 03–347 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 010303A]**

## North Pacific Fishery Management Council; Notice of Committee Meeting

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

**ACTION:** Committee Meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Essential Fish Habitat Committee will meet in Seattle, WA.

**DATES:** The meeting will be held on January 26, 2003.

**ADDRESSES:** Renaissance Madison Hotel, 515 Madison Street, Seattle, WA 98104, in the South Room on the 3rd floor.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Cathy Coon, NPFMC, 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9a.m. on Sunday, January 26, 2003. The Committee's agenda includes the following issues:

(1) Comments on the geographic boundaries of Alternative 6.

(2) Comments on Alternative 5 suboption for the Aleutian Islands.

(3) Update on the geographic boundaries of the Gulf of Alaska Alternatives in accordance with Coast Guard and NMFS regulatory specifications.

(4) Discussion of the concept of a baseline for the analysis.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), these issues may not be the subject of formal Committee action during this meeting. Committee 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 Committee'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 Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 3, 2003.

**Richard W. Surdi,**

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

[FR Doc. 03–322 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 010203D]**

## North Pacific Fishery Management Council; Notice of Committee Meeting

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

**ACTION:** Committee Meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Observer Committee will meet in Seattle, WA.

**DATES:** The meeting will be held on January 23 and 24, 2003.

**ADDRESSES:** Alaska Fisheries Science Center (Center), 7600 Sand Point Way NE, Seattle, WA.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Nicole Kimball, NPFMC, 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 9 a.m. on Thursday, January 23, 2003, and continue through Friday, January 24, 2003. The Committee's agenda includes the following issues:

(1) Review a discussion paper which outlines a proposed problem statement and general alternatives and issues for long-term, significant revisions to the Observer Program.

(2) Review a NMFS proposal for a short-term pilot project to test deployment of observer resources to determine catch composition and bycatch rates in a specific fishery.

Although non-emergency issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), these issues may not be the subject of formal Committee action during this meeting. Committee 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 Committee'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 Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: January 02, 2003.

**Richard W. Surdi,**

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

[FR Doc. 03–324 Filed 1–7–03; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; ADA Technologies, Inc.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to ADA Technologies, Inc., a revocable, nonassignable, exclusive, license to practice worldwide the Government-Owned inventions described in U.S. Patent No. 5,885,076 entitled ''Method and System for Removing Mercury From Dental Waste Water,'' issued 23 March 1999, in the field of removal of mercury from dental waste water.

**DATES:** Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

**ADDRESSES:** Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone (301) 319–7428.

**J.T. Baltimore,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 03–299 Filed 1–7–03; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Secretary of Education's Commission on Opportunity in Athletics; Meeting

**AGENCY:** Secretary of Education's Commission on Opportunity in Athletics; Department of Education.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming public meeting of the Secretary of Education's Commission on Opportunity in Athletics (the Commission). The meeting will take place in Washington, DC.

Individuals who will need accommodations for a disability in order to attend the meetings should notify the Commission office no later than January 22, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATES:** January 29–30, 2003.

*Location:* Hilton Washington and Towers Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009.

*Times:* January 29: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. January 30: 9 a.m.–1 p.m.

*Meeting Format:* This meeting will be held according to the following schedule:

1. Date: January 29, 2003, Time: 9 a.m.–12:30 p.m., 2 p.m.–5 p.m. January 30, 2003, Time: 9 a.m.–1 p.m.

*Attendees:* If you would like to attend any or all of the above listed meetings, we ask that you register with the Commission office by email or fax to the address listed under **ADDRESSES**. Please provide us with your name contact information.

*Participants:* The meeting scheduled for January 29–30, 2003 will consist of review and discussion by the Commissioners of the information from the previous public meetings in preparation for the Commission's forthcoming report to the Secretary of Education. The public is invited to observe this meeting; however there will not be opportunity for public comment.

In addition to making reservations, individuals attending the public meetings, for security purposes, must be prepared to show photo identification in order to enter the meeting location.

**FOR FURTHER INFORMATION CONTACT**

1. *Internet.* We encourage you to send your questions through the Internet to the following address: *OpportunityinAthletics@ed.gov*

2. *Mail.* You may submit your comments to The Secretary of Education's Commission on Opportunity in Athletics, 400 Maryland Avenue, SW., ROB–3 Room 3060, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

3. *Facsimile.* You may submit comments by facsimile at (202) 260–4560.

View the Commission's Web site at: *http://www.ed.gov/inits/commissionsboards/athletics.* The Commission office number is 202–708–7417.

**SUPPLEMENTARY INFORMATION:** The nation is commemorating the 30th anniversary of the passage of Title IX, the landmark legislation prohibiting recipients of Federal funds from discriminating on the basis of sex. Since this legislation was enacted, there has been a dramatic increase in the number of women participating in athletics at the high school and college level. The Secretary of Education has determined that this anniversary provides an appropriate time to review the application of Title IX to educational institutions; efforts to provide equal opportunity in athletics to women and men. In order to do so, the Secretary established the Commission on Opportunity in Athletics. The Commission will produce a report no later than February 28, 2003, outlining its findings relative to the opportunities for men and women in athletics in order to improve the effectiveness of Title IX.

The Commission will discuss the following priority areas:

1. Are Title IX standards for assessing equal opportunity in athletics working to promote opportunities for male and female athletes?

2. Is there adequate Title IX guidance that enables colleges and school districts to know what is expected of them and to plan for an athletic program that effectively meets the needs and interests of their students?

3. Is further guidance or are other steps needed at the junior and senior high school levels where the availability or absence of opportunities will critically affect the prospective interests and abilities of student athletes when they reach college age?

4. How should activities such as cheerleading or bowling factor into the analysis of equitable opportunities?

5. How do revenue producing and large-roster teams affect the provision of equal athletic opportunities? The Department has heard from some parties that whereas some men athletes will ''walk-on'' to intercollegiate teams—without athletic financial aid and without having been recruited—women rarely do this. Is this accurate and, if so, what are its implications for Title IX analysis?

6. In what ways do opportunities in other sports venues, such as the Olympics, professional leagues, and community recreation programs, interact with the obligations of colleges and school districts to provide equal athletic opportunity? What are the implications for Title IX?

7. Apart from Title IX enforcement, are there other efforts to promote athletic opportunities for male and female students that the Department might support, such as public-private partnerships to support the efforts of schools and colleges in this area?

**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.

**Note:** The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Dated: January 6, 2003.

**Rod Paige,**

*Secretary of Education.*

[FR Doc. 03–386 Filed 1–7–03; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site, Richland, WA

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Department of Energy (DOE) intends to prepare an environmental impact statement (EIS) on the proposed retrieval, treatment, and disposal of the waste being managed in the high-level waste (HLW) tank farms at the Hanford Site near Richland, Washington, and closure of the 149 single-shell tanks (SSTs) and associated facilities in the HLW tank farms. The HLW tanks contain both hazardous and radioactive waste (mixed waste).

This EIS will be prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations (40 CFR parts 1500–1508 and 10 CFR part 1021). DOE's proposed action is to remove waste from the tanks to the extent that retrieval is technically and economically feasible, treat the waste through vitrification in the planned Waste Treatment Plant (WTP) and/or one of several other treatment processes such as bulk vitrification, grout, steam reforming and sulfate removal, depending on waste type and waste characteristics. DOE proposes to package the waste for offsite shipment and disposal or onsite disposal. The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access.

The 149 underground SSTs and 28 underground double-shell tanks (DSTs) are grouped in 18 tank farms that are regulated under the Resource Conservation and Recovery Act of 1976 (RCRA) as treatment, storage, and disposal units that, for closure purposes, include tanks, associated ancillary equipment, and contaminated soils. DOE proposes to close the tanks in accordance with the Hanford Federal Facility Agreement and Consent Order (also known as the Tri-Party Agreement or TPA). DOE invites public comments on the proposed scope of this EIS.

**DATES:** The public scoping period begins with the publication of this Notice and concludes March 10, 2003. DOE invites Federal agencies, Native American tribes, State and local governments, and members of the public to comment on the scope of this EIS. DOE will consider fully all comments received by the close of the scoping period and will consider comments received after that date to the extent practicable.

Public meetings will be held during the scoping period. Meetings will be held in Seattle and Richland, Washington and in Portland and Hood River, Oregon on the following dates.

*Richland:* February 5, 2003.

*Hood River:* February 18, 2003.

*Portland:* February 19, 2003.

*Seattle:* February 20, 2003.

At least 15 days prior to the meetings, DOE will notify the public of the meeting locations and times and will provide additional information about each meeting through press releases, advertisements, mailings and other methods of encouraging public participation in the NEPA process. At these scoping meetings, DOE will provide information about the tank waste program and alternatives for retrieving, treating, and disposing of the waste, along with alternatives for closing the SSTs. The meetings will provide opportunities to comment orally or in writing on the EIS scope, including the alternatives and issues that DOE should consider in the EIS.

**ADDRESSES:** DOE invites public comment on the proposed scope of this EIS. Comments may be submitted by mail, electronic mail, fax, or voice mail and addressed as follows: Mary Beth Burandt, Document Manager, DOE Office of River Protection, U.S. Department of Energy, Post Office Box 450, Mail Stop H6–60, Richland, Washington, 99352, Attention: Tank Retrieval and Closure EIS, Electronic mail: *Mary_E_Burandt@rl.gov,* Fax: (509) 376–2002, Telephone and voice mail: (509) 373–9160.

**FOR FURTHER INFORMATION CONTACT:** To request information about this EIS and the public scoping workshops or to be placed on the EIS distribution list, use any of the methods identified in **ADDRESSES** above. For general information about the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585–0119, Fax: (202) 586–7031, Telephone: (202) 586–4600, Voice mail: (800) 472–2756.

**SUPPLEMENTARY INFORMATION**

### Background

The Hanford Site defense activities related to nuclear weapons production created a wide variety of waste. Over 50 million gallons of waste are presently stored in the HLW tank farms, which are located in the 200 Area of the Site. The waste is stored in 149 underground SSTs (ranging in capacity from approximately 55,000 to 1 million gallons) and 28 underground DSTs (ranging in capacity from approximately one to 1.16 million gallons) grouped in 18 tank farms, and approximately 60 smaller miscellaneous underground storage tanks. This waste has been processed and transferred between tanks, and as a result, the chemical, physical (*i.e.*, liquid, solid and sludge) and radiological characteristics of the waste vary greatly among and within individual tanks. In addition, the tank waste contains chemicals or has characteristics classified as hazardous waste under RCRA regulations (40 CFR Parts 260–268 and Parts 270–272) and as dangerous waste under the Washington Administrative Code ''Dangerous Waste Regulations'' (WAC 173–303).

In 1996, DOE issued the Tank Waste Remediation System (TWRS) EIS (DOE/EIS–0189), which included analyses of alternatives for retrieving and treating (*e.g.,* immobilizing) the waste stored in the tank farms. Because sufficient data were not available to evaluate a range of closure actions, tank system closure alternatives were not evaluated in the TWRS EIS. Among the uncertainties were data regarding past leak losses from the SSTs and how retrieval technology would perform to meet retrieval objectives.

In 1997, DOE issued its Record of Decision (ROD, 62 FR 8693, February

26) in which DOE decided that it would proceed with tank waste retrieval and treatment. In the ROD and subsequent supplemental analyses, DOE acknowledged that there were substantial technical uncertainties that required resolution. Nevertheless, to make progress while resolving the technical uncertainties, DOE decided to implement waste treatment using a phased approach as identified in the TWRS ROD. During the initial phase (Phase I), DOE planned to design, construct and operate demonstration-scale waste treatment facilities. Following the demonstration phase, DOE would construct full-scale facilities to treat the remaining tank waste (Phase II).

DOE's decision in the TWRS ROD was consistent with modifications to the Tri-Party Agreement contained in the M–62, ''Complete Pretreatment, Processing and Vitrification of Hanford High-level (HLW) and Low-activity (LAW) Tank Wastes'' series of milestones. Accordingly, DOE proceeded with plans to design, construct, and operate facilities that would separate waste into high-level and low-activity waste streams, vitrify the high-level waste stream and vitrify or similarly immobilize the LAW stream. These facilities are now under construction and are collectively referred to as the ''Waste Treatment Plant'' or WTP.

DOE's strategy for retrieving, treating and disposing of the tank waste and closing the tank farms has continued to evolve, based on information becoming available since the TWRS ROD was issued. New information and proposed changes to DOE's strategy include the following:

- Design of and preliminary performance projections for the WTP support DOE's proposal to extend operations beyond the original plan to operate the WTP for a ten-year period and to enhance throughput compared to facilities planned for in the 1997 ROD.
- New information indicates that deployment of large-scale treatment facilities in approximately 2012 to immobilize waste not processed by the WTP currently under construction, as identified in the TWRS ROD, may be prohibitively expensive (DOE/EIS–0189–SA–3).
- Under DOE Order 435.1 (Radioactive Waste Management), as applicable, DOE may determine that some tank wastes should be managed as low-level waste (LLW) and transuranic (TRU) waste, which may result in changes in how DOE may treat and dispose of portions of the SST and DST wastes from the HLW tank farms.
- DOE wants to consider non-vitrification treatment technologies for LAW and LLW, if these wastes could be immobilized and disposed of onsite or offsite, while providing protection to the human environment comparable to LAW and LLW immobilized by vitrification.

In developing its Performance Management Plan for the Accelerated Cleanup of the Hanford Site (PMP, DOE/RL–2000–47, August 2002), DOE stated its intent to meet its commitments under the Tri-Party Agreement, and identified its plan to complete tank waste retrieval, treatment and disposal by 2028, and to close all of the tanks and associated facilities, including the WTP, by 2033. DOE's current plans call for closing all of the SSTs by 2028.

DOE stated in the PMP that to achieve these objectives, increased capacity will be needed for the WTP, along with additional treatment capacity provided by other waste immobilization technologies, referred to herein as ''supplemental'' technologies (bulk vitrification, containerized grout, steam reforming, or sulfate removal are examples). Also in the PMP and in the Supplement Analysis for the Tank Waste Remediation System (DOE/EIS–0189–SA3, 2001), DOE concluded that its evolving strategy for treating and disposing of the tank wastes by 2028 and closing the SSTs by 2028 requires NEPA analysis of proposed tank waste retrieval, treatment and disposal, and proposed tank closure actions.

Further, under the TPA Milestone M–45, ''Complete Closure of All Single-Shell Tank (SST) Farms,'' DOE and the Washington State Department of Ecology (Ecology) have identified a process to start discussing how SST closure would occur. An important part of the process DOE and Ecology have defined for closing tank systems is compliance with Washington State Dangerous Waste regulations that require approval of a closure plan and modification of the Hanford Site Dangerous Waste Permit. Before Ecology can approve either a closure plan or modification of DOE's permit, the State of Washington must fulfill its State Environmental Policy Act (SEPA) requirements. As SEPA is very similar to NEPA, Ecology can adopt a NEPA document if it determines that the document is sufficient to meet SEPA requirements. Ecology has agreed to be a cooperating agency in preparing this EIS.

**Need for Action**

To meet its commitments under the Tri-Party Agreement and implement its plans to close the tank systems and associated facilities in a timely manner to reduce existing and potential future risk to the public, site workers, and the environment, DOE needs to complete waste retrieval, treatment and disposal of the waste from the SST and DST systems by 2028 and close all SST systems by 2028.

Although DOE is addressing safety and environmental issues posed by tank wastes to minimize current potential risks to human health and the environment, DOE must also implement long-term actions to safely manage and dispose of waste from the tank waste systems, including waste associated with inactive miscellaneous underground storage tanks, and close the SST systems to reduce permanently the potential risk to human health and the environment. These long-term actions also are needed to ensure compliance with applicable Federal requirements regulating the management and disposal of radioactive waste, as well as Federal and Washington State requirements regulating hazardous and mixed waste.

**Proposed Action**

DOE proposes to retrieve waste from the 149 SST and 28 DST systems and close the SST tank farms in a manner that complies with Federal and Washington State requirements and protects the human environment. (Closure of the DSTs and closure of the WTP are not part of the proposed action because they are active facilities needed to complete waste treatment. Closure of the DSTs and WTP would be addressed at a later date, after appropriate NEPA analysis.) DOE proposes to immobilize the retrieved waste in the WTP and through supplemental treatment technologies such as bulk vitrification, grout, steam reforming and sulfate removal, and to package the immobilized waste for offsite shipment and disposal in licensed and/or permitted facilities or disposal onsite. DOE proposes to close the SST farms (including tanks, ancillary equipment and soils) within the tank farm area by 2028. The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Associated support buildings, structures, laboratories, and the treatment facilities would be decontaminated and decommissioned in a cost-effective, legally compliant, and environmentally sound manner. Under the proposed action, DOE would use existing, modified, or, if required, new systems to assure capability to store and manage waste during retrieval and treatment.

**Background on Development of Alternatives**

The proposed action could result in changes to DOE's tank waste management program with respect to waste storage, waste retrieval, waste treatment, waste disposal, and tank farm closure at the Hanford Site. These key variables were evaluated to develop the range of reasonable alternatives identified below. In terms of waste storage, the EIS would analyze the use of the existing waste storage systems and evaluate the need for new storage systems. With regard to waste retrieval, DOE would evaluate a range of timing of retrieval and the technologies used, from past-practice sluicing as analyzed in the TWRS EIS to dry retrieval. Treatment and disposal alternatives for portions of the SST and DST waste would be evaluated based on some volume of the waste being classified as LLW or TRU waste pursuant to DOE Order 435.1. The waste identified as LLW could be treated and packaged for onsite or offsite disposal. The waste identified as TRU waste could be treated and packaged for transport and disposal at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico.

Unless a specific alternative identifies a waste type as LLW and/or TRU waste, the waste would be analyzed as HLW or LAW for the purposes of treatment and disposal. The alternatives for waste treatment include: 1) Treating all wastes via an enhanced WTP as vitrified waste; 2) treating HLW via the WTP and LAW via WTP or supplemental treatments; or 3) treating the waste as stated in #2 and/or supplemental treatment for LLW and TRU waste in the tank farms, in which case some waste would not be processed through the WTP. The options for waste disposal include disposing of the waste onsite using existing or new facilities, disposing of the waste at offsite government facilities (*e.g.*, a geological repository, WIPP, DOE's Nevada Test Site) or using onsite and offsite commercial facilities (such as Envirocare in Utah) for disposal of Hanford waste. Alternatives for tank closure would be evaluated based on broad closure strategies including clean closure (removal of the tanks, ancillary facilities, and contaminated soils) and landfill closure (residual waste left in place and post closure care).

**Proposed Alternatives**

Each of the six alternatives contains a waste storage, retrieval, treatment and disposal component. Alternatives 3 through 6 also include a tank closure component. The main differences among the alternatives include the extent of waste retrieval, the waste treatment and disposal approach, the tank closure approach, and timing to complete the necessary activities.

*1. No Action*

The Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and the DOE NEPA Regulations (10 CFR part 1021) require analysis of a No Action alternative.

*Storage:* DOE would continue current waste management operations using existing storage facilities. Immobilized (*i.e.*, vitrified) High-level Waste (IHLW) would be stored onsite pending disposal at a geologic repository. Once WTP operations are completed, all tank waste system storage (SSTs and DSTs), treatment, and disposal facilities at the Hanford Site would be placed in a stand-by operational condition.

*Retrieval:* Waste would be retrieved to the extent required to provide waste feed to the WTP using currently available liquid-based retrieval and leak detection technologies (approximately 25–50% of the total waste volume would be retrieved).

*Treatment:* No new vitrification or treatment capacity beyond that anticipated in the WTP would be deployed. However, the WTP would be modified within parameters provided for in the TWRS ROD to increase throughput. The WTP would continue to operate until its design life ends in 2046.

*Disposal:* The residual waste in tanks and the waste remaining in tanks that had not been retrieved (approximately 50 to 75% of the total waste volume) would remain in the tank farm indefinitely. Immobilized Low Activity Waste (ILAW) (by vitrification) would be disposed of onsite. IHLW would be stored onsite pending disposal at a geological repository. For purposes of analysis, administrative control of the tank farms would end following a 100-year period.

*Closure:* Tank closure would not be addressed; under this alternative, some waste would be left in the tanks indefinitely.

*2. Implement the 1997 Record of Decision (With Modifications)*

This alternative would continue implementation of decisions made in the TWRS ROD and as considered in three supplement analyses completed through 2001. (*See* ''RELATED NEPA DECISIONS AND DOCUMENTS'' below for references.) Under these supplement analyses, DOE concluded that changes in the design and operation of the WTP, as defined in its contracts and program plans, were within the bounds of analysis of environmental impacts in the TWRS EIS. Among the key modifications that would occur under this alternative are: (1) Implementing the initial phase of waste treatment with one ILAW facility rather than two, (2) expanding the design capacity of the ILAW facility from 20 metric tons of glass per day to 30 metric tons of glass per day, and (3) extending the design life of the Phase I facilities from 10 years to 40 years. Under this alternative, no new actions would be taken beyond those previously described in the TWRS ROD and supplement analyses regarding the tank waste.

*Storage:* DOE would continue current waste management operations using existing storage facilities as described under No Action.

*Retrieval:* Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which would correspond to 99% retrieval) using currently available liquid-based retrieval and leak detection systems.

*Treatment:* The existing WTP would be modified to enhance throughput and supplemented with additional vitrification capacity, as needed, to complete waste treatment by 2028. Under this alternative, all waste retrieved from tanks (approximately 99%) would be vitrified.

*Disposal:* Retrieved and treated waste would be disposed of onsite (ILAW) or stored onsite pending disposal at a geologic repository (IHLW). Once operations are completed, all tank waste system waste storage, treatment, and disposal facilities at the Hanford Site would be placed in a stand-by operational condition. The residual waste would remain in the tank farm indefinitely. For purposes of analysis, DOE assumes under this alternative that it would cease to maintain administrative control after a 100-year period.

*Closure:* Tank closure would not be addressed under this alternative. Some waste would be left in the tanks indefinitely.

*3.0 Landfill Closure of Tank Farms/ Onsite and Offsite Waste Disposal*

*Storage:* DOE would continue current waste management operations using existing storage facilities.

*Retrieval:* Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which would correspond to 99% retrieval) using currently available liquid-based retrieval and leak detection systems.

*Treatment:* Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems (*e.g.*, modifications to melters to increase throughput). WTP capacity would be supplemented with additional waste treatment capacity to immobilize LAW using a non-vitrification technology. New non-vitrification supplemental treatment capacity would be developed external to the WTP to immobilize a portion of the tank waste that would be designated as LLW pursuant to DOE Order 435.1 and/or prepare a portion of the tank waste that would be designated as TRU waste for disposal. Waste treatment under this alternative would be completed in 2028 and all SST tank systems would be closed by 2028.

*Disposal:* ILAW immobilized via the WTP would be disposed of onsite or at offsite commercial (*e.g.*, U.S. Ecology of Washington or Envirocare of Utah) or DOE facilities (Nevada Test Site). IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities. TRU waste would be packaged and stored onsite in an existing or new facility pending disposal at the Waste Isolation Pilot Plant (WIPP).

*Closure:* As operations are completed, SST waste system, waste storage, treatment and disposal facilities at the Hanford Site would be closed as a RCRA landfill unit under Dangerous Waste Regulations under WAC 173–303 and DOE Order 435.1, as applicable, or decommissioned (waste treatment facilities under DOE Order 430.1A). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Tanks, ancillary equipment, and contaminated soils would be remediated and remain in place and the closed tank systems would be covered with an engineered barrier that exceeds RCRA landfill requirements and is the more protective of the landfill options being evaluated (*i.e.*, Hanford barrier).

The main differences between this alternative and other alternatives involve: 1) Using a more robust barrier for closure of tank systems that would provide longer term protection from contaminant releases from closed tank systems and limit intrusion into the closed system compared to the barrier evaluated under Alternatives 5 and 6 (tanks would not be closed under Alternatives 1 and 2, thus no barriers would be used); and 2) Treatment and disposal of treated waste would be the same for Alternatives 3 through 5 allowing for a comparison of the impacts associated with deployment of systems to treat and dispose of transuranic waste (Alternatives 3 through 5) to treatment of waste via the WTP and subsequent management as ILAW and IHLW (Alternatives 2 and 6).

*4.0 Clean Closure of Tank Farms/ Onsite and Offsite Waste Disposal*

*Storage:* DOE would continue current waste management operations using existing storage facilities that would be modified, as needed, to support minimizing liquid losses from SSTs and accelerating SST waste retrieval into safer storage pending retrieval for treatment.

*Retrieval:* Waste would be retrieved using multiple waste retrieval campaigns using various retrieval technologies (*e.g.*, confined sluicing, crawlers), to the extent needed to support clean closure requirements (*i.e.*, 0.1% residual in the tanks or 99.9% waste retrieved from tanks) using liquid and non-liquid retrieval and enhanced in-tank and/or ex-tank leak detection systems.

*Treatment:* Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems (see Alternative 3). New alternative treatment capacity to immobilize LLW (*e.g.*, bulk vitrification, containerized grout, steam reforming, sulfate removal) and/or prepare TRU waste for disposition would be developed external to the WTP. Waste treatment under this alternative would be completed in 2028 and all SST tank systems would be closed by 2028.

*Disposal:* LAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities (see Alternative 3). IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities (See Alternative 3). TRU waste would be retrieved from tanks, packaged in a new facility, and stored onsite in existing or new storage facilities pending shipment to and disposal at the WIPP.

*Closure:* Clean closure reflects minimal residual waste in tanks and ancillary equipment, and contaminated soils remediated in place and/or removed from the tank system to be treated and disposed of in accordance with RCRA requirements. As operations are completed, all SST system storage, treatment, and disposal facilities at the Hanford Site would be closed. Waste storage and disposal facilities would be closed in a manner that supported future use on an unrestricted basis and that did not require post-closure care.

The main differences between this alternative and the other alternatives are: 1) The greatest amount of waste is retrieved from tanks based on multiple technology deployments; and 2) tank systems would be closed to meet clean closure standards. Treatment and disposal of treated waste would be the same for Alternatives 3 through 5, allowing a comparison of the impacts associated with deployment of systems to treat and dispose of TRU waste (Alternatives 3 through 5) to treatment of TRU waste via the waste treatment plant (Alternatives 2 and 6).

*5.0 Accelerated Landfill Closure/ Onsite and Offsite Waste Disposal*

*Storage:* DOE would continue current waste management operations using existing storage facilities that would be modified or supplemented with new waste storage facilities, to support actions regarding near-term acceleration of tank waste retrieval and treatment. Under this alternative, some SSTs would be retrieved and closed by 2006, exceeding the existing TPA M–45 commitments.

*Retrieval:* Waste would be retrieved to the Tri-Party Agreement goal to the extent feasible using currently available liquid-based retrieval and leak detection systems (residual waste would correspond to 90–99% retrieval).

*Treatment:* Waste treatment would be completed no later than 2024 and SST systems would be closed by 2028. Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems, as described under Alternative 2. WTP capacity would be supplemented with new treatment capacity to immobilize LLW. New treatment capacity to immobilize LLW and/or prepare TRU waste for disposition would be developed external to the WTP.

*Disposal:* LAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities. IHLW would be stored onsite pending disposal at the proposed national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities. Transuranic waste would be packaged and stored onsite pending disposal at the WIPP.

*Closure:* As operations are completed, SST tank waste system waste storage, treatment, and disposal facilities would be closed as a RCRA landfill unit under Dangerous Waste Regulations under WAC 173–303 and DOE Order 435.1, or decommissioned (waste treatment

facilities under DOE Order 430.1A). Waste storage and disposal facilities would be closed as RCRA landfill units under applicable state Dangerous Waste Regulations (WAC 173–303). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Tank systems (tanks, ancillary equipment, and soils) would be closed in place and would be covered with a modified RCRA barrier (*i.e.*, a barrier with performance characteristics that exceed RCRA requirements for disposal of hazardous waste).

The main difference between this alternative and the other alternatives are (1) completion of some SST closure actions by 2006, completion of all waste treatment by 2024, and closure of all SST systems by 2028 in contrast to Alternatives 2, 3 and 6, which would complete waste treatment in 2028 and SST tank systems closure in 2028 and; (2) no remediation of ancillary equipment and contaminated soil, allowing a comparison with the more extensive remediation analyzed under Alternative 3. Another main difference between this alternative and Alternative 3 is the use of a modified RCRA barrier. Treatment and disposal of treated waste would be the same for Alternatives 3 through 5, allowing for a comparison of the impacts associated with deployment of systems to treat and dispose of transuranic waste (Alternatives 3 through 5) to treatment of transuranic waste via the WTP (Alternatives 2 and 6).

*6.0 Landfill Closure/Onsite and Offsite Waste Disposal*

*Storage:* DOE would continue current waste management operations using existing storage facilities that would be modified, as needed, to support SST waste retrieval and treatment.

*Retrieval:* Waste would be retrieved to the Tri-Party Agreement goal (*i.e.*, residual waste would not exceed 360 cubic feet for 100 series tanks or 36 cubic feet for 200 series tanks, which corresponds to retrieval of 99%) using liquid and non-liquid based retrieval and enhanced leak detection systems.

*Treatment:* Retrieved waste would be treated with the WTP capacity based on enhanced and/or modified performance of operating systems. Supplemental treatment technologies would be used to immobilize LLW. New non-vitrification treatment capacity to immobilize LLW for disposition would be developed external to the WTP. Waste treatment under this alternative would be completed in 2028, and all SST systems would be closed by 2028.

*Disposal:* ILAW immobilized via the WTP would be disposed of onsite or at offsite commercial or DOE facilities. IHLW would be stored onsite pending disposal at a national geologic repository. LLW immobilized external to the WTP would be disposed of onsite or at offsite commercial or DOE facilities.

*Closure:* As operations are completed, all tank waste system waste storage, treatment, and disposal facilities at the Hanford Site would be closed (tank farm systems) or decommissioned (waste treatment facilities). The tanks would be filled with materials to immobilize the residual waste and prevent long-term degradation of the tanks and discourage intruder access. Waste storage and disposal facilities would be closed as RCRA landfill units under applicable state Dangerous Waste Regulations (WAC 173–303). Residual waste in tanks, ancillary equipment, and contaminated soils would be remediated in place as needed in accordance with RCRA requirements, and the closed tank systems would be covered with a modified RCRA barrier.

The main difference between this alternative and the other alternatives is that under this alternative there would not be a separate TRU waste stream (Alternatives 3 through 5). As with Alternative 2, waste would be treated in the WTP and subsequently managed as either ILAW or IHLW.

*Preliminary Identification of EIS Issues:* The following issues have been tentatively identified for analysis in the EIS. The list is presented to facilitate comment on the scope of the EIS; it is not intended to be all-inclusive or to predetermine the potential impacts of any of the alternatives.

- Effects on the public and onsite workers from releases of radiological and nonradiological materials during normal operations and reasonably foreseeable accidents.
- Long-term risks to human populations resulting from waste disposal and residual tank system wastes.
- Effects on air and water quality from normal operations and reasonably foreseeable accidents, including long-term impacts on groundwater.
- Cumulative effects, including impacts from other past, present, and reasonably foreseeable actions at the Hanford Site.
- Effects on endangered species, archaeological/cultural/historical sites, floodplains and wetlands, and priority habitat.
- Effects from onsite and offsite transportation and from reasonably foreseeable transportation accidents.
- Socioeconomic impacts on surrounding communities.
- Disproportionately high and adverse effects on low-income and minority populations (Environmental Justice).
- Unavoidable adverse environmental effects.
- Short-term uses of the environment versus long-term productivity.
- Potential irretrievable and irreversible commitment of resources.
- The consumption of natural resources and energy, including water, natural gas, and electricity.
- Pollution prevention, waste minimization, and potential mitigative measures.

*Related NEPA Decisions and Documents:* The following lists DOE other NEPA documents that are related to this proposed Hanford Site Tank Retrieval and Closure EIS.

45 FR 46155, 1980, ''Double-Shell Tanks for Defense High-Level Radioactive Waste Storage, Hanford Site, Richland, Washington; Record of Decision,'' **Federal Register**.

53 FR 12449, 1988, ''Disposal of Hanford Defense High-Level Transuranic, and Tank Wastes, Hanford Site, Richland, Washington; Record of Decision,'' **Federal Register**.

60 FR 28680, 1995, ''Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Program, Part III; Record of Decision,'' **Federal Register**.

60 FR 54221, 1995, ''Final Environmental Impact Statement for the Safe Interim Storage of Hanford Tank Wastes at the Hanford Site, Richland, WA; Record of Decision,'' **Federal Register**.

60 FR 61687, 1995, ''Record of Decision Safe Interim Storage of Hanford Tank Wastes, Hanford Site, Richland, Washington,'' **Federal Register**.

61 FR 3922, 1996, ''Availability of the Final Environmental Impact Statement for Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA; Notice of Availability of Final Environmental Impact Statement,'' **Federal Register**.

61 FR 10736, 1996, ''Management of Spent Nuclear Fuel from the K Basins at the Hanford Site, Richland, WA. ACTION: Notice of Record of Decision,'' **Federal Register**.

62 FR 8693, 1997, ''Record of Decision for the Tank Waste Remediation System, Hanford Site, Richland, Washington,'' **Federal Register**.

DOE/EA–0479, 1990, Collecting Crust Samples from Level Detectors in Tank

SY–101 at the Hanford Site, U.S. Department of Energy, Richland, Washington.

DOE/EA–0495, 1991, Preparation of Crust Sampling of Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.

DOE/EA–0511, 1991, Characterization of Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.

DOE/EA–0581, 1991, Upgrading of the Ventilation System at the 241–SY Tank Farm, U.S. Department of Energy, Richland, Washington.

DOE/EA–0802, 1992, Tank 241–SY–101 Equipment Installation and Operation to Enhance Tank Safety, U.S. Department of Energy, Richland, Washington.

DOE/EA–0803, 1992, Proposed Pump Mixing Operations to Mitigate Episodic Gas Releases in Tank 241–SY–101, U.S. Department of Energy, Richland, Washington.

DOE/EA–0881, 1993, Tank 241–C–103 Organic Vapor and Liquid Characterization and Supporting Activities, U.S. Department of Energy, Richland, Washington.

DOE/EA–0933, 1995, Tank 241–C–106 Past Practice Sluicing Waste Retrieval, U.S. Department of Energy, Richland, Washington.

DOE/EA–0981, 1995, Solid Waste Retrieval Complex, Enhanced Radioactive and Mixed Waste Storage Facility, U.S. Department of Energy, Richland, Washington.

DOE/EA–1203, 1997, Trench 33 Widening in 218–W–5 Low-Level Burial Ground, U.S. Department of Energy, Richland, Washington.

DOE/EA–1276, 1999, Widening Trench 36 of the 218–E–12B Low-Level Burial Ground, U.S. Department of Energy, Richland, Washington.

DOE/EA–1405, 2002, Transuranic Waste Retrieval from the 218–W–4B and 218–W–4C Low-Level Burial Grounds, Finding of No Significant Impact, U.S. Department of Energy, Richland, Washington.

DOE/EIS–0113, 1987, Final Environmental Impact Statement. Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes Hanford Site Richland, Washington, U.S. Department of Energy, Washington, DC.

DOE/EIS–0189, 1996, Tank Waste Remediation System, Hanford Site, Richland, Washington, Final Environmental Impact Statement, U.S. Department of Energy and Washington State Department of Ecology, Washington, DC.

DOE/EIS–0189–SA1, 1997, Supplement Analysis for the Proposed Upgrades to the Tank Farm Ventilation, Instrumentation, and Electrical Systems under Project W–314 in Support of Tank Farm Restoration and Safe Operations, U.S. Department of Energy, Richland Operations Office, Richland, Washington.

DOE/EIS–0189–SA2, 1998, Supplement Analysis for the Tank Waste Remediation System, U.S. Department of Energy, Washington, DC.

DOE/EIS–0189–SA3, 2001, Supplement Analysis for the Tank Waste Remediation System, U.S. Department of Energy, Washington, DC.

DOE/EIS–0200, 1997, Final Waste Management Programmatic Environmental Impact Statement, U.S. Department of Energy, Washington, DC.

DOE/EIS–0212, 1995, Safe Interim Storage of Hanford's Tank Waste Final Environmental Impact Statement, U.S. Department of Energy, Richland Operations Office, Richland, Washington.

DOE/EIS–0222, 1999, Final Hanford Remedial Action Environmental Impact Statement and Comprehensive Land Use Plan, U.S. Department of Energy, Richland Operations Office, Richland, Washington.

DOE/EIS–0250, 2002, Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada, U.S. Department of Energy Office of Civilian Radioactive Waste Management, Washington, DC.

DOE/EIS–0286D, 2000, Draft Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement, U.S. Department of Energy, Richland, Washington.

DOE/EIS–0287, 2002, Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement, U.S. Department of Energy, Washington, DC.

Ecology, 2000, Draft Environmental Impact Statement for Commercial Low-Level Radioactive Waste Disposal Site, Richland, Washington, Washington State Department of Ecology, Olympia, Washington.

Ecology, EPA, and DOE, 1989, Hanford Federal Facility Agreement and Consent Order, as amended, Washington State Department of Ecology, U.S. Environmental Protection Agency, and U.S. Department of Energy, Olympia, Washington.

Issued in Washington, DC on this 3rd day of January, 2003.

**Beverly A. Cook,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 03–318 Filed 1–7–03; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC03–37–000, et al.]**

### Exelon Generation Company, LLC, et al. Electric Rate and Corporate Filings

January 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Exelon Generation Company, LLC**

[Docket No. EC03–37–000]

Take notice that on December 23, 2002, Exelon Corporation, Exelon Ventures Company, LLC, and Exelon Generation Company, LLC, filed an application with the Federal Energy Regulatory Commission (Commission) requesting authorization from the Commission to implement a plan of corporate reorganization.

*Comment Date:* January 13, 2003.

**2. Idaho Power Company andIDACORP Energy, L.P.,**

[Docket No. EC03–38–000]

Take notice that on December 23, 2002, Idaho Power Company (Idaho Power) and IDACORP Energy, L.P. (IELP, collectively, Applicants) filed an Application for Commission Approval of Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act. The jurisdictional facilities that are the subject of the Application are a wholesale power sales agreement and transactions (Truckee Agreement and Transactions) between Idaho Power and Truckee-Donner Public Utility District. By their Application, Applicants seek Commission approval for the assignment of the Truckee Agreement and Transactions from Idaho Power to IELP.

*Comment Date:* January 13, 2003.

**3. Calpine Energy Services, L.P. Calpine Northbrook Energy Marketing, LLC**

[Docket No. EC03–39–000]

Take notice that on December 24, 2002, Calpine Energy Services, L.P. (CES) and Calpine Northbrook Energy Marketing, LLC (CNEM) tendered for filing an application under section 203 of the Federal Power Act for approval of

the assignment by CES to CNEM of a wholesale power sales agreement for power purchase and sale transactions between Morgan Stanley Capital Group Inc., and CES.

*Comment Date:* January 14, 2003.

**4. ITC Holdings Corp., et al.**

[Docket Nos. EC03–40–000 and ER03–343–000]

Take notice that on December 24, 2002, ITC Holdings Corp. (ITC Holdings), ITC Holdings Limited Partnership, International Transmission Company (International Transmission), DTE Energy, Inc. (DTE Energy), and The Detroit Edison Company (Detroit Edison) submitted a joint application pursuant to Section 203 of the Federal Power Act (FPA) seeking all authorizations and approvals necessary for the disposition of jurisdictional facilities in order for DTE Energy to sell, and ITC Holdings to purchase, all of the outstanding capital stock of International Transmission. In addition, pursuant to FPA Section 205 and part 35 of the Commission's regulations, the joint application tenders for filing proposed rates for International Transmission as an independent transmission company, and certain operating and interconnection agreements between International Transmission and Detroit Edison.

*Comment Date:* January 14, 2003.

**5. New England Power Pool**

[Docket No. ER03–291–000]

Take notice that on December 18 , 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Eighth Agreement Amending New England Power Pool Agreement, which changes the formula in Scheduling 16 of the NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) for determining the compensation owners of eligible generators will receive for providing black-start related system restoration and planning services to NEPOOL pursuant to Schedule 16. A January 1, 2003 effective date was requested for each of these Agreements.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England State governors and regulatory commissions.

*Comment Date:* January 10, 2003.

**6. Nevada Power Company**

[Docket No. ER03–340–000]

Take notice that on December 26, 2002, Nevada Power Company (Nevada Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) three services agreements:

1. Service Agreement No. 100 to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Reliant Energy Services, Inc. (Reliant).

2. Service Agreement No. 101A to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Pinnacle West Energy Company (Pinnacle West).

3. Service Agreement No. 101B to the Sierra Pacific Resources Operating Companies' FERC Electric Tariff, First Revised Volume No. 1. This Service Agreement is an executed Transmission Service Agreement between Nevada Power and Southern Nevada Water Authority (SNWA).

*Comment Date:* January 16, 2003.

**7. Arizona Public Service Company**

[Docket No. ER03–347–000]

Take notice that on December 30, 2002, Arizona Public Service Company (APS) tendered for filing a revised Agreement with the City of Williams (Williams) which terminates Service Schedule A effective December 31, 2002 at midnight of APS–FERC Rate Schedule No. 192.

APS states that copies of this filing have been served on Williams and the Arizona Corporation Commission.

*Comment Date:* January 21, 2003.

**8. Arizona Public Service Company**

[Docket No. ER03–348–000]

Take notice that on December 30, 2002, Arizona Public Service Company (APS) tendered for filing a request for regulatory approval to change rates to its Long-Term Power Transactions Agreement with PacifiCorp (PAC) applicable under the APS–FERC Rate Schedule No. 182.

APS states that copies of this filing have been served on PAC, the California Public Utilities Commission, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Washington Utilities and Transportation Commission, the Montana Public Service Commission, the Public Service Commission of Wyoming, the Idaho Public Utilities Commission, and the Arizona Corporation Commission.

*Comment Date:* January 21, 2003.

**9. Central Maine Power Company**

[Docket No. ER03–349–000]

Take notice that on December 30, 2002, Central Maine Power Company (CMP) filed with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act, an executed S.D. Warren Somerset Entitlement Agreement, effective as of March 1, 2003, and designated as Original FERC Rate Schedule No. 201. In addition, CMP requested confidential treatment for certain competitively sensitive material contained in the Agreement and in Exhibit B to CMP's filing.

*Comment Date:* January 21, 2003.

**10. Wisconsin River Power Company**

[Docket No. ER03–350–000]

Take notice that on December 30, 2002, Wisconsin River Power Company (WRPCo or the Company) tendered for filing Second Revised Rate Schedule FERC No. 2 (Second Revised Rate Schedule) by and among WRPCo and Consolidated Water Power Company (CWPCo) and Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L). The Second Revised Rate Schedule facilitates the sale of power by WRPCo to CWPCo, WPS and WP&L.

The Company requests that the Commission waive its notice of filing requirements to allow the Second Revised Rate Schedule to become effective as of December 31, 2002.

WRPCo states that copies of the filing were served upon CWPCo, WPS, WP&L, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment Date:* January 21, 2003.

**11. Wisconsin River Power Company**

[Docket No. ER03–351–000]

Take notice that on December 30, 2002, Wisconsin River Power Company (WRPCo or the Company) tendered for filing an Original Rate Schedule FERC No. 3 (Rate Schedule) by and among WRPCo and Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L) (collectively, the Purchasers). The Rate Schedule sets forth the rates, terms and conditions under which the Purchasers will obtain electric capacity and energy from WRPCo's generating unit.

The Company requests that the Commission waive its notice of filing requirements to allow the Rate Schedule to become effective as of December 31, 2002.

WRPCo states that copies of the filing were served upon WPS, WP&L, the Public Service Commission of

Wisconsin and the Michigan Public Service Commission.

*Comment Date:* January 21, 2003.

**12. Calpine California Equipment Finance Company, LLC**

[Docket No. ES03–17–000]

Take notice that on December 18, 2002, Calpine California Equipment Finance Company, LLC (Calpine Finance) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term debt in an amount not to exceed $250 million.

Calpine Finance also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* January 14, 2003.

**Standard Paragraph**

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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. The Commission strongly encourages electronic filings.

**Linwood A. Watson, Jr.,**

*Deputy Secretary.*

[FR Doc. 03–376 Filed 1–7–03; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0080; FRL–7282–8]**

## Lead-Based Paint Activities; State of North Dakota Lead-Based Paint Program

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

**ACTION:** Notice; requests for comments and opportunity for public hearing.

**SUMMARY:** On October 4, 2002, EPA received an application from the State of North Dakota requesting authorization to administer a Program in accordance with section 402 of the Toxic Substances Control Act (TSCA). Included in the application was a letter signed September 26, 2002, by the Governor of North Dakota. stating that the State's Lead-Based Paint Abatement Program is at least as protective of human health and the environment as the Federal program under TSCA section 402. Also, included was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. North Dakota certifies that its program meets the requirements for approval of a State program under section 404 of TSCA and that North Dakota has the legal authority and ability to implement the appropriate elements necessary to enforce the program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will be established. Today's notice announces the receipt of North Dakota's application, provides a 45–day public comment period, and an opportunity to request a public hearing on the application.

**DATES:** Comments on the application must be received on or before February 24, 2003.

**ADDRESSES:** Submit all written comments and/or requests for a public hearing identified by docket ID number 2002–0080 (in duplicate) to: Amanda Hasty, Environmental Protection Agency, Region VIII, 8P–P3T, 999 18th St., Suite 300, Denver, CO 80202–2466.

Comments, data, and requests for a public hearing may also be submitted electronically to: hasty.amanda@epa.gov. Follow the instructions under Unit V. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

**FOR FURTHER INFORMATION CONTACT:** Dave Combs, Regional Toxics Team Leader, 999 18th St., Suite 300, 8P–P3T, Denver, CO 80202–2466; telephone (303) 312–6021; e-mail address: combs.dave@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General

*A. Does this Notice Apply to Me?*

This notice is directed to the public in general. This notice may, however, be of interest to firms and individuals engaged in lead-based paint activities in North Dakota. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What is the Agency's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–92), titled ''Lead Exposure Reduction.''

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). These regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 (15 U.S.C. 2684), a State or Indian Tribe may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. EPA will review those applications within 180 days of receipt of the complete application. To receive

EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684 (b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA authorization.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA authorization, by submitting a letter signed by the Governor or the Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdrawals the application.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether North Dakota's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If EPA finds that the program does not meet the requirements for authorization of a state program, EPA will disapprove the program application, at which time a notice will be issued in the **Federal Register** and the Federal program will be established in North Dakota.

## II. State Program Description Summary

This summary is provided in accordance with 40 CFR 745.324(a)(4). The applicant has provided the following summary of their lead program. The 2001 North Dakota Legislative session adopted changes to North Dakota's Century Code (NDCC) 23-25, ''Air Pollution Control Law.'' These changes authorized North Dakota's Department of Health (NDDH) to adopt and enforce certain requirements of 40 CFR part 745, subpart L, into the North Dakota Administrative Code (NDAC). The NDDH began amending the NDAC in January 2002. The amendments to the NDAC were adopted in accordance with the administrative rule practices requirements contained in NDCC 28-32 titled ''Administrative Agencies Practice Act.''

On April 19, 2002, a public hearing was held to consider comments on the proposed administrative rule amendments. Comments were accepted for 30 days before and 30 days after the public hearing. A regulatory analysis including the classes of people probably affected, probable impact including economic impact, probable impact to the Department and alternative methods considered were prepared and made available prior to the start of the public comment period. In addition, the Department prepared a takings assessment (economic analysis) and a stringency determination in conjunction with the regulatory analysis.

On June 18, 2002, the State Health Council adopted the final rule. On August 1, 2002, the North Dakota Legislative Council published the North Dakota Administrative Code (NDAC) 33-15-24 titled ''Standards for Lead-Based Paint Activities,'' to adopt certain provisions of 40 CFR part 745, subpart L, into the North Dakota Administrative Code. The rule became effective September 1, 2002.

On August 15, 2002, a public hearing was held regarding North Dakota's intent to seek EPA authorization of its lead-based paint program. Comments were accepted for 30 days before and 30 days after the public hearing. No comments were received concerning North Dakota's intent to seek EPA authorization of its program. NDAC 33-15-24 references with minor changes the requirements contained in 40 CFR 745.220, ''Scope and Applicability,'' § 745.223, ''Definitions,'' § 745.225, ''Accreditation of Training Programs: Target Housing and Child-Occupied Facilities,'' § 745.226, ''Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities,'' § 745.227, ''Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities,'' and § 745.233, ''Lead-Based Paint Activities Requirements.'' Minor changes were made to these sections. The term ''certification of companies'' was replaced with ''licensing of companies.'' The term ''certification'' was reserved for individuals. The terminology change was made for clarification and ease of implementation when discussing requirements with the regulated community. All references to EPA grandfather clauses, which preceded the rulemaking, were deleted. Definitions including chewable surface, dripline, lead-based paint hazard, wipe sample, dust lead hazard, paint lead hazard, soil lead hazard, work practice requirement and renovation were adopted from 40 CFR 745.63, 745.65, and 745.83. Elevated blood lead level concentration was changed from 20 micrograms per deciliter to 10 micrograms per deciliter to follow the U.S. Center for Disease Control (CDC) guidelines. Notification requirements were added to NDAC 33–15–24–03. The notification requirements contain provisions for notification to the State prior to beginning lead-based paint abatement activities and prior to conducting lead-based paint abatement courses. Also, fees for certification of individuals, licensing of companies and accreditation of lead-based paint courses were established in NDAC 33–15–24–04.

Several other minor changes were made. These changes are discussed in more detail in a document titled, ''Summary of Proposed North Dakota's Lead-Based Paint Rules, January 2002.'' The North Dakota Lead Activities program will be administered by the North Dakota Department of Health, Division of Air Quality. The North Dakota Department of Health began implementing its program on the day the rule became effective, September 1, 2002. Additional information, copies of the documents referenced above and application forms for licensing and certification may be obtained by contacting the North Dakota Department of Health at (701) 328–5188.

In accordance with 40 CFR 745.324(d), ''Program Certification,'' the Governor of North Dakota submitted a self-certification letter to the EPA Administrator on September 26, 2002, certifying that the State program meets the requirements contained in 40 CFR part 745.324(e)(2)(i) and (e)(2)(ii). Included in the application was a letter from the Attorney General of North Dakota, certifying that the laws and regulations of the State provided adequate legal authority to administer and enforce TSCA section 402. Therefore, as of September 26, 2002, the State of North Dakota is authorized to administer and enforce the lead-based paint program under TSCA section 402, until such time as the Administrator disapproves the application or withdraws the State's Program authorization.

## III. Federal Overfiling

TSCA section 404(b) (15 U.S.C. 2684(b)) makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

## IV. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket ID number 2002–0080. Copies of this notice, the State of North Dakota's authorization application, and all comments received on the application are available for inspection in the Region VIII office, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located at EPA, Region VIII, and 8P–P3T, 999 18th St., Suite 300, Denver CO 80202.

Commenters are encouraged to structure their comments so as not to contain information for which CBI claims would be made. However, any information claimed as CBI must be marked ''confidential,'' ''CBI,'' or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed, as CBI at the time of submission will be placed in the public record.

Electronic comments can be sent directly to EPA at: hasty.amanda@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket ID number. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

## V. Submission to Congress and the Comptroller General

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

## List of Subjects in 40 CFR Part 180

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: December 12, 2002.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

[FR Doc. 03–337 Filed 1–7–03; 8:45 am]

BILLING CODE 6560–50–S

# FEDERAL MARITIME COMMISSION

## Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Jetstream Freight Forwarding, Inc. dba Jetstream, 21804 Marine View Drive South, Suite C, Des Moines, WA 98198, Officers: Sara Barnes, Director of Operations (Qualifying Individual), Bryan Jennings, President.

JJB Trucking Service Inc., 333 N. Broad Street, Elizabeth, NJ 07201, Officer: Bertha Trimmio, President (Qualifying Individual).

### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Full Service Logistics, Inc., 2100 Huntington Drive, Suite 7, San Marino, CA 91108, Officer: Mei Tung Tsang, C.E.O. (Qualifying Individual).

Q Follow Shipping, Inc., 815 Fairview Avenue, Bldg. #1, Fairview, NJ 07022, Officers: Timothy Cheng Liang, President (Qualifying Individual).

Northtrans Shipping Inc., 17246 S. Main Street, Gardena, CA 90248, Officers: Herbert Lo, President (Qualifying Individual), Matthew Leung, Exec. Vice President.

ECAC Incorporated, 1146 Atlantic Avenue, Brooklyn, NY 11216, Officer: Emeka J. Ukasoanya, President (Qualifying Individual).

Consolidation Shipping & Logistic, (USA) Inc., 219 Stuyvesant Avenue, Lyndhurst, NJ 07071, Officers: Edwin E. Romero, President (Qualifying Individual), Tario Mahmood, Chairman.

### Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Kraus International Shipping Co., 1400 E. Clement Street, Suite 100, Baltimore, MD 21230, Officers: Brenda A. Lang, Secretary (Qualifying Individual), Diane Kraus, President.

Dated: January 3, 2003.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 03–317 Filed 1–7–03; 8:45 am]

BILLING CODE 6730–01–P

# FEDERAL RESERVE SYSTEM

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than February 3, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. CBS Banc Corp*, Russellville, Alabama; to merge with Community Financial Services, Inc., Bolivar, Tennessee, and thereby indirectly acquire The Bank of Bolivar, Bolivar, Tennessee.

*2. Coast Financial Holdings, Inc.*, Bradenton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Coast Bank of Florida, Bradenton, Florida.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

*1. Frontenac Bancshares, Inc.*, Earth City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Frontenac Bank, Earth City, Missouri.

**C. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Utah Community Bancorp*, Sandy, Utah; to become a bank holding company by acquiring 100 percent of the voting shares of Utah Community Bank, Sandy, Utah.

Board of Governors of the Federal Reserve System, January 2, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–302 Filed 1–7–03; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 22, 2003.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Bancshares of Florida, Inc.* (formerly Citizens Bancshares of Southwest Florida), Naples, Florida; to acquire Florida Trust Company, Inc., Ft. Lauderdale, Florida, and thereby engage in trust company activites, pursuant to section 225.28(b)((15) of Regulation Y. These activities will be conducted in Florida.

Board of Governors of the Federal Reserve System, January 2, 2003.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 03–301 Filed 1–7–03; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL TRADE COMMISSION

**[File No. 021 0171]**

### Baxter International, Inc., and Wyeth Corporation; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before January 18, 2003.

**ADDRESSES:** Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

**FOR FURTHER INFORMATION CONTACT:** Joanne Lewers, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2667.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following analysis to aid public comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for December 20, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/12/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

### Analysis of Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing consent orders (''Consent Agreement'') from Baxter International Inc. and Wyeth. The Consent Agreement contains an order to maintain assets to preserve, among other things, the viability, marketability, and

competitiveness of the assets to be divested pending their divestiture. The Consent Agreement also contains a decision and order that is designed to remedy the anticompetitive effects of Baxter's proposed acquisition of the generic injectable pharmaceutical business of Wyeth. Under the terms of the Consent Agreement, the companies will be required to: (1) Divest all of Wyeth's assets relating to propofol to a Commission-approved acquirer; (2) terminate all of Baxter's rights and interests in GensiaSicor's pancuronium, vecuronium, and metoclopramide products, and divest all of its pancuronium, vecuronium, and metoclopramide assets to GensiaSicor; and (3) terminate Baxter's co-marketing agreement with Watson Pharmaceuticals, Inc. by March 14, 2004.

The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

Pursuant to an asset purchase agreement dated June 8, 2002, between Baxter and Wyeth, Baxter proposes to acquire from Wyeth substantially all of the assets related to Wyeth's generic injectable pharmaceutical business operated by Wyeth's ESI Lederle division for a total of $316 million in cash and assumed liabilities. The Commission's complaint alleges that the proposed acquisition, if consummated, would constitute a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for the manufacture and sale of: (1) Propofol; (2) pancuronium; (3) vecuronium; (4) metoclopramide; and (5) new injectable iron replacement therapies (''NIIRTs''). The proposed Consent Agreement would remedy the alleged violations by replacing in each of these markets the lost competition that would result from the merger.

*Propofol*

Propofol is a general anesthetic commonly used for the induction and maintenance of anesthesia during surgical procedures and as a sedative for patients who are mechanically ventilated. Although there are other anesthetic agents, there are many benefits associated with propofol including the ability to quickly adjust the amount of sedation and its superior safety profile. Because propofol has a short duration profile, it is the preferred anesthetic agent for out-patient surgery. Annual U.S. sales of propofol total between $375 and $400 million.

The market for propofol is highly concentrated. AstraZeneca sells Diprivan®, the branded propofol product. Baxter markets the only generic propofol product, which is manufactured by GensiaSicor. Wyeth is seeking approval from the Food and Drug Administration (''FDA'') for its own propofol product, and it is one of the two best-positioned firms to enter the market.

Entry into the propofol market requires lengthy development efforts because of the product's unique characteristics. Propofol is considered to be one of the most difficult injectable products to develop. Indeed, only one company has been able to introduce a generic propofol product. Propofol is manufactured using a complex process, and it requires the use of a preservative. The preserved formulation used for Diprivan® and the preserved formulation used for the generic propofol marketed by Baxter are both protected by patents. For this reason, any new entrant would have to develop a propofol product using a different preservative that does not infringe existing patents. Once a company has developed a viable product, it is also required to conduct studies and obtain approval from the FDA to market propofol. Clinical development and FDA approval for this particular generic drug takes several years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for the manufacture and sale of propofol by eliminating potential competition between Baxter and Wyeth. With only two firms currently supplying propofol to customers in this market (Baxter and AstraZeneca), entry by Wyeth and the one other firm well-positioned to enter would likely increase competition and reduce propofol prices. Accordingly, allowing Baxter to acquire Wyeth's generic injectable business likely would reduce the number of rivals in the future from four to three and force customers to pay higher prices for propofol.

The proposed Consent Agreement preserves future competition in the market for propofol by requiring the parties to divest Wyeth's propofol assets to Faulding Pharmaceutical Company no later than 10 business days after the acquisition. Faulding is well-positioned to continue Wyeth's development efforts and poses no separate competitive concerns as the acquirer of the propofol assets. If the Commission determines that Faulding is not an acceptable purchaser, or that the manner of divestiture is not acceptable, Baxter and Wyeth must divest the propofol assets to a Commission-approved buyer no later than 90 business days from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the propofol assets. The Consent Agreement also requires the parties to license certain additional know-how that relates, but does not exclusively relate, to propofol to the propofol acquirer.

The Consent Agreement contains several provisions designed to ensure that the divestiture is successful. Baxter and Wyeth are required to provide transitional services to the propofol acquirer relating to regulatory approvals and manufacturing, and in responding to, and defending against, any lawsuit, investigation or proceeding relating to propofol. The Consent Agreement also requires Baxter and Wyeth to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. For a period of six months from the date the assets are divested, Baxter and Wyeth will provide the propofol acquirer an opportunity to enter into employment contracts with individuals who have experience relating to Wyeth's propofol product. Baxter and Wyeth are also required to provide incentives to these individuals to accept employment with the propofol acquirer. For a period of one year following the divestiture date, Baxter and Wyeth are prohibited from hiring any employees of the acquirer of the propofol assets who have responsibility related to propofol. Finally, Baxter and Wyeth must take steps to maintain the confidentiality of confidential information related to propofol.

*Pancuronium*

Pancuronium is a rapid-onset, long-acting neuromuscular blocking agent used to temporarily freeze muscles during surgery or mechanical ventilation and to assist in the intubation process. Although pancuronium is an older drug, doctors continue to use it because it is an effective and inexpensive product with a known side-effect profile. The market for pancuronium in the United States is approximately $2 million.

Pancuronium is a small and highly concentrated market. Baxter, Wyeth and Abbott are the only suppliers of generic injectable pancuronium in the United States. Currently, Baxter, which markets pancuronium pursuant to an exclusive

agreement with GensiaSicor, accounts for almost half of U.S. sales of the drug. Post-acquisition, Baxter would account for 74% of the sales of pancuronium in the United States, and the post-acquisition Herfindahl-Hirschman Index (''HHI'') would be 6,152 points, representing a 2,496 point increase in the HHI. Post-acquisition, Abbott would be the only other supplier of pancuronium in the United States.

The market for the manufacture and sale of pancuronium is unlikely to attract new entrants because pancuronium is an older drug whose usage and price have declined over time. Although pancuronium is still an important drug, companies are unlikely to devote resources to developing an older drug with limited sales. Even if a supplier of other injectable drugs decided to develop pancuronium, it would be costly and time consuming to complete the necessary research and development, and to obtain the requisite approval from the FDA. Consequently, entry into the pancuronium market is not likely to occur in a timely manner, if at all.

The proposed acquisition would create a duopoly in the market for the manufacture and sale of pancuronium in the United States. Post-acquisition, Baxter and Abbott would be the only remaining suppliers of pancuronium. This is likely to lead to higher prices of pancuronium.

The proposed Consent Agreement preserves competition in the pancuronium market by requiring Baxter to terminate all of its rights and interests in GensiaSicor's pancuronium product and divest all of its pancuronium assets to GensiaSicor no later than five days after the acquisition. GensiaSicor is capable of marketing and selling its own pancuronium. It is a well recognized and respected company in the injectable pharmaceutical industry, and will be an able competitor in the market for the manufacture and sale of pancuronium.

*Vecuronium*

Vecuronium is an intermediate-acting neuromuscular blocking agent that temporarily freezes muscles during surgery, mechanical ventilation, or intubation. Vecuronium is a popular neuromuscular blocking agent with a superior side effect profile. The market for the manufacture and sale of vecuronium in the United States is approximately $21 million.

The market for the manufacture and sale of vecuronium is highly concentrated. Baxter markets vecuronium under an exclusive supply agreement with GensiaSicor. Baxter and Wyeth were the two leading suppliers of vecuronium in the United States, with a combined market share of 53%, until Wyeth temporarily suspended its vecuronium production in 2001. Prior to the announcement of the acquisition, Wyeth planned to re-enter the vecuronium market in the near future. Post-acquisition, the HHI would be 3,598 points, representing a 1,364 point increase in the HHI. There are only three other suppliers of vecuronium in the United States. Organon continues to market its branded vecuronium, and Abbott and Bedford supply generic vecuronium products.

Entry into the market for the manufacture and sale of vecuronium is unlikely because it is an older drug with established suppliers, and it is a difficult drug to manufacture. Although vecuronium continues to be an important drug, companies are unlikely to devote resources to entering this market because existing suppliers have become entrenched, making it difficult for new entrants to capture meaningful market share. In addition, vecuronium is a complicated drug to manufacture. Because of the unique manufacturing process involved in making vecuronium, entry would take longer than two years and cost hundreds of thousands of dollars.

The proposed acquisition is likely to result in anticompetitive harm in the U.S. market for the manufacture and sale of vecuronium. Absent the proposed acquisition, Wyeth would have re-entered this market. By acquiring Wyeth's vecuronium, Baxter would likely delay or forego the re-launch of Wyeth's vecuronium and eliminate any associated price competition.

The proposed Consent Agreement preserves future competition in the market for vecuronium by requiring Baxter to terminate all of its rights and interests in GensiaSicor's vecuronium product and divest all of its vecuronium assets to GensiaSicor no later than five days after the acquisition.

*Metoclopramide*

Metoclopramide is an antiemetic used for the prevention and treatment of nausea and vomiting for patients undergoing certain types of chemotherapy and for post-operative treatment. Metoclopramide is an older antiemetic that continues to be used because it is effective, has a known safety profile, and is considerably cheaper than newer antiemetics. Annual U.S. sales of metoclopramide total approximately $13 million.

The market for metoclopramide is highly concentrated. Wyeth developed the branded metoclopramide product, Reglan®. Baxter is the exclusive supplier of GensiaSicor's metoclopramide product. Wyeth and Baxter together represent over half of the sales of metoclopramide in the United States. Post-acquisition, the HHI would be 3,852 points, an increase of 936 points above the pre-Acquisition HHI. Only two other companies supply metoclopramide in the United States: Abbott and Faulding.

New entry into the market for the manufacture and sale of metoclopramide is difficult, expensive and unlikely to occur. Metoclopramide is an older drug with small sales relative to newer injectable anti-emetics. Therefore, firms do not consider the market for the manufacture and sale of metoclopramide to be an attractive entry opportunity. Several manufacturers have already exited the market and none are interested in re-entering. Even if firms that have exited were interested in re-launching their drugs, re-entry would likely take such firms an estimated two years or more.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for the manufacture and sale of metoclopramide by reducing the number of suppliers from four to three. The combined entity would account for over half of all sales of metoclopramide in the United States. The proposed acquisition is likely to lead to higher prices.

The proposed Consent Agreement preserves competition in the metoclopramide market by requiring Baxter to terminate all of its interests in GensiaSicor's metoclopramide and divest all of its metoclopramide assets to GensiaSicor no later than five days after the acquisition.

*New Injectable Iron Replacement Therapies*

NIIRTs are used to treat iron deficiency in patients undergoing hemodialysis. NIIRTs include both injectable iron gluconate and iron sucrose. Annual U.S. sales of NIIRTs total approximately $225 million.

The market for the manufacture and sale of NIIRTs is highly concentrated. Watson markets Ferrlecit®, the only injectable iron gluconate product available in the United States. American Regent markets Venofer®, the only injectable iron sucrose product in the United States. Watson recently entered into a co-promotional agreement with Baxter, pursuant to which Baxter promotes Ferrlecit®.

Entry into the market for the manufacture and sale of NIIRTs is very difficult and time consuming. Because

of FDA-imposed New Chemical Entity exclusivity periods, the earliest that any company could file for regulatory approval of a generic iron gluconate product is February 2004. Similar provisions protect iron sucrose, though its exclusivity period expires in November 2003. Entry into the market for the manufacture and sale of NIIRTs is further complicated by a lack of raw material suppliers. Even if a new entrant were to locate a raw material supplier, both iron gluconate and iron sucrose are difficult products that would take more than two years to develop. Wyeth is the best-positioned firm to successfully develop a NIIRT product.

The proposed acquisition is likely to have anticompetitive effects in the market for the manufacture and sale of NIIRTs in the United States because it would eliminate potential competition between Baxter and Wyeth. The proposed acquisition would remove Wyeth as the best-positioned independent entrant into this market and prevent all associated price competition.

The proposed Consent Agreement preserves future competition in the market for the manufacture and sale of NIIRTs by requiring Baxter to terminate its co-marketing agreement with Watson within weeks of the expiration of Ferrlicit®'s New Chemical Entity exclusivity. This termination provides an incentive for Baxter to continue developing and ultimately launch the iron gluconate product that it will acquire from Wyeth.

Pursuant to the terms of the Order, the Commission has appointed William E. Hall as a Monitor Trustee to ensure Baxter's and Wyeth's compliance with all of the requirements of the Order. Mr. Hall has over 30 years of experience in the pharmaceutical industry and is well-respected in the industry. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the Consent Agreement requires Baxter and Wyeth to file reports with the Commission periodically until the divestitures are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

**C. Landis Plummer,**

*Acting Secretary.*

[FR Doc. 03–309 Filed 1–7–03; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–03–33]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman , CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

*Proposed Project:* The Second Injury Control and Risk Survey (ICARIS 2) Phase 2—New—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC)—This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities including those identified as priorities in Healthy People 2010 objectives for the nation. Injuries are a major cause of premature death and disability with associated economic costs of over $150 billion dollars in lifetime costs for persons injured each year. Healthy People 2010 objectives and the recent report from the Institute of Medicine, Reducing the Burden of Injury, call for reducing this toll. In addition to national efforts, NCIPC funds injury control prevention programs at the state and local levels. These programs need data both to establish their prevention priorities and monitor their performance. The use of outcome data (*e.g.*, fatal injuries) for measuring program effectiveness is problematic because cause-specific events are relatively rare and because data on critical risk factors (*e.g.*, was a helmet worn in a bike crash?; was a smoke detector present at a fatal fire?) are often missing. Because these risk factors are early in the causal chain of injury, they are what injury control programs target to prevent injuries. Accordingly, monitoring the level of injury risk factors in a population can help programs set priorities and evaluate interventions.

The first Injury Control and Risk Factor Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (greater than or equal to 18 years old) in the United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes toward violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling.

ICARIS–2, a national telephone survey about injury, which began in the summer of 2000, has collected data on more than 8,700 of the targeted 10,200 respondents to date. The first phase of the survey was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium. The second phase of the survey is needed to expand knowledge in areas investigators could not fully explore, previously. By using data collected in ICARIS as a baseline, data collected in ICARIS–2 Phase-2 will be used along with data currently being collected (ICARIS–2 Phase-1) to measure changes and gauge the impact of injury prevention policies. The ICARIS–2 surveys may also serve as the only readily available source of data to measure several of the Healthy People 2010 injury prevention objectives. In order to more fully monitor injury risk factors and selected year Healthy People 2010 injury objectives, as well as evaluate the effectiveness of injury prevention programs, the second phase (ICARIS–2 Phase-2) of the current national telephone survey on injury risk is being implemented. The only cost to the respondents is the time involved to complete the survey.

| Respondents | Number of respondents | Number of responses/respondent | Average burden/response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Adult male and female (age +18 years) | 3,000 | 1 | 17/60 | 850 |
| Total | 3,000 | 1 | 17/60 | 850 |

Dated: January 2, 2003.

**Nancy E. Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 03–326 Filed 1–7–03; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2004 or Calendar Year 2004

**AGENCY:** Office of Self-Governance, Interior.

**ACTION:** Notice of application deadline.

**SUMMARY:** In this notice, the Office of Self-Governance (OSG) establishes a March 3, 2003, deadline for tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year 2004 or calendar year 2004.

**DATES:** Completed application packages must be received by the Director, Office of Self-Governance by March 3, 2003.

**ADDRESSES:** Application packages for inclusion in the applicant pool should be sent to the Director, Office of Self-Governance, U.S. Department of the Interior, Mail Stop 2548, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kenneth D. Reinfeld, U.S. Department of the Interior, Office of Self-Governance, Mail Stop 2548, 1849 C Street NW., Washington, DC 20240; Telephone 202–208–5734.

**SUPPLEMENTARY INFORMATION:** Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the Fiscal Year 1997 Omnibus Appropriations Bill (Pub. L. 104–208) the Director, Office of Self-Governance may select up to 50 additional participating tribes/consortia per year for the tribal self-governance program, and negotiate and enter into a written funding agreement with each participating tribe. The Act mandates that the Secretary submit copies of the funding agreements at least 90 days before the proposed effective date to the appropriate committees of the Congress and to each tribe that is served by the Bureau of Indian Affairs (BIA) agency that is serving the tribe that is a party to the funding agreement. Initial negotiations with a tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations, will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1. Agreements for a January 1 to December 31 funding year need to be signed and submitted by October 1.

#### Purpose of Notice

25 CFR parts 1000.10 to 1000.31 will be used to govern the application and selection process for tribes/consortia to begin their participation in the tribal self-governance program in fiscal year 2004 and calendar year 2004. Applicants should be guided by the requirements in these subparts in preparing their applications. Copies of these subparts may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2004 or calendar year 2004 must respond to this notice, except for those which are (1) currently involved in negotiations with the Department; (2) one of the 81 tribal entities with signed agreements; or (3) one of the tribal entities already included in the applicant pool as of the date of this notice.

Dated: December 19, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–342 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–W8–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Environmental Assessment of the Addition of Blue-Fronted Amazon Parrots (*Amazona aestiva*) From a Sustainable Use Management Plan in Argentina to the Approved List of Non-Captive-Bred Birds Under the Wild Bird Conservation Act of 1992

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of a draft Environmental Assessment.

**SUMMARY:** The public is invited to comment on the draft Environmental Assessment of the addition of blue-fronted amazon parrots (*Amazona aestiva*) from a sustainable use management plan in Argentina to the approved list of non-captive-bred birds under the Wild Bird Conservation Act of 1992 (WBCA). We have prepared a draft Environmental Assessment under regulations implementing the National Environmental Policy Act of 1969 (NEPA). Council on Environmental Quality regulations in 40 CFR 1501.3(b) state that an agency ''may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making.'' Future regulations implementing the WBCA may be subject to NEPA documentation requirements on a case-by-case basis.

**DATES:** Written data, comments, or requests for a copy of this draft Environmental Assessment must be received by February 7, 2003.

**ADDRESSES:** Written data, comments, or requests for a copy of this draft Environmental Assessment should be sent to the Chief, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Andrea Gaski, Chief, Branch of Operations, Division of Management Authority, at 703–358–2095.

**SUPPLEMENTARY INFORMATION:**

#### Background

The WBCA, which was signed into law on October 23, 1992, limits or prohibits imports of exotic bird species

to ensure that their wild populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by ensuring that all imports of such species into the United States are biologically sustainable and not detrimental to the survival of the species. A final rule published in the **Federal Register** on November 16, 1993 (58 FR 60524), implemented the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions.

Since the publication of the final rule of November 16, 1993, imports of all birds listed in the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as defined in the final rule are prohibited, except for (a) species included in an approved list; (b) specimens for which an import permit has been issued; (c) species from countries that have approved sustainable use management plans for those species; or (d) specimens from approved foreign captive-breeding facilities. We published a proposed rule in the **Federal Register** on March 17, 1994 (59 FR 12784), that would implement procedures for the establishment of an approved list of captive-bred species listed in the CITES Appendices that can be imported without a WBCA permit, criteria for including non-captive-bred (wild-caught) species in the approved list, and approval of foreign captive-breeding facilities.

A final rule published on January 24, 1996 (61 FR 2084), implemented procedures for the establishment of an approved list of non-captive-bred (wild-caught) species listed in the CITES Appendices that could be imported. The list of approved non-captive-bred species is contained in 50 CFR 15.33(b). For wild-caught CITES-listed birds to be on the approved list, we must determine that CITES is being effectively implemented for the species for each country of origin from which imports will be allowed, CITES-recommended measures are implemented, and there is a scientifically based management plan for the species that is adequately implemented and enforced. The scientifically based management plan must: (a) Provide for the conservation of the species and its habitat; (b) include incentives for conservation; (c) ensure that the use of the species is biologically sustainable and is well above the level at which the species might become threatened; (d) ensure that the species is maintained throughout its range at a level consistent with its role in the ecosystem; (e) address factors that include illegal trade, domestic trade, subsistence use, disease, and habitat loss; and (f) ensure that the methods of capture, transport, and maintenance of the species minimize the risk of injury or damage to health. For a species with a multinational distribution, we must also consider (a) whether populations of the species in other countries will be detrimentally affected by exports from the country requesting approval; (b) whether factors affecting conservation of the species are regulated throughout its range so that recruitment and/or breeding stocks will not be detrimentally affected by the proposed export; (c) whether the projected take and export will detrimentally affect breeding populations; and (d) whether the projected take and export will detrimentally affect existing enhancement activities, conservation programs, or enforcement efforts throughout the species' range. A species and country of export listed in 50 CFR 15.33(b) may be approved for three years, after which time the Service will have an opportunity to consider renewal of the approval.

On August 10, 2000, we published in the **Federal Register** (65 FR 49007) a notice of receipt of application for approval of a petition from the Management Authority of Argentina, Direccion de Fauna and Flora Silvestre, requesting that blue-fronted amazon parrots (*Amazona aestiva*) from an Argentine sustainable use management plan be added to the list of approved non-captive-bred species under the WBCA. We accepted comments on that petition until October 11, 2000.

Approval of Argentina's petition would result in the need to amend 50 CFR 15.33(b) by adding blue-fronted amazon parrots from Argentina to the list of approved non-captive-bred species. The amendment would allow the import into the United States of blue-fronted amazon parrots removed from the wild in Argentina under an approved sustainable use management plan, without a WBCA import permit. Along with this notice of availability, we will publish a proposed rule to allow the import into the United States of blue-fronted amazon parrots (*Amazona aestiva*) removed from the wild in Argentina under their approved sustainable use management plan.

Comments on the draft Environmental Assessment will be considered in our decision regarding whether to amend 50 CFR 15.33(b) by adding blue-fronted amazon parrots from Argentina to the list of approved non-captive-bred species. Written comments we have already received in response to the August 10, 2000, notice of receipt of application, have been retained and will be considered during this open comment period. Although we have used information already received in formulating the draft Environmental Assessment, we will address that information as well as any new comments received in our final Environmental Assessment, if necessary.

Dated: January 3, 2003.

**Peter O. Thomas,**

*Chief, Division of Management Authority.*

[FR Doc. 03–345 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Meeting of the Klamath Fishery Management Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall Chinook salmon harvest management options for the 2003 season, and to make recommendations to the Pacific Fishery Management Council and other agencies. The meeting is open to the public.

**DATES:** The Klamath Fishery Management Council will meet from 3 p.m. to 8 p.m. on Sunday, April 6, 2003.

**ADDRESSES:** The meeting will be held at the Red Lion Hotel at the Quay, 100 Columbia Street, Vancouver, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phil Detrich, Project Leader, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

**SUPPLEMENTARY INFORMATION:** At the April 6, 2003, meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between April 7, 2003, and April 11, 2003, at the Red Lion Hotel at the Quay, 100 Columbia Street, Vancouver,

Washington, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 2, 2003.

**John Engbring,**

*Acting Manager, California/Nevada Operations Office, Sacramento, CA, Notice of Meeting of the Klamath Fishery Management Council.*

[FR Doc. 03–321 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register** notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III gaming between the Confederated Tribes of the Colville Reservation and the State of Washington.

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 18, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–339 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved addendum to a tribal-State compact.

**SUMMARY:** Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Addendum to the Class III gaming compact between the Coeur d'Alene Tribe and the State of Idaho.

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–338 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of amendment to approved tribal-State Compact.

**SUMMARY:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment to the Class III gaming compact between the Kootenai Tribe of Idaho and the State of Idaho.

**EFFECTIVE DATE:** January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–340 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved addendum to a tribal-State compact.

**SUMMARY:** Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register,** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Addendum to the Class III gaming compact between the Nez Perce Tribe and the State of Idaho.

**DATES:** January 8, 2003

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 19, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–341 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–4N–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1023 (Preliminary)]**

### Certain Ceramic Station Post Insulators from Japan

**AGENCY:** International Trade Commission.

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The United States International Trade Commission (Commission) hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1023 (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 Japan of certain station

post insulators of ceramics, provided for in subheading 8546.20.00 of the Harmonized Tariff Schedule of the United States (currently reported under statistical reporting number 8546.20.0060), that are alleged to be sold in the United States at less than fair value. Unless the United States Department of Commerce (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 February 14, 2003. The Commission's views are due at Commerce within five business days thereafter, or by February 24, 2003.

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:** December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Fred Fischer (202–205–3179 or *ffischer@usitc.gov*), 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 December 31, 2002, by Lapp Insulator Company LLC, Le Roy, NY; Newell Porcelain Co., Inc., Newell, WV; Victor Insulators, Inc., Victor, NY; and the IUE Industrial Division of the Communications Workers of America, AFL–CIO, Washington, DC.

*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 January 21, 2002, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202–205–3179 or *ffischer@usitc.gov*) not later than January 14, 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 January 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 except to the extent provided by 201.8 of the Commission's rules, as amended by 67 FR 68063 (November 8, 2002).

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.

By order of the Commission.

Issued: January 2, 2003.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 03–303 Filed 1–7–03; 8:45 am]

BILLING CODE 7020–02–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. STN 50–454, STN 50–455, 50–373, 50–374, 50–254, and 50–265]**

## Exelon Generation Company, LLC; Byron Station, Units 1 and 2, LaSalle County Station, Units 1 and 2, Quad Cities Nuclear Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. NPF–37 and NPF–66, issued to Exelon Generation Company, LLC (the licensee), for operation of the Byron Station, Units 1 and 2, located in Ogle County, Illinois; for Facility Operating License Nos. NPF–11 and NPF–18, issued to the licensee, for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois; and for Facility Operating License Nos. DPR–29 and DPR–30, issued to the licensee, for operation of the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois. Therefore, as required by 10 CFR 51.21, the NRC has prepared this environmental assessment. For the reasons set forth in this environmental assessment, the NRC is making a finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would revise Appendix B, ''Environmental Protection Plan (Non-Radiological),'' of the licenses to remove a parenthetical reference to a superseded section of 10 CFR Part 51.

The proposed action is in accordance with the licensee's application dated September 27, 2002.

*The Need for the Proposed Action*

The proposed change is editorial in nature. An amendment is required because the current parenthetical reference to 10 CFR 51.5(b)(2) in Appendix B is no longer applicable, since this CFR reference was superseded in 1984 by a complete revision of 10 CFR Part 51 (49 FR 9381). The subject matter of the original referenced portion of the regulations was not carried over into the reformatted version during the revision.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that there are no significant adverse environmental impacts associated with the proposed action. The proposed change is editorial in nature.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

The action does not involve the use of any resource different from those previously considered in the Final Environmental Statements for the Byron Station, Units 1 and 2, dated April 1982; for the LaSalle County Station, Units 1 and 2, dated November 1978; and for the Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

*Agencies and Persons Consulted*

On November 13, 2002, the staff consulted with the Illinois State official, Mr. F. Niziolek of the Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 27, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of January 2003.

For the Nuclear Regulatory Commission.

**Carl F. Lyon,**

*Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 03–319 Filed 1–7–03; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, January 23, 2003
Thursday, February 6, 2003
Thursday, February 20, 2003
Thursday, March 6, 2003
Thursday, March 20, 2003

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to

be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5538, 1900 E Street, NW, Washington, DC 20415 (202) 606–1500.

Dated: December 30, 2002.

**Mary M. Rose,**

*Chairperson, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 03–298 Filed 1–7–03; 8:45 am]

**BILLING CODE 6325–49–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–25880; 812–12676]**

## Neuberger Berman Equity Funds, et al.; Notice of Application

January 2, 2003.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 thereunder to permit certain joint transactions.

*Summary of Application:* Applicants request an order to permit (a) Certain registered investment companies to pay an affiliated lending agent a fee based on a share of the revenue derived from securities lending activities; and (b) the registered investment companies to lend portfolio securities to affiliated broker-dealers. The requested order would supersede certain prior orders. [1]

*Applicants:* Neuberger Berman Equity Funds, Neuberger Berman Income Funds, Neuberger Berman Advisers Management Trust, Neuberger Berman Intermediate Municipal Fund Inc., Neuberger Berman California Intermediate Municipal Fund Inc., Neuberger Berman New York Intermediate Municipal Fund Inc., Neuberger Berman Real Estate Income Fund Inc. (the ''Funds''), Neuberger Berman, LLC (''Neuberger Berman''), and Neuberger Berman Management Inc. (''NBMI'').

*Filing Dates:* The application was filed on October 26, 2001 and amended on December 23, 2002.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 27, 2003, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants: c/o Ellen Metzger, Esq., Neuberger Berman, LLC, 605 3rd Avenue, 21st Floor, New York, NY 10158–3698.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. Each of the Funds is either an open-end or closed-end management investment company registered under the Act. Several of the Funds are comprised of multiple series (the Funds and any existing or future series thereof, collectively, the ''Lending Funds''). NBMI is the investment manager and administrator to the Funds and their series and the principal underwriter of those Funds that are open-end management investment companies. Neuberger Berman serves as the sub-adviser to the Funds. Pursuant to the sub-advisory agreement with NBMI, Neuberger Berman is compensated for providing investment research; however, all investment decisions for the Funds are made by NBMI. Both NBMI and Neuberger Berman are registered as investment advisers under the Investment Advisers Act of 1940 and broker-dealers under the Securities Exchange Act of 1934. NBMI and Neuberger Berman are wholly owned subsidiaries of Neuberger Berman Inc., a publicly owned holding company.

2. Applicants request that any relief granted pursuant to the application also apply to any other registered investment company or series thereof for which NBMI or any entity controlling, controlled by or under common control with NBMI serves as investment adviser. All existing entities that currently intend to rely on the order have been named as applicants. Any other existing or future entity that wishes to rely on the order will do so only in accordance with the terms and conditions of the application.

3. The Lending Funds propose to enter into an agency securities lending program (the ''Securities Lending Program''). The agent for the Securities Lending Program will be an operating unit of Neuberger Berman (the ''NB Securities Lending Group''). [2] The NB Securities Lending Group's activities as lending agent for the Lending Funds will be conducted under the supervision of investment management personnel of NBMI. Subject to the parameters set forth in procedures approved by the board of trustees or directors (''Board'') of each Lending Fund, NBMI will pre-approve eligible borrowers. In addition, NBMI will be responsible for determining what portion, if any, of assets of the Lending Funds will be allocated to securities lending activities, subject to each Lending Fund's fundamental or operating policies. NBMI will be responsible for investing all cash collateral received in respect of the securities loans.

4. As securities lending agent for the Lending Funds, the NB Securities Lending Group will be responsible for, among other things, selecting borrowers from the pre-approved list, entering into loans of pre-approved securities with pre-approved borrowers on pre-approved terms, and performing administrative or ministerial functions in connection with each Lending Fund's securities lending program. The NB Securities Lending Group will deliver loaned securities received from the Lending Funds to borrowers; arrange for the return of loaned securities to the Lending Funds at the termination of the loans; monitor daily the value of the loaned securities and collateral; request that borrowers add to the collateral when required by the loan agreement; and provide recordkeeping and accounting services necessary for the

[1] Energy Fund Incorporated, Investment Company Act Release Nos. 11175 (May 19, 1980) (notice) and 11249 (July 3, 1980) (order); Energy Fund Inc., Investment Company Act Release Nos. 14452 (April 4, 1985) (notice) and 14498 (May 2, 1985) (order).

[2] In addition, the applicants may utilize the employees of entities controlling, controlled by or under common control with Neuberger Berman in performing the securities lending activities to be performed by NB Securities Lending Group.

operation of the Securities Lending Program.[3]

5. Securities loans generally are collateralized by U.S. Government securities, cash or letters of credit. When the collateral is cash, the lender invests the cash collateral during the loan period and, after paying the borrower an agreed upon interest rate, retains the remainder thereof, which is usually shared with the securities lending agent. If the collateral is a U.S. Government security or letter of credit, the borrower pays a lending fee, which is usually shared between the lender and the securities lending agent.

6. The applicants request relief to permit: (a) The Lending Funds to pay Neuberger Berman, or an entity controlling, controlled by, or under common control with Neuberger Berman, a fee based on a share of the revenue derived from securities lending activities; and (b) the Lending Funds to lend portfolio securities to Neuberger Berman and any broker-dealer, other than NBMI, that controls, is controlled by, or is under common control with, Neuberger Berman (collectively, the ''Affiliated Broker-Dealers'').

**Applicants' Legal Analysis**

*A. Payment of Lending Agent Fees*

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan, in which the investment company participates unless the Commission has approved the transaction. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include the investment company's adviser. As the Lending Funds' sub-adviser, Neuberger Berman may be deemed to be an affiliated person of the Lending Funds. Because a fee arrangement between a lending agent and a Lending Fund, under which compensation is based on a percentage of the revenue generated by securities lending transactions, may be a joint enterprise or other joint arrangement or profit sharing plan within the meaning of section 17(d) and rule 17d–1, applicants request an order to permit each Lending Fund to pay, and Neuberger Berman to accept, such fees in connection with services provided by Neuberger Berman to a Lending Fund.

2. Applicants propose that each Lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with the NB Securities Lending Group will meet the standards of rule 17d–1:

a. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds, and implementation of the proposed fee arrangement, a majority of the Board of each Lending Fund (including a majority of the trustees or directors of each Lending Fund who are not ''interested persons'' as defined in section 2(a)(19) of the Act (the ''Independent Trustees/Directors'')) will determine that (i) The contract with the NB Securities Lending Group is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by the NB Securities Lending Group are appropriate for the Lending Fund; (iii) the nature and quality of the services to be provided by the NB Securities Lending Group are at least equal to those provided by others offering the same or similar services; and (iv) the fees for the NB Securities Lending Group's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

b. In connection with the approval of the NB Securities Lending Group as lending agent for the Lending Funds and the initial implementation of the proposed fee arrangement, the Board of each Lending Fund will review competing quotes with respect to lending agency fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Lending Fund's contract with the NB Securities Lending Group for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

d. The Board, including a majority of the Independent Trustees/Directors, will (i) determine at each regular quarterly meeting on the basis of reports submitted by the NB Securities Lending Group that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review not less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions described in the application and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Securities Lending Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

*B. Lending to Affiliated Broker-Dealers*

1. Section 17(a)(3) of the Act makes it unlawful for any affiliated person of or principal underwriter for a registered investment company, or an affiliated person of such a person (''second-tier affiliate''), acting as principal, to borrow money or other property from the registered investment company. Applicants state that because Neuberger Berman is sub-adviser to the Lending Funds, and the other Affiliated Broker-Dealers are under common control with Neuberger Berman and NBMI, an Affiliated Broker-Dealer may be considered an affiliated person, or a second-tier affiliate, of a Lending Fund. Accordingly, section 17(a)(3) would prohibit the Affiliated Broker-Dealers from borrowing securities from the Lending Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and their affiliates unless the Commission has approved the transaction. Applicants request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3), and under section 17(d) and rule 17d–1 to permit the Lending Funds to lend portfolio securities to Affiliated Broker-Dealers.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Lending Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[4] In this regard, applicants state

[3] The personnel of the NB Securities Lending Group who will provide day-to-day lending agency services to the Lending Funds do not and will not provide investment advisory services to the Lending Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of the Lending Funds.

[4] A ''spread'' is the compensation earned by a Lending Fund from a securities loan, which compensation is in the form either of a lending fee payable by the borrower to the Lending Fund (when non-cash collateral is posted) or of the excess retained by the Lending Fund over a rebate rate

that at least 50% of the loans made by the Lending Funds, on an aggregate basis, will be made to unaffiliated borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board, including a majority of the Independent Trustees/Directors, or by a committee of the Board made up of Independent Trustees/Directors (the ''Lending Committee''), and all transactions with Affiliated Broker-Dealers will be reviewed periodically by an officer of the Lending Fund. The Board, including a majority of the Independent Trustees/Directors, also will review quarterly reports on all lending activity.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Securities Lending Program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. Approval of the Board, including a majority of the Independent Trustees/Directors, shall be required for the initial and subsequent approvals of the NB Securities Lending Group as lending agent for a Lending Fund, for the institution of all procedures relating to the Securities Lending Program, and for any periodic review of loan transactions for which the NB Securities Lending Group acted as lending agent.

3. Each Lending Fund will (i) Maintain and preserve permanently in an easily accessible place a written copy of the procedures (with any modifications) that are followed in connection with lending securities and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or rebate remitted), the identity of the borrower, the terms of the loan, and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable, and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

4. The Lending Funds, on an aggregate basis, will make at least 50% of their portfolio securities loans to unaffiliated borrowers.

5. a. All loans will be made with spreads no lower than those provided for in a schedule of spreads, which will be established and may be modified from time to time by the Board and by a majority of the Independent Trustees/Directors or by the Lending Committee (''Schedule of Spreads''). The Schedule of Spreads and any modifications thereto will be ratified by the full Board of each Lending Fund and by a majority of the Independent Trustees/Directors.

b. The Schedule of Spreads will provide for rates of compensation to the Lending Funds that are reasonable and fair, and that are determined in light of those considerations set forth in the application.

c. The Schedule of Spreads will be uniformly applied to all borrowers of the Lending Funds' portfolio securities, and will specify the lowest allowable spread with respect to a loan of securities to any borrower.

d. If a security is loaned to an unaffiliated borrower with a spread higher than the minimum provided for in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

e. Each Lending Fund's Securities Lending Program will be monitored on a daily basis by an officer of the Lending Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Lending Fund's Board, including a majority of the Independent Trustees/Directors, or the Lending Committee.

6. A Lending Fund will not make any loan to an Affiliated Broker-Dealer unless the income to the Lending Fund attributable to such loan fully covers the transaction costs, if any, incurred in making the loan.

7. The Boards of the Lending Funds, including a majority of the Independent Trustees/Directors, (a) will determine no less frequently than quarterly that all transactions with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of any order that may be granted and that such transactions were conducted on terms that were reasonable and fair, and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

8. The total value of securities loaned to any one borrower on the approved list will be in accordance with a schedule to be approved by the Board of each Lending Fund, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Lending Fund, computed at market value.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03–300 Filed 1–7–03; 8:45 am]

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payable by the Lending Fund to the borrower (when cash collateral is posted and then invested by the Lending Fund).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3474]**

### State of Florida

Sarasota County and the contiguous counties of Charlotte, DeSoto, and Manatee in the State of Florida constitutes a disaster area as a result of a fire that occurred on October 16, 2002, at the Public Storage Inc. storage facility. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 19, 2003, and for economic injury may be filed until the close of business on September 22, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 6.625 |
| Homeowners without credit available elsewhere | 3.312 |
| Businesses with credit available elsewhere | 7.000 |
| Businesses and non-profit organizations without credit available elsewhere | 3.500 |
| Others (including non-profit organizations) with credit available elsewhere | 6.375 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.500 |

The number assigned to this disaster for physical damage is 347405 and for economic injury is 9T6800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 20, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–307 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3478]**

### State of Mississippi

Newton County and the contiguous counties of Clarke, Jasper, Kemper, Lauderdale, Leake, Neshoba, Scott, and Smith in the State of Mississippi constitute a disaster area due to damages caused by severe thunderstorms and tornadoes that occurred on December 19, 2002. Applications for loans for physical damage may be filed until the close of business on February 24, 2003 and for economic injury until the close of business on September 24, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The Interest Rates are:

| | *Percent* |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 5.87 |
| Homeowners Without Credit Available Elsewhere | 2.937 |
| Businesses With Credit Available Elsewhere | 6.648 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 3.324 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.500 |
| For Economic Injury: Businesses and a Small Agricultural Cooperatives Without Credit Available Elsewhere | 3.324 |

The number assigned to this disaster for physical damage is 347812 and for economic injury, the number is 9T7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 24, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–305 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3479]**

### Commonwealth of the Northern Mariana Islands

As a result of the President's major disaster declaration for Public Assistance on December 11, 2002, and Amendment 1 adding Individual Assistance on December 24, 2002, I find that the Island of Rota within the Commonwealth of the Northern Mariana Islands constitutes a disaster area due to damages caused by Super Typhoon Pongsona occurring on December 8, 2002, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 24, 2003 and for economic injury until the close of business on September 24, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853–4795.

The Interest Rates are:

| *For Physical Damage:* | *Percent* |
|---|---|
| Homeowners With Credit Available Elsewhere | 5.875 |
| Homeowners Without Credit Available Elsewhere | 2.937 |
| Businesses With Credit Available Elsewhere | 6.648 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 3.324 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 5.500 |
| *For Economic Injury:* Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 3.324 |

The number assigned to this disaster for physical damage is 347908 and for economic injury the number is 9T7300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 26, 2002.

**Allan I. Hoberman,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 03–304 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3476]**

### State of Texas

Jefferson County and the contiguous counties of Chambers, Hardin, Liberty, and Orange in the State of Texas, and Cameron Parish in the State of Louisiana constitute a disaster area due to damages caused by flooding that occurred on December 3, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on February 24, 2003, and for economic injury until the close of business on September 24, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 5.875 |
| Homeowners without credit available elsewhere | 2.937 |
| Businesses with credit available elsewhere | 6.648 |
| Businesses and non-profit organizations without credit available elsewhere | 3.324 |
| Others (including non-profit organizations) with credit available elsewhere | 5.500 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 3.324 |

The numbers assigned to this disaster for physical damage are 347606 for Texas and 347706 for Louisiana. For economic injury, the numbers are 9T7000 for Texas and 9T7100 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 24, 2002.

**Hector V. Barreto,**

*Administrator.*

[FR Doc. 03–306 Filed 1–7–03; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG–2002–14069]**

### Maritime Security

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meetings; request for comments—correction.

**SUMMARY:** On December 30, 2002, the Coast Guard published a notice of meetings and request for comments in the **Federal Register** concerning requirements for security assessments, plans, and specific security measures for ports, vessels, and facilities. This document contains corrections to that notice.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice or

the public meetings, write or call Mr. Martin Jackson of the Office of Standards Evaluation and Development (G–MSR), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, *mjackson@comdt.uscg.mil*, or call at 202–267–1140.

**Need for Correction**

As published, the Coast Guard's December 30, 2002 Maritime Security notice of meetings and request for comments (67 FR 79741–79806) contains typographical errors and omissions that may prove to be misleading and therefore need to be corrected.

**Correction**

In notice FR Doc. 02–32845, published December 30, 2002 (67 FR 79741), make the following corrections:

1. On page 79743, in the third column, starting on line 57, immediately after the words ''Navigation and Vessel Inspection Circular (NVIC) 3–96,'' correct ''Change 2'' to read ''Change 1.''
2. On page 79744, in the first column, on line 5, correct ''NVIC 3–96'' to read ''NVIC 3–96, Change 1''.
3. On page 79745, in the third column, starting on line 7, correct ''$1.4 billion'' to read ''$1.3 billion''.
4. On page 79782, in the second column, in line 17, correct ''$1.4 billion'' to read ''$1.3 billion''.
5. On page 79782, in the second column, in line 32, correct ''141,000 hours'' to read ''140,000 hours''.
6. On page 79782, in the second column, in line 45, correct ''464,000 hours'' to read ''465,000 hours''.
7. On page 79790, in the heading for table 24, correct ''>500'' to read ''≤500''.

Dated: January 3, 2003.

**L.L. Hereth,**

*RADM U.S. Coast Guard, Director, Port Security.*

[FR Doc. 03–344 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[Docket No. NHTSA–2002–13986]**

## Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

**SUMMARY:** This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards.

**DATES:** These decisions are effective as of the date of their publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Marilynne Jacobs, Office of Vehicle Safety Compliance, NHTSA (202–366–2832).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

**Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

**Final Decision**

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 2, 2003.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

**Annex A**

**Nonconforming Motor Vehicles Decided to Be Eligible for Importation**

*1. Docket No. NHTSA–2002–13384*

*Nonconforming Vehicle:* 2001 and 2002 Ducati 996R motorcycles.

*Substantially similar U.S.-certified vehicle:* 2001 and 2002 Ducati 996R motorcycles.

*Notice of Petition Published at:* 67 FR 62520 (October 7, 2002).

*Vehicle Eligibility Number:* VSP–398.

*2. Docket No. NHTSA–2002–12730*

*Nonconforming Vehicles:* 2002 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base multipurpose passenger vehicles.

*Substantially similar U.S.-certified vehicles:* 2002 Mercedes Benz Gelaendewagen 5-Door Long Wheel Base multipurpose passenger vehicles.

*Notice of Petition Published at:* 67 FR 55307 (August 28, 2002).

*Vehicle Eligibility Number:* VSP–392.

*3. Docket No. NHTSA–2002–12731*

*Nonconforming Vehicle:* Left-Hand Drive Japanese Market 1997 Jeep Grand Cherokee multipurpose passenger vehicles.

*Substantially similar U.S.-certified vehicle:* 1997 Jeep Grand Cherokee multipurpose passenger vehicles.

*Notice of Petition Published at:* 67 FR 48701 (July 25, 2002).
*Vehicle Eligibility Number:* VSP–389.

*4. Docket No. NHTSA–2002–12732*

*Nonconforming Vehicles:* 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.
*Substantially similar U.S.-certified vehicles:* 1997–2001 and 2002 Porsche Boxster passenger cars manufactured before September 1, 2002.
*Notice of Petition Published at:* 67 FR 48700 (July 25, 2002).
*Vehicle Eligibility Number:* VSP–390.

*5. Docket No. NHTSA–2002–13333*

*Nonconforming Vehicle:* 1997 BMW 850 Series passenger cars.
*Substantially similar U.S.-certified vehicle:* 1997 BMW 850 Series passenger cars.
*Notice of Petition Published at:* 67 FR 59593 (September 23, 2002).
*Vehicle Eligibility Number:* VSP–396.

*6. Docket No. NHTSA–2002–13382*

*Nonconforming Vehicles:* 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.
*Substantially similar U.S.-certified vehicles:* 1999 and 2000 Bimota SB8 and 2000 Bimota DB4 motorcycles.
*Notice of Petition Published at:* 67 FR 62521 (October 7, 2002).
*Vehicle Eligibility Number:* VSP–397.

[FR Doc. 03–297 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 03–14196]**

### Grant of Application of Suzuki Motor Corp. for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

This notice grants the application by Suzuki Motor Corporation of Japan (submitted by American Suzuki Motor Corporation) for a temporary exemption of two years for its AN 400 scooter, from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The applicant asserts that Acompliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. Sec. 30113(b)(3)(iv).

The safety issues raised by this petition are identical to those raised in previous petitions by Suzuki and other manufacturers. Further, given the opportunity for public comment on these issues in the years 1998–2001 (which resulted only in comments in support of the petitions), we have concluded that a further opportunity to comment on the same issues is not likely to result in any substantive submissions, and that we may proceed to a decision on this petition. See, e.g., Aprilia and Honda (66 FR 59519) and Aprilia (65 FR 1225).

#### The Reason Why the Applicant Needs a Temporary Exemption

The problem is one that is common to the motorcycles covered by the applications. If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control, although the left handlebar is permissible for motor-driven cycles (Item 11, Table 1). Motor-driven cycles are motorcycles with motors that produce 5 brake horsepower or less. Suzuki petitioned to use the left handlebar as the control for the rear brakes of certain of their motorcycles whose engines produce more than 5 brake horsepower. The frame of each of these motorcycles has not been designed to mount a right foot operated brake pedal (i.e, these scooter-type vehicles which provide a platform for the feet and operate only through hand controls). Applying considerable stress to this sensitive pressure point of the frame could cause failure due to fatigue unless proper design and testing procedures are performed.

Absent an exemption, the manufacturer will be unable to sell the AN 400 because the vehicle would not fully comply with Standard No. 123.

#### Arguments Why the Overall Level of Safety of the Vehicle to be Exempted Equals or Exceeds That of Non-Exempted Vehicles

As required by statute, the petitioner has argued that the overall level of safety of the AN 400 equals or exceeds that of a non-exempted motor vehicle, for the following reasons. The vehicle is equipped with an automatic transmission. As there is no foot-operated gear change, the operation and use of a motorcycle with an automatic transmission is similar to the operation and use of a bicycle, and the vehicle can be operated without requiring special training or practice.

Suzuki informed us that its AN 400 ''can easily meet the braking performance requirements in FMVSS 122,'' and enclosed a test report dated August 26 and 27, 2002, in support.

#### Arguments Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Suzuki argued that the level of safety of the AN 400 is at least equal to that of vehicles certified to meet Standard No. 123. In its opinion, scooters like the AN 400 ''are of interest to the public [as] evidenced by . . . the favorable public comment on [similar] exemption requests and the number of scooters sold under the granted exemptions.''

#### NHTSA's Decision on the Application

It is evident that, unless Standard No. 123 is amended to permit or require the left handlebar brake control on motorscooters with more than 5 hp, the petitioner will be unable to sell its AN 400 if it does not receive a temporary exemption from the requirement that the right foot pedal operate the brake control. It is also evident from the previous grants of similar petitions by Suzuki, Aprilia, Honda, and others, that we have repeatedly found that the motorcycles exempted from the brake control location requirement of Standard No. 123 have an overall level of safety that equals or exceeds that of nonexempted motorcycles.

Suzuki's argument that an exemption would be in the public interest because of the comments in support of previous exemption requests for similar scooter-type vehicles is a valid one, absent any data indicating that the overall level of safety is not at least equal to that of complying vehicles.

In consideration of the foregoing, we hereby find that the petitioner has met their burden of persuasion that to require compliance with Standard No. 123 would prevent it from selling a motor vehicle with an overall level of safety at least equal to the overall safety level of nonexempt vehicles. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Therefore, Suzuki Motor Corporation is hereby granted NHTSA Temporary Exemption No. EX02–3 from the requirements of item 11, column 2, table 1 of 49 CFR 571.123 Standard No. 123 *Motorcycle Controls and Displays*, that the rear brakes be operable through the right foot control. This exemption applies only to the Suzuki AN 400, and will expire on December 1, 2004.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50).

Issued on January 2, 2003.

**Jeffrey W. Runge,**

*Administrator.*

[FR Doc. 03–356 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 168X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Hardin County, IA (Eldora Junction Line in Eldora, IA)

On December 19, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 to abandon and discontinue service over a segment of line, known as the Eldora Junction Line, extending from milepost 5.10 to milepost 6.22, a distance of 1.12 miles, in Hardin County, IA. The line traverses U.S. Postal Service Zip Code 50627 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by April 8, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 28, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 168X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before January 28, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *''http://www.stb.dot.gov.''*

Decided: December 31, 2002.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 03–334 Filed 1–7–03; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Wednesday,
January 8, 2003

# Part II

# Department of Transportation

## Federal Highway Administration

**23 CFR Parts 970, 971, 972, and 973**
**Federal Lands Highway Program; Proposed Rules**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 970**

**[FHWA Docket No. FHWA–99–4967]**

**RIN 2125–AE52**

## Federal Lands Highway Program; Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities under National Park Service (NPS) jurisdiction and funded under the FLHP.

**DATES:** Comments must be received on or before March 10, 2003.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

### Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways (PRP), Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48(b)(29)). This rulemaking action addresses the management systems for the NPS and the Park Roads and Parkways program.

The requirements in the TEA–21 are not intended in any way to interfere with any portion of the NPS Organic Act, 16 U.S.C. 1 *et seq.*, which established the NPS. The four management systems serve to guide the NPS in making resource allocation decisions for the PRP transportation improvement programs (PRPTIPs) and help the NPS implement the purpose of the Organic Act, which is to promote and regulate the use of the lands managed by the NPS.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the NPS and the Park Roads and Parkways program (64 FR 47749). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to separate the NPRM's for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Transportation Departments. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for roads under the NPS jurisdiction and funded under the FLHP. Separate NPRM's on management systems have also been developed for the Fish and Wildlife Service (FWS) and the Refuge Roads program, the Forest Service (FS) and the Forest Highway program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRM's are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

**Summary of Comments Received on the ANPRM Pertaining to the NPS and the Park Roads and Parkways Program**

The following discussion summarizes the comments received on the ANPRM and the FHWA's responses to these comments. The discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

*Rule Development*

*Comments:* The majority of comments supported the FHWA's proposal to develop ''separate rules'' pertaining to the NPS and the Park Roads and Parkways program, the FWS and the Refuge Roads program, the BIA and the Indian Reservations Roads program, and the FS and the Forest Highway program. The commenters in favor of this proposal point out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State DOTs requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

*Response:* Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the NPS, the FWS, the FS, and the BIA. The variance among the rules allows for

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence website at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship.*

the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

*Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMA's and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMA's have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

*Comments:* The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

*Response:* While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPO's), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) applies to the Federal land management agencies, not to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify ''The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.'' Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

**Approach to Structure of Proposed Regulation**

In the development of this proposed rule, the FHWA attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

**Section-by-Section Analysis**

*Subpart A*

*Section 970.100 Purpose*

This section states that subpart A provides definitions for terms used in this rule.

*Section 970.102 Applicability*

This section states that the definitions in subpart A are applicable to this rule.

*Section 970.104 Definitions*

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase ''Federal lands'' or ''Indian lands,'' as applicable, would be added to the definitions of ''bridge management system (BMS),'' ''congestion management system (CMS),'' ''pavement management system (PMS),'' and ''safety management system (SMS)'' to indicate the distinction between the Federal or Indian lands and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

*Subpart B*

*Section 970.200 Purpose*

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21. The section further emphasizes that the management systems would serve as a guide for the development of the NPS transportation plan and the PRPTIP, which are the products of the NPS transportation planning process.

*Section 970.202 Applicability*

This section defines the applicability of the management systems.

*Section 970.204 Management Systems Requirements*

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 970.208 through 970.214.

Paragraph (a) states that the NPS shall develop, establish, and implement the management systems. This paragraph also requires the NPS to develop the management systems in a way that assists in meeting the goals and measures established through the Government Performance and Results Act (Public Law 103–62, 107 Stat.285 (1993)). Paragraphs (a) and (e) provide flexibility in the development of the management systems. Paragraph (b) requires the FHWA and the NPS to develop implementation plans for the management systems.

To ensure the management systems are developed, implemented, and operated systematically, paragraph (c) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (d) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (f) requires a periodic evaluation of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (g) ensures that transportation investment decisions based on management system results would be used at different levels of the NPS.

*Section 970.206 Funds for Establishment, Development, and Implementation of the Systems*

This section provides that the funds available for the Park Roads and Parkways program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

*Section 970.208 Federal Lands Pavement Management System (PMS)*

Paragraph (a) defines the applicability of the PMS. Paragraph (b) provides flexibility for the development of the PMS.

This section further sets forth components that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting requirements.

*Section 970.210 Federal Lands Bridge Management System (BMS)*

Paragraph (a) defines the applicability of the BMS. The section sets forth the components that must be included in a BMS. They consist of data collection and maintenance, network level analysis, investment analysis, and reporting requirements.

*Section 970.212 Federal Lands Safety Management System (SMS)*

Paragraph (a) defines the applicability of the SMS. Because of the strong emphasis the TEA–21 has on safety, paragraph (b) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation.

Section (c) sets forth the components that must be included in a SMS. They include data collection, maintenance and reporting; identification and correction of potential safety problems; and communications.

To provide flexibility, paragraph (d) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads, and the number and types of transit and other vehicles operated by the NPS. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

*Section 970.214 Federal Lands Congestion Management System (CMS)*

This section defines congestion and requires the NPS to develop criteria for determining when a CMS is to be implemented for a specific transportation system, and have coverage for all systems meeting the criteria. In addition, it requires the NPS to consider the results of the CMS in selecting strategies to address congestion and, further, that strategies be considered that reduce private automobile travel and improve existing transportation system efficiency. Paragraphs (c)(1), (2), and (3) address CMS coverage for portions of the NPS transportation systems inside and outside the boundaries of transportation management areas (TMAs).

Paragraph (c)(4) further sets forth components to be included in a CMS. They include the following: identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

**Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the National Parks. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed rule will not adversely affect any sector of the economy in a material way. Though the proposed action here will impact the NPS, it will not likely interfere with any action taken or planned by the NPS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995; 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for roads under the NPS jurisdiction. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded

Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

**Executive Order 13132 (Federalism)**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the National Park Service.

The FHWA estimates that a total of 4,100 burden hours per year would be imposed on non-Federal entities to provide the required information for the NPS management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations, Tribal governments, regional transportation planning agencies, and county and local governments. The National Park Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide NPS management system information, the effort has been benchmarked to the number of miles of NPS owned roads or the number of NPS owned bridges within the agency's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For NPS implementation of the PMS, BMS, and SMS, the annual burden estimate is 1,700 hours. Implementation of the BMS will result in 500 annual hours of burden, with the PMS and the SMS each requiring 600 hours per year. The level of burden on non-Federal entities is modest since the NPS will incorporate existing data into the management systems, where feasible.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the NPS to coordinate its management system with the MPO's, for that portion of its transportation system that is within an MPO area. For estimating purposes, approximately 60 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 60 MPOs, resulting in a total burden of 2,400 hours per year attributable to the CMS.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**National Environmental Policy Act**

The FHWA analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

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

**Executive Order 13211 (Energy Effects)**

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because, although it is a significant regulatory action under Executive Order 12866, the proposed rule is not likely to have a significant adverse effect on the supply, distribution or use of energy.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 970**

Bridges, Grant programs—transportation, Highway safety, Highways and roads, National parks, Public lands, Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

**Mary E. Peters,**

*Federal Highway Administrator.*

1. Add a new subchapter L, consisting of part 970 to read as follows:

## SUBCHAPTER L—FEDERAL LANDS HIGHWAYS

## PART 970—NATIONAL PARK SERVICE MANAGEMENT SYSTEMS

### Subpart A—Definitions

Sec.
970.100 Purpose.
970.102 Applicability.
970.104 Definitions.

### Subpart B—National Park Service Management Systems

970.200 Purpose.
970.202 Applicability.
970.204 Management systems requirements.
970.206 Funds for establishment, development and implementation of the systems.
970.208 Federal lands Pavement Management System (PMS).
970.210 Federal lands Bridge Management System (BMS).
970.212 Federal lands Safety Management System (SMS).
970.214 Federal lands Congestion Management System (CMS).

**Authority:** 23 U.S.C. 204 and 315; 42 U.S.C. 7410 *et seq.;* 49 CFR 1.48.

## Subpart A—Definitions

### § 970.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

### § 970.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

### § 970.104 Definitions.

*Alternative transportation systems* means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

*Elements* means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

*Federal lands bridge management system (BMS)* means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for collecting and analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently and effectively considered.

*Federal lands congestion management system (CMS)* means a systematic process used by the NPS, the FWS and the FS for managing congestion that provides information on transportation system performance, and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

*Federal Lands Highway program (FLHP)* means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

*Federal lands pavement management system (PMS)* means a systematic process used by the NPS, the FWS and the FS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies, and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

*Federal lands safety management system (SMS)* means a systematic process used by the NPS, the FWS and the FS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented, and evaluated, as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

*Highway safety* means the reduction of traffic accidents on public roads, including reductions in deaths, injuries, and property damage.

*Intelligent transportation system (ITS)* means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

*Life-cycle cost analysis* means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, including maintenance and operation expenditures. Comprehensive life-cycle cost analysis includes all economic variables essential to the evaluation, including user costs such as delay, safety costs associated with maintenance and rehabilitation projects, agency capital costs, and life-cycle maintenance costs.

*Metropolitan planning area* means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

*Metropolitan planning organization (MPO)* means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

*National Park Service transportation plan* means an official NPS multimodal transportation plan that is developed through the NPS transportation planning process pursuant to 23 U.S.C. 204.

*Operations* means those activities associated with managing, controlling, and regulating highway and pedestrian traffic.

*Park road* means a public road, including a bridge built primarily for pedestrian use, but with capacity for use by emergency vehicles, that is located within, or provides access to, an area in the National Park System with title and maintenance responsibilities vested in the United States.

*Park Road Program transportation improvement program (PRPTIP)* means a staged, multi-year, multimodal program of NPS transportation projects in a State area. The PRPTIP is consistent with the NPS transportation plan and developed through the NPS planning processes pursuant to 23 U.S.C. 204.

*Park Roads and Parkways program* means a program that is authorized in 23 U.S.C. 204 with funds allocated to the NPS by the FHWA for each fiscal year as provided in 23 U.S.C. 202(c).

*Parkway* means a parkway authorized by Act of Congress on lands to which title is vested in the United States.

*Secretary* means the Secretary of Transportation.

*Serviceability* means the degree to which a bridge provides satisfactory service from the point of view of its users.

*State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

*Transportation facilities* means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

*Transportation Management Area (TMA)* means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

## Subpart B—National Park Service Management Systems

### § 970.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204, which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. These management systems serve to guide the National Park Service (NPS) in developing transportation plans and making resource allocation decisions for the PRPTIP.

### § 970.202 Applicability.

The provisions in this subpart are applicable to the NPS, which is responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

### § 970.204 Management systems requirements.

(a) The NPS shall develop, establish and implement the management systems as described in this subpart. The NPS may tailor all management systems to meet the NPS goals, policies, and needs. The management systems also shall be developed so they assist in meeting the goals and measures that were jointly developed by the FHWA and the NPS in response to the Government Performance and Results Act of 1993 (Public Law 103–62, 107 Stat. 285).

(b) The NPS and the FHWA shall develop an implementation plan for each of the management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the management systems, each agency's responsibilities for developing and implementing the management systems, implementation schedule, data sources, and cost estimate. The FHWA will provide the NPS ongoing technical engineering support for the development, implementation, and maintenance of the management systems.

(c) The NPS shall develop and implement procedures for the development, establishment, implementation and operation of management systems. The procedures shall include:

(1) A process for ensuring the outputs of the management systems are considered in the development of NPS transportation plans and PRPTIPs and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analysis and coordination of all management system outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis and updating for each management system.

(d) All management systems will use databases with a geographical reference system that can be used to geolocate all database information.

(e) Existing data sources may be used by the NPS to the maximum extent possible to meet the management system requirements.

(f) The NPS shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisionmaking and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the NPS planning process.

(g) The management systems shall be operated so investment decisions based on management system outputs can be considered at the national, regional, and park levels.

### § 970.206 Funds for establishment, development, and implementation of the systems.

The FLHP Park Roads and Parkways program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

### § 970.208 Federal lands Pavement Management System (PMS).

In addition to the requirements provided in § 970.204, the PMS must meet the following requirements:

(a) The NPS shall have PMS coverage of all paved park roads, parkways, parking areas and other associated facilities, as appropriate, that are funded under the FLHP.

(b) The PMS may be utilized at various levels of technical complexity depending on the nature of the transportation network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the NPS deems appropriate.

(c) The PMS shall be designed to fit the NPS goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) Condition data that includes roughness, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all park roads, parkways and other appropriate associated facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes roughness, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the

remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides for short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(d) For any park roads, parkways and other appropriate associated facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

**§ 970.210 Federal lands Bridge Management System (BMS).**

In addition to the requirements provided in § 970.204, the BMS must meet the following requirements:

(a) The NPS shall have a BMS for the bridges which are under the NPS jurisdiction, funded under the FLHP, and required to be inventoried and inspected as prescribed by 23 U.S.C. 144.

(b) The BMS shall be designed to fit the NPS goals, policies, criteria, and needs using, as a minimum, the following components:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) Data described by the inventory section of the National Bridge Inspection Standards (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and other pertinent information; and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds through development of a prioritized list of candidate projects over predefined short and long term planning horizons.

(c) The BMS may include the capability to perform an investment analysis as appropriate, considering size of structure, traffic volume, and structural condition. The investment analysis may:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure;

(4) Provide short and long term budget forecasting; and

(5) Evaluate the cultural and historical values of the structure.

(d) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

**§ 970.212 Federal Lands Safety Management System (SMS).**

In addition to the requirements provided in § 970.204, the SMS must meet the following requirements:

(a) The NPS shall have an SMS for all transportation systems serving NPS facilities, as appropriate, funded under the FLHP.

(b) The NPS shall use the SMS to ensure that safety is considered and implemented, as appropriate, in all phases of transportation system planning, design, construction, maintenance, and operations.

(c) The SMS shall be designed to fit the NPS goals, policies, criteria, and needs and shall contain the following components:

(1) An ongoing program for the collection, maintenance and reporting of a data base that includes:

(i) Accident records with details for analysis such as accident type, using standard reporting descriptions (*e.g.*, right-angle, rear-end, head-on, pedestrian-related), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volume, speed, and vehicle classification, as appropriate.

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment, and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features, where appropriate;

(ii) Identifying and investigating hazardous or potentially hazardous transportation elements and systems, transit vehicles and facilities, roadway locations and features;

(iii) Establishing countermeasures and setting priorities to address identified needs.

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;

(d) While the SMS applies to appropriate transportation systems serving NPS facilities funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the road and number and types of transit and other vehicles operated by the NPS.

**§ 970.214 Federal Lands Congestion Management System (CMS).**

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For portions of the NPS transportation system outside the boundaries of TMAs, the NPS shall:

(1) Develop criteria to determine when a CMS is to be implemented for a specific transportation system; and

(2) Have CMS coverage for all transportation systems serving NPS facilities that meet minimum CMS needs criteria, as appropriate, funded through the FLHP.

(b) The NPS shall consider the results of the CMS when selecting congestion mitigation strategies that are the most time efficient and cost effective and that add value (protection/rejuvenation of resources, improved visitor experience) to the park and adjacent communities.

(c) In addition to the requirements provided in § 970.204, the CMS must meet the following requirements:

(1) For those NPS transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that promote alternative transportation systems, reduce private automobile travel, and best integrate

private automobile travel with other transportation modes.

(2) For portions of the NPS transportation system within transportation management areas (TMAs), the NPS transportation planning process shall include a CMS that meets the requirements of this section. By agreement between the TMA and the NPS, the TMA's CMS coverage may include the transportation systems serving NPS facilities, as appropriate. Through this agreement(s), the NPS may meet the requirements of this section.

(3) If a TMA's CMS does not provide coverage of the portions of the NPS transportation facilities within the boundaries of the TMA, the NPS shall develop a separate CMS to cover those facilities within the boundaries of the TMA. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(4) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider strategies, or combinations of strategies for each area, such as:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

[FR Doc. 03–102 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 23 CFR Part 971

**[FHWA Docket No. FHWA–99–4969]**

**RIN 2125–AE55**

## Federal Lands Highway Program; Management Systems Pertaining to the Forest Service and the Forest Highway Programs

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities providing access to and within the National Forests and funded under the FLHP.

**DATES:** Comments must be received on or before March 10, 2003.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

### Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48 (b)(29)). This rulemaking action addresses the management systems for the Forest Service (FS) and the Forest Highway (FH) program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed regulation pertaining to the FS and the FH program (64 FR 47744). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of

the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to separate the NPRM's for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Transportation Departments and the Oregon Association of County Engineers and Surveyors. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within the National Forests and Grasslands, and funded under the FLHP. Separate NPRMs on management systems have also been developed for the Fish and Wildlife Service (FWS) and the Refuge Roads program, the National Park Service (NPS) and the Park Roads and Parkways program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRMs are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

**Summary of Comments Received on the ANPRM Pertaining to the FS and the Forest Highway Programs**

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

*Rule Development*

*Comments:* The majority of comments supported the FHWA's proposal to develop ''separate rules'' pertaining to the FS and the FH programs, the NPS

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence website at the following URL: *http://itre.ncsu.edu/AASHTO/stewardship.*

and the Park Roads and Parkways program, the FWS and the Refuge Roads program, and the BIA and the Indian Reservations Roads program. The commenters in favor of this proposal point out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, Tribal and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State DOTs requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

*Response:* Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the FS, the NPS, the FWS, and the BIA. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

*Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, Tribal, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data. In fact, throughout the proposed regulation, we use the term ''tri-party partnership'' to refer to the joint, cooperative, shared partnership among the Federal Lands Highway Division, the State Department of Transportation and the Forest Service that carry out the FH program.

*Comments:* The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

*Response:* While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify, ''The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.'' Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

**Approach to Structure of Proposed Regulation**

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

**Section-by-Section Analysis**

*Subpart A*

*Section 971.100 Purpose*

This section states that subpart A provides definitions for terms used in this rule.

*Section 971.102 Applicability*

This section states that the definitions in subpart A are applicable to this rule.

*Section 971.104 Definitions*

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase ''Federal lands'' or ''Indian lands,'' as applicable, would be added to the definitions of ''bridge management system (BMS),'' ''congestion management system (CMS),'' ''pavement management system (PMS),'' and ''safety management system (SMS)'' to indicate the distinction between the Federal or Indian lands, and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

*Subpart B*

*Section 971.200 Purpose*

This section states the purpose of this proposed regulation, which is to fulfill the requirements set forth by the TEA–21.

*Section 971.202 Applicability*

This section defines the applicability of the management systems.

*Section 971.204 Management Systems Requirements*

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 971.208 through 971.214.

Paragraph (a) states that the tri-party partnership shall develop, establish, and implement the management systems as described in this subpart. In addition, paragraph (a), along with paragraph (d), provides flexibility in the development of the management systems. To ensure the management systems are developed, implemented, and operated systematically, paragraph (b) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (c) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (e) requires a periodic evaluation of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (f) ensures that transportation investment decisions based on management system results would be used at the State area level.

*Section 971.206 Funds for Establishment, Development, and Implementation of the Systems*

This section provides that the funds available for the FH program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

*Section 971.208 Federal Lands Pavement Management System (PMS)*

Paragraph (a) defines the applicability of the PMS. Paragraph (b) permits the use of the American Association of State Highway and Transportation Officials' (AASHTO) ''Pavement Management Guide'' [3] as a guide for the development of the PMS. Paragraph (c) provides flexibility for the development of the PMS.

This section further sets forth components that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting requirements.

*Section 971.210 Federal Lands Bridge Management System (BMS)*

Paragraph (a) defines the applicability of the BMS. Paragraph (b) permits the use of the AASHTO's ''Guidelines for Bridge Management Systems'' [4] as a guide for the development of the BMS.

The section sets forth components that must be included in a BMS. They consist of data collection and maintenance, network level analysis, investment analysis, and reporting requirements.

*Section 971.212 Federal Lands Safety Management System (SMS)*

Paragraph (a) defines the applicability of the SMS. Paragraph (b) permits the use of the FHWA publication entitled ''Safety Management Systems: Good Practices for Development and Implementation.''[5]

Because of the strong emphasis the TEA–21 has on safety, paragraph (c) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (d) states that the level of complexity of a SMS depends on the nature of the facilities involved.

Paragraphs (e) and (g) set forth components that must be included in a SMS. They include data collection and maintenance, identification and correction of potential safety problems, coordination, and reporting.

To provide flexibility, paragraph (f) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

*Section 971.214 Federal Lands Congestion Management System (CMS)*

This section defines congestion and addresses the criteria and the need for CMS coverage for portions of the FH network outside the boundaries of transportation management areas (TMAs). In addition, it specifies that the tri-party partnership shall consider CMS results in selecting implementation strategies to address congestion. Paragraph (c)(1) requires consideration of strategies that reduce automobile travel and improve the efficiency of the existing transportation system.

Paragraph (c)(2) further sets forth components to be included in a CMS. They include the following: identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits of congestion management; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

[3] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org.publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[4] ''Guidelines for Bridge Management Systems,'' AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[5] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.thwa.dot.gov/media/documents.htm.* It is available for inspection and copying as prescribed at 49 CFR part 7.

**Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the National Forests and Grasslands. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. Any changes proposed here are not anticipated to adversely affect any sector of the economy in a material way. Though the proposed action here will impact the FS, it will not likely interfere with any action taken or planned by the FS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within the National Forests and Grasslands. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

**Executive Order 13132 (Federalism)**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the U.S. Forest Service.

The FHWA estimates that a total of 8,900 burden hours would be imposed on non-Federal entities to provide the required information for the FS management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations (MPOs), Tribal governments, regional transportation planning agencies, and county and local governments. The Forest Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide management system information, the effort has been benchmarked to the number of miles of State or locally owned roads or the number of State or locally owned bridges within the jurisdiction of the FS. This approach has been applied to the PMS, BMS and SMS. Since a substantial portion of the FS system is State or locally owned roads, considerable effort may be required of States, and county and local governments in providing pavement, bridge and safety information. The total annual burden estimate for these three systems is 6,100 hours. Burden estimates are 2,200 hours per year for the PMS; 1,700 hours per year for the BMS; and 2,200 hours per year for the SMS.

For implementation of the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the FS to coordinate its management systems with the MPOs for that portion of its transportation system that is within an MPO area. For estimating purposes, approximately 70 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 70 MPOs, resulting in a total annual burden estimate of 2,800 hours attributable to the FS CMS.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**National Environmental Policy Act**

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

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

**Executive Order 13211 (Energy Effects)**

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution or Use. The FHWA has determined that it is not a significant energy action under that order because, although this proposed action is considered a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 971**

Bridges, Grant programs—transportation, Highway safety, Highways and roads, National forests, Public lands, Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

**Mary E. Peters,**

*Federal Highway Administrator.*

1. Add part 971 to subpart L to read as follows:

## PART 971—FOREST SERVICE MANAGEMENT SYSTEMS

### Subpart A—Definitions

Sec.
971.100 Purpose.
971.102 Applicability.
971.104 Definitions.

### Subpart B—Forest Highway Program Management Systems

971.200 Purpose.
971.202 Applicability.
971.204 Management systems requirements.
971.206 Funds for establishment, development and implementation of the systems.
971.208 Federal lands Pavement Management System (PMS).
971.210 Federal lands Bridge Management System (BMS).
971.212 Federal lands Safety Management System (SMS).
971.214 Federal lands Congestion Management System (CMS).

**Authority:** 23 U.S.C. 204, 315; 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

### Subpart A—Definitions

#### § 971.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

#### § 971.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

#### § 971.104 Definitions.

*Alternative transportation systems* means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

*Elements* means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

*Federal lands bridge management system (BMS)* means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for collecting and analyzing bridge data to make forecasts and recommendations, and that provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently and effectively considered.

*Federal lands congestion management system (CMS)* means a systematic process used by the FS, FWS and NPS for managing congestion that provides information on transportation system performance, and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

*Federal Lands Highway program (FLHP)* means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

*Federal lands pavement management system (PMS)* means a systematic process used by the FS, FWS and NPS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

*Federal lands safety management system (SMS)* means a systematic process used by the FS, FWS and NPS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

*Forest highway (FH)* means a State-designated road under the jurisdiction of, and maintained by, a public authority and open to public travel, that provides access to or within a National Forest or Grassland.

*Forest Highway program* means the public lands highway funds allocated each fiscal year as is provided in 23 U.S.C. 202 for projects that provide access to and within the National Forest system as described in 23 U.S.C. 202(b).

*Forest Highway program transportation improvement program (FHPTIP)* means a staged, multiyear, multimodal program of transportation projects in a State area consistent with the Forest Highway transportation plan and developed through the tri-party Forest Highway planning processes pursuant to 23 U.S.C. 204.

*Forest Service transportation plan* means the official Forest Highway multimodal, transportation plan that is developed through the tri-party Forest Highway transportation planning process pursuant to 23 U.S.C. 204.

*Highway safety* means the reduction of traffic accidents on public roads, including reductions in deaths, injuries, and property damage.

*Intelligent transportation system (ITS)* means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

*Life-cycle cost analysis* means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, including maintenance and operation expenditures. Comprehensive life-cycle cost analysis includes all economic variables essential to the evaluation including user costs such as delay, safety costs associated with maintenance and rehabilitation projects, agency capital costs, and life-cycle maintenance costs.

*Metropolitan planning area* means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

*Metropolitan planning organization (MPO)* means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

*National Forest System* means all the lands and waters reported by the Forest Service as being part of the National Forest System, including those generally known as National Forests and National Grasslands.

*Operations* means those activities associated with managing, controlling, and regulating highway traffic.

*Secretary* means the Secretary of Transportation.

*Serviceability* means the degree to which a bridge provides satisfactory service from the point of view of its users.

*State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

*Transportation facilities* means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

*Transportation Management Area (TMA)* means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

*Tri-party* means the joint, cooperative, shared partnership among the Federal Lands Highway Division (FLHD), State Department of Transportation (State DOT), and the Forest Service (FS) to carry out the FH program.

## Subpart B—Forest Highway Program Management Systems

### § 971.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

### § 971.202 Applicability.

The provisions in this subpart are applicable to the FHWA, the Forest Service and the State DOTs that are responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

### § 971.204 Management systems requirements.

(a) The tri-party partnership shall develop, establish and implement the management systems as described in this subpart. The management systems may be tailored to meet the FH program goals, policies, and needs.

(b) The tri-party partnership shall develop and implement procedures for the acceptance of the existing, or the development, establishment, implementation and operation of new management systems. The procedures shall include:

(1) A process for ensuring the output of the management systems are considered in the development of the FH program transportation plans and transportation improvement programs, and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analyses and coordination of all management systems outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis, and updating for each management system.

(c) All management systems will use databases with a common or coordinated reference system, that can be used to geolocate all database information, to ensure that data across management systems are comparable.

(d) Existing data sources may be used by the tri-party partnership to meet the management system requirements.

(e) The tri-party partnership shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisionmaking and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the FS planning process.

(f) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the State area level.

### § 971.206 Funds for establishment, development, and implementation of the systems.

The FLHP FH program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

### § 971.208 Federal lands Pavement Management System (PMS).

In addition to the requirements provided in § 971.204, the PMS must meet the following requirements:

(a) The tri-party partnership shall have PMS coverage of all FHs and other associated facilities, as appropriate, funded under the FLHP.

(b) The PMS may be based on the concepts described in the AASHTO's ''Pavement Management Guide.'' [1]

(c) The PMS may be utilized at various levels of technical complexity depending on the nature of the transportation network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the tri-party partnership deems appropriate.

(d) The PMS shall be designed to fit the FH program goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all FHs and other appropriate associated facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides for short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) For any FHs and other appropriate associated facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

**§ 971.210 Federal Lands Bridge Management System (BMS).**

In addition to the requirements provided in § 971.204, the BMS must meet the following requirements:

(a) The tri-party partnership shall have a BMS for the FH bridges funded under the FLHP and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) The BMS may be based on the concepts described in the AASHTO's ''Guidelines for Bridge Management Systems.''[2]

(c) The BMS shall be designed to fit the FH program goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data required by the NBIS (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A system for applying network level analytical procedures at the State or local area level, as appropriate, and capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds through development of a prioritized list of candidate projects over predefined short and long term planning horizons.

(d) The BMS may include the capability to perform an investment analysis as appropriate, considering size of structure, traffic volume, and structural condition. The investment analysis may:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure; and

(4) Provide short and long term budget forecasting.

(e) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

**§ 971.212 Federal Lands Safety Management System (SMS).**

In addition to the requirements provided in § 971.204, the SMS must meet the following requirements:

(a) The tri-party partnership shall have an SMS for transportation systems providing access to and within National Forests and Grasslands, and funded under the FLHP.

(b) The SMS may be based on the guidance in ''Safety Management Systems: Good Practices for Development and Implementation.''[3]

(c) The tri-party partnership shall utilize SMS to ensure that safety is considered and implemented, as appropriate, in all phases of transportation system planning, design, construction, maintenance, and operations.

(d) The SMS may be utilized at various levels of complexity depending on the nature of the facility and/or network involved.

[1] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[2] ''Guidelines for Bridge Management Systems,'' AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[3] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm.* It is available for inspection and copying as prescribed at 49 CFR part 7.

(e) The SMS shall be designed to fit the FH program goals, policies, criteria, and needs and shall contain the following components:

(1) An ongoing program for the collection, maintenance and reporting of a database that includes:

(i) Accident records with detail for analysis such as accident type using standard reporting descriptions (*e.g.*, right-angle, rear-end, head-on, pedestrian-related, *etc.*), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volume and vehicle classification (as appropriate); and

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment, and implementation of procedures for:

(i) Routine maintenance and upgrading of safety appurtenances including highway rail crossing safety devices, signs, highway elements, and operational features, where appropriate;

(ii) Identifying, investigating, and analyzing hazardous or potentially hazardous transportation system safety problems, roadway locations and features;

(iii) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) Identification of focal points for all contacts at State, regional, Tribal and local levels to coordinate, develop, establish, and implement the SMS among the agencies.

(f) While the SMS applies to appropriate transportation systems providing access to and within National Forests and Grasslands funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate requirements should be included for each roadway to provide for effective inclusion of safety decisions in the administration of the FH program.

**§ 971.214 Federal Lands Congestion Management System (CMS).**

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For portions of the FH network outside the boundaries of TMA's, the tri-party partnership shall:

(1) Develop criteria to determine when a CMS is to be implemented for a specific FH; and

(2) Have CMS coverage for the transportation systems providing access to and within National Forests, as appropriate, that meets minimum CMS criteria.

(b) The tri-party partnership shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities.

(c) In addition to the requirements provided in § 971.204, the CMS must meet the following requirements:

(1) For those FH transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation efficiency. Approaches may include the use of alternative mode studies and implementation plans as components of the CMS.

(2) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies to manage congestion;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

[FR Doc. 03–103 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 972**

**[FHWA Docket No. FHWA–99–4970]**

**RIN 2125–AE54**

## Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21) requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of safety, bridge, pavement, and congestion management systems for transportation facilities serving the National Wildlife Refuge System (Refuge System) funded under the FLHP.

**DATES:** Comments must be received on or before March 10, 2003.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC

20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

## Background

Section 1115(d) of the TEA–21 (Public Law 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (see 49 CFR 1.48(b)(29)). This rulemaking action addresses the management systems for the Fish and Wildlife Service (FWS) and the Refuge Roads program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the FWS and the Refuge Roads program (64 FR 47741). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to publish separate NPRMs for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State Departments of Transportation. These comments are summarized below. Specific comments may be obtained by reviewing the materials in the docket.

Based on the comments on the ANPRM, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities serving the Refuge System funded under the FLHP. Separate NPRMs on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Forest Service (FS) and the Forest Highway program, and the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads program. The other three related NPRMs are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence Web site at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship.*

rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

**Summary of Comments Received on the ANPRM Pertaining to the FWS and the Refuge Roads Program**

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

*Rule Development*

*Comments:* The majority of comments supported the FHWA's proposal to develop ''separate rules'' pertaining to the FWS and the Refuge Roads program, the NPS and the Park Roads and Parkways program, the BIA and the Indian Reservations Roads program, and the FS and the Forest Highway program. The commenters in favor of this proposal pointed out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State Transportation Departments requested that we develop only one general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

*Response:* Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: The FWS, the NPS, the FS, and the BIA. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

*Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, Tribal, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMA's and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMA's have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[2]

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMAs management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

[2] The HPMS was developed in 1978 as a national highway transportation system database. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

*Comments:* The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

*Responses:* While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify ''The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.'' Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

**Approach to Structure of Proposed Regulation**

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify the specific reasons why requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

**Section-by-Section Analysis**

*Subpart A*

*Section 972.100 Purpose*

This section states that subpart A provides definitions for terms used in this rule.

*Section 972.102 Applicability*

This section states that the definitions in subpart A are applicable to this rule.

*Section 972.104 Definitions*

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450. It also includes additional definitions for terms used in this part.

The phrase ''Federal lands'' or ''Indian lands,'' as applicable, would be added to the definitions of ''bridge management system (BMS),'' ''congestion management system (CMS),'' ''pavement management system (PMS),'' and ''safety management system (SMS)'' to indicate the distinction between the Federal or Indian lands, and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

*Subpart B*

*Section 972.200 Purpose*

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21.

*Section 972.202 Applicability*

This section defines the applicability of the management systems.

*Section 972.204 Management Systems Requirements*

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 972.208 through 972.214.

Paragraph (a) states that the FWS shall develop, establish, and implement the management systems. Paragraphs (a) and (e) provide flexibility in the development of the management systems. Paragraph (b) requires the FHWA and the FWS to develop implementation plans for the management systems. To ensure the management systems are developed, implemented, and operated systematically, paragraph (c) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (d) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (f) requires a periodical evaluation process of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (g) ensures that transportation investment decisions based on management system results would be used at the regional level.

*Section 972.206 Funds for Establishment, Development, and Implementation of the Systems*

This section provides that the funds available for the Refuge Roads program can be used for development, establishment, and implementation of the management systems in accordance with legislative provisions for the funds.

*Section 972.208 Federal Lands Pavement Management System (PMS)*

Paragraph (a) defines the applicability of the PMS. Paragraph (b) permits the use of the American Association of State Highway and Transportation Officials' (AASHTO) ''Pavement Management Guide''[3] as a guide for the development of the PMS. Paragraph (c) provides flexibility for the development of the PMS.

This section further sets forth processes and procedures that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting procedures.

*Section 972.210 Federal Lands Bridge Management System (BMS)*

Paragraph (a) defines the applicability of the BMS. The section sets forth processes and procedures that must be included in a BMS. They consist of data collection and maintenance, analytical procedures, and reporting procedures.

*Section 972.212 Federal Lands Safety Management System (SMS)*

Paragraph (a) defines the applicability of the SMS. Paragraph (b) permits the use of the FHWA publication entitled ''Safety Management Systems: Good Practices for Development and Implementation.''[4]

Because of the strong emphasis the TEA–21 has on safety, paragraph (c) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (d) states that the level of complexity of a SMS depends on the nature of the facilities involved.

Paragraph (e) section sets forth components that must be included in a SMS. They include data collection and

[3] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[4] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm.* It is available for inspection and copying as prescribed at 49 CFR part 7.

maintenance, identification and correction of potential safety problems, communications, public education, and reporting.

To provide flexibility, paragraph (f) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decision-making.

*Section 972.214 Federal Lands Congestion Management System (CMS)*

This section defines congestion and specifies that the FWS shall consider the results of the CMS in selecting strategies to address congestion. In addition, it requires the FWS to consider strategies that reduce private automobile travel and improve existing transportation system efficiency. Paragraphs (b)(1), (2), and (3) address CMS coverage for portions of the FWS transportation systems inside and outside the boundaries of transportation management areas (TMAs).

Paragraph (b)(4) further sets forth components to be included in a CMS. They include the following: Identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; consideration of example strategies provided in the proposed rule; and provision of information supporting the implementation of actions.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

**Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the Refuges. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed changes will not adversely affect any sector of the economy in a material way. Though the proposed action here will impact the FWS, it will not likely interfere with any action taken or planned by the FWS or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities serving the Refuge System. These roads are funded under the FLHP; therefore the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

**Executive Order 13132 (Federalism)**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the Fish and Wildlife Service.

The FHWA estimates that a total of 3,700 burden hours would be imposed on non-Federal entities to provide the required information. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations

(MPOs), Tribal governments, regional transportation planning agencies, and county and local governments. The Fish and Wildlife Service would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide management system information, the effort has been benchmarked to the number of miles of State or locally owned roads or the number of State or locally owned bridges within the agency's jurisdiction. This approach has been applied to the PMS, BMS and SMS. Since a substantial portion of the FWS system is State and locally owned roads, the burden on States, and county and local governments will be measurable at a level commensurate with the relatively modest extent of the public FWS system. The total annual burden estimate for these three systems is 1,300 hours. Burden estimates are 500 hours per year for the PMS, 300 hours per year for the BMS, and 500 hours per year for the SMS.

For implementation of the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the FLMA's to coordinate their management systems with the MPOs for that portion of their transportation system that is within the MPO area. For estimating purposes, approximately 60 MPOs nationwide, may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 60 MPO's, resulting in a total annual burden estimate of 2,400 hours attributable to the FWS CMS.

The FHWA is required to submit this proposed collection of information to the OMB for review and approval and, accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**National Environmental Policy Act**

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that the proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal government, and will not preempt tribal law. The requirements set forth in the proposed rule do not directly affect one or more Indian tribes. Therefore, a tribal summary impact statement is not required.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

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

**Executive Order 13211 (Energy Effects)**

This proposed rule has been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distributions, or Use. The FHWA has determined that it is not a significant energy action under that order because, although the proposed action is considered to be a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 972**

Bridges, Grant programs—transportation, Highway safety, Highways and roads, Public lands, Transportation, Wildlife refuges.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of Title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

**Mary E. Peters,**

*Federal Highway Administrator.*

1. Add a new part 972 to subchapter L to read as follows:

## PART 972—FISH AND WILDLIFE SERVICE MANAGEMENT SYSTEMS

### Subpart A—Definitions

Sec.
972.100 Purpose.
972.102 Applicability.
972.104 Definitions.

### Subpart B—Fish and Wildlife Service Management Systems

Sec.
972.200 Purpose.
972.202 Applicability.
972.204 Management systems requirements.
972.206 Funds for establishment, development and implementation of the systems.
972.208 Federal lands Pavement Management System (PMS).
972.210 Federal lands Bridge Management System (BMS).
972.212 Federal lands Safety Management System (SMS).
972.214 Federal lands Congestion Management System (CMS).

**Authority:** 23 U.S.C. 204, 315; 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

## Subpart A—Definitions

### § 972.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

### § 972.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

**§ 972.104 Definitions.**

*Alternative transportation systems* means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

*Elements* means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

*Federal lands bridge management system (BMS)* means a systematic process used by the Forest Service (FS), the Fish and Wildlife Service (FWS) and the National Park Service (NPS) for analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be effectively considered.

*Federal lands congestion management system (CMS)* means a systematic process used by the FS, FWS and NPS for managing congestion that provides information on transportation system performance and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

*Federal Lands Highway program (FLHP)* means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

*Federal lands pavement management system (PMS)* means a systematic process used by the FS, FWS and NPS that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

*Federal lands safety management system (SMS)* means a systematic process used by the FS, FWS and NPS with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated as appropriate, during all phases of highway planning, design, construction, operation and maintenance, by providing information for selecting and implementing effective highway safety strategies and projects.

*Fish and Wildlife Service transportation plan* means the official Fish and Wildlife Service-wide multimodal transportation plan that is developed through the Fish and Wildlife Service transportation planning process pursuant to 23 U.S.C. 204.

*Highway safety* means the reduction of traffic accidents, and deaths, injuries, and property damage resulting therefrom, on public roads.

*Intelligent transportation system (ITS)* means electronics, communications, or information processing used singly or in combination to improve the efficiency and safety of a surface transportation system.

*Life-cycle cost analysis* means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, to include maintenance and operation expenditures. Comprehensive life-cycle costs analysis includes all economic variables essential to the evaluation: User costs such as delay and safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

*Metropolitan planning area* means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

*Metropolitan planning organization (MPO)* means the forum for cooperative transportation decisionmaking for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

*National Wildlife Refuge System (Refuge System)* means all the lands and waters reported by the FWS as being part of the National Wildlife Refuge System in the annual ''Report of Lands Under Control of the U.S. FWS.''[1] Included in the Refuge System are those lands that are generally known as refuges, waterfowl production areas, wetland management districts, and coordination areas.

*Operations* means those activities associated with managing, controlling, and regulating highway traffic.

*Refuge road* means a public road that provides access to or within a unit of the National Wildlife Refuge System and for which title and maintenance responsibilities is vested in the United States Government.

[1] ''Report of Lands under Control of the U.S. FWS,'' U.S. FWS, (published annually on September 30). A free copy is available from the U.S. FWS, Division of Realty, 4401 North Fairfax Drive, Suite 622, Arlington, VA 22203; telephone: (703) 358–1713.

*Refuge Road transportation improvement program (RRTIP)* means a staged, multiyear, multimodal program of transportation projects for the Refuge Road Program consistent with the Fish and Wildlife Service transportation plan and planning processes pursuant to 23 U.S.C. 204.

*Refuge Roads program* means the funds allocated each fiscal year, as described in 23 U.S.C. 202(e).

*Secretary* means the Secretary of Transportation.

*State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

*Transportation facilities* means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

*Transportation Management Area (TMA)* means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the Federal Transit Administration (FTA). The TMA designation applies to the entire metropolitan planning area(s).

## Subpart B—Fish and Wildlife Service Management Systems

**§ 972.200 Purpose.**

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

**§ 972.202 Applicability.**

The provisions in this subpart are applicable to the Fish and Wildlife Service (FWS) which is responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

**§ 972.204 Management systems requirements.**

(a) The FWS shall develop, establish and implement the management systems as described in this subpart. The FWS may tailor the management systems to meet the FWS goals, policies, and needs.

(b) The FWS and the FHWA shall develop an implementation plan for each of the management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the management systems, each agency's responsibilities for developing and implementing the

management systems, implementation schedule, data sources, and cost estimate. The FHWA will provide the FWS ongoing technical engineering support for the development, implementation, and maintenance of the management systems.

(c) The FWS shall develop and implement procedures for the development, establishment, implementation and operation of management systems. The procedures shall include:

(1) A process for ensuring the results of any of the management systems are considered in the development of FWS transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204;

(2) A process for the analyses and coordination of all management system outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(3) A description of each management system;

(4) A process to operate and maintain the management systems and their associated databases; and

(5) A process for data collection, processing, analysis and updating for each management system.

(d) All management systems will use databases with a geographical reference system that can be used to geolocate all database information.

(e) Existing data sources may be used by the FWS to the maximum extent possible to meet the management system requirements.

(f) The FWS shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation decision-making and improving the overall efficiency of the affected federally owned transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the comprehensive conservation planning process.

(g) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the regional level.

**§ 972.206 Funds for establishment, development, and implementation of the systems.**

The FLHP Refuge Roads program funds may be used for development, establishment, and implementation of the management systems. These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

**§ 972.208 Federal lands Pavement Management System (PMS).**

In addition to the requirements provided in § 972.204, the PMS must meet the following requirements:

(a) The FWS shall, at a minimum, have PMS coverage of all paved refuge roads and other associated facilities, as appropriate, funded under the FLHP.

(b) The PMS may be based on the concepts described in the AASHTO's ''Pavement Management Guide.'' [2]

(c) The PMS may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileages, functional classes, volumes, loadings, usage, surface type, or other criteria the FWS deems appropriate.

(d) The PMS shall be designed to fit the FWS goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data are difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all FWS managed transportation facilities in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Provides short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) For any FWS managed transportation facilities in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

**§ 972.210 Federal Lands Bridge Management System (BMS).**

In addition to the requirements provided in § 972.204, the BMS must meet the following requirements:

(a) The FWS shall have a BMS for bridges which are under the FWS jurisdiction, funded under the FLHP, and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) The BMS shall be designed to fit the FWS goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data required by the NBIS (23 CFR 650.311(a));

(ii) Data characterizing the severity and extent of deterioration of bridge elements;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) Analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. These procedures include, as appropriate, such factors as bridge condition, recommended repairs/replacement and

[2] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

estimated costs, prediction of the estimated remaining life of the bridge, development of a prioritized list of candidate projects over a specified planning horizon, and budget forecasting.

(c) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

**§ 972.212 Federal lands Safety Management System (SMS).**

In addition to the requirements provided in § 972.204, the SMS must meet the following requirements:

(a) The FWS shall have an SMS for all transportation facilities serving the Refuge System, as appropriate, funded under the FLHP.

(b) The FWS SMS may be based on the guidance in ''Safety Management Systems: Good Practices for Development and Implementation,'' [3]

(c) The FWS shall utilize the SMS to ensure that safety is considered and implemented as appropriate in all phases of transportation system planning, design, construction, maintenance, and operations.

(d) The SMS may be utilized at various levels of complexity depending on the nature of the facility involved.

(e) The SMS shall be designed to fit the FWS goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) An ongoing program for the collection, maintenance and reporting of a database that includes:

(i) Accident records with sufficient detail for analysis such as accident type using standard reporting descriptions (*e.g.* right-angle, rear-end, head-on, pedestrian-related, etc.), location, description of event, severity, weather and cause;

(ii) An inventory of safety appurtenances such as signs, delineators, and guardrails (including terminals);

(iii) Traffic information including volumes and vehicle classification (as appropriate); and

(iv) Accident rates by customary criteria such as location, roadway classification, and vehicle miles of travel.

(2) Development, establishment and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features where appropriate; and

(ii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features, then establishing countermeasures and setting priorities to correct the identified hazards and potential hazards;

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements; and

(4) Development and implementation of public information and education activities on safety needs, programs, and countermeasures which affect safety on the FWS transportation systems.

(f) While the SMS applies to appropriate transportation facilities serving the Refuge System funded under the FLHP, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate detail should be included for each functional classification to provide for effective inclusion of safety decisions in the administration of transportation by the FWS.

**§ 972.214 Federal lands Congestion Management System (CMS).**

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. For those FWS transportation systems that require a CMS, in both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS. The FWS shall consider the results of the CMS when selecting the implementation of strategies that provide the most efficient and effective use of existing and future transportation facilities, and alleviate congestion.

(b) In addition to the requirements provided in § 972.204, the CMS must meet the following requirements:

(1) For portions of the FWS transportation system within TMAs, the FWS transportation planning process shall include a CMS that meets the requirements of this section. By agreement between the TMA and the FWS, the TMA's CMS coverage may include the transportation facilities serving the Refuge System, as appropriate. Through this agreement(s), the FWS may meet the requirements of this section.

(2) If a TMA's CMS does not provide coverage of the portions of the FWS transportation facilities within the boundaries of the TMA, the FWS shall develop a separate CMS to cover those facilities within the boundaries of the TMA.

(3) For portions of the FWS transportation system outside the boundaries of TMA's, the FWS shall:

(i) Develop criteria to determine when a CMS is to be implemented for a specific transportation system; and

(ii) Have CMS coverage for all transportation facilities serving the Refuge System, as appropriate, funded through the FLHP that meet minimum CMS needs criteria.

(4) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies to manage congestion;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system;

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies;

(E) Additional system capacity; and

(vii) Provide information supporting the implementation of actions.

[FR Doc. 03–104 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

[3] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.thwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed as 49 CFR part 7.

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 973**

**[FHWA Docket No. FHWA–99–4968]**

**RIN 2125–AE53**

## Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21), requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway program (FLHP). The Secretary of Transportation has delegated the authority to the FHWA to serve as the lead agency within the U.S. DOT to implement the FLHP. The roads funded under the FLHP include Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP.

**DATES:** Comments must be received on or before March 10, 2003.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bob Bini, Federal Lands Highway, HFPD–2, (202) 366–6799, FHWA, 400 Seventh Street, SW., Washington, DC 20590; office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. For legal questions, Ms. Vivian Philbin, HFL–16, (303) 716–2122, FHWA, 555 Zang Street, Lakewood, CO 80228. Office hours are from 7:45 a.m. to 4:15 p.m., m.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS): *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web Page at: *http://www.access.gpo.gov/nara.*

### Background

Section 1115(d) of the TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204 to require the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods.

The roads funded under the FLHP include, but are not limited to, Park Roads and Parkways, Forest Highways, Refuge Roads, and Indian Reservation Roads. The Secretary of Transportation delegated to the FHWA the authority to serve as the lead agency within the U.S. Department of Transportation to administer the FLHP (*see* 49 CFR 1.48 (b)(29)). This rulemaking action addresses the management systems for the Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) program.

On September 1, 1999, the FHWA issued an advance notice of proposed rulemaking (ANPRM) to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). The ANPRM requested comments on the feasibility of developing a rule to meet both the transportation planning and management systems requirements of the TEA–21. Therefore, comments made to the docket addressed both transportation planning and management systems issues. However, the FHWA has decided to publish separate NPRMs for transportation planning and management systems. For this reason, this NPRM concerns only the development of the management systems. This NPRM includes responses to the comments submitted to the docket on the ANPRM that addressed the proposed development of the four management systems. Those comments on the ANPRM that addressed transportation planning will be addressed at a later date. The FHWA received comments addressing the management systems from various State DOT's, Tribal representatives from the Indian Reservation Roads Program Negotiated Rulemaking Committee (Committee), the United South and Eastern Tribes, Inc. (USET), and an intertribal council of twenty-three federally recognized Tribes (Council). These comments are summarized in the following section. Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175 (Tribal Consultation), the FHWA has participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. To the extent feasible, the FHWA will continue to use the Committee and other key Tribal transportation meetings to consult and coordinate with the (Indian Tribal Governments) ITGs on this rulemaking throughout the remainder of the process. In addition, the FHWA will hold seven informational meetings during the comment period in the following locations at a date and time to be announced in the **Federal Register:** Albuquerque, NM; Anchorage, AK; Minneapolis, MN; Nashville, TN; Portland, OR; Las Vegas, NV; and Tulsa, OK. These meetings will be used to provide an overview of the rulemaking

process and describe FHWA's purpose and intent in developing the rules. Tribal representatives are encouraged to attend these meetings and to provide suggestions and comments.

Based on the comments we received on the ANPRM and during Tribal consultations, the FHWA has developed this NPRM to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation facilities providing access to Indian lands and funded under the FLHP. Separate NPRM's on management systems have also been developed for the National Park Service (NPS) and the Park Roads and Parkways program, the Fish and Wildlife Service (FWS) and the Refuge Roads program, and the Forest Service (FS) and the Forest Highway program. The other three related NPRM's are published elsewhere in today's **Federal Register**.

On April 21, 2000, then President Clinton issued Executive Order (EO) 13148, Greening the Government Through Leadership in Environmental Management. This EO requires all Federal agencies to implement an environmental management system (EMS) to ensure that agencies develop strategies to support environmental leadership in programs, policies, and procedures and that senior level managers explicitly and actively endorse these strategies. The EO requires that agencies implement an EMS no later than December 31, 2005. Furthermore, in an April 1, 2002, letter, the Bush Administration encouraged all agencies to promote the use of EMS in Federal, State, local, and private facilities and directed the Environmental Protection Agency (EPA) to report annually on how well each agency has done in promoting EMS.

The FHWA has already begun working toward establishing an EMS. Additionally, the FWHA is working with the American Association of State Highway and Transportation Officials' (AASHTO) Center for Environmental Excellence to include EMS as part of an environmental stewardship demonstration project. The FHWA is currently providing technical and financial assistance to the Center, which in turn supports States that have initiated EMSs.[1] Furthermore, the FHWA continues to demonstrate environmental stewardship by encouraging the use of EMS in the construction, operation, and maintenance of transportation facilities.

Although an EMS may have some overlap with the four management systems that are the subject of this proposed rulemaking, the FHWA has decided not to incorporate the EMS in this rulemaking. The FHWA believes that great progress has been made on the EMS and promoting the use of EMS by the States. In addition, the FHWA has a long-standing working relationship with the Federal Land Management Agencies (FLMAs) through the Federal Lands Highway Program. The natural resource conservation and preservation missions of these agencies have led to the development of a jointly held environmental ethic that pervades transportation project decision-making through the use of context sensitive design, best management practices, and a heightened sensitivity to environmental impacts. This relationship provides a strong foundation for the FHWA to encourage the use of environmental management systems by the FLMAs. For example, the National Park Service currently has an initiative underway to implement a service-wide EMS approach. The FHWA and the NPS can evaluate ways to coordinate the use and development of the EMS with the transportation management systems through the joint development of the management system implementation plan called for in this rulemaking. A similar approach can be used with all of the FLMAs.

Any EMS developed by the FHWA, or by a FLMA, will not have an adverse effect on any of the management systems in this proposed rulemaking. Instead, such an EMS may help foster a movement toward the use of a comprehensive asset management system that incorporates EMS, along with the transportation management systems proposed in this rulemaking, and others not covered in this proposed action, such as a maintenance management system. The role of the EMS in a more comprehensive approach would demonstrate a commitment to environmental stewardship that goes beyond the individual project level or the development of a multi-project transportation program. The EMS should be a fundamentally important business tool that pervades all aspects of FLMA transportation decision-making. The FHWA will continue to advance its EMS and promote the EMS initiatives of the FLMAs through implementation planning for the transportation management systems. In addition, the FHWA will continue to promote the use of EMSs in the construction, operation, and maintenance of transportation facilities.

In developing the management system implementation plans, the need for data elements that address the environmental performance measures can be evaluated in relationship to individual agency plans to implement an EMS. This could provide an opportunity for the ongoing collection of environmental information, if appropriate and necessary. At a minimum, this would provide an opportunity to link existing environmental data to the transportation management systems using a geographic information system common to both systems.

From the FHWA's stewardship perspective regarding the Federal Lands Highway Program, EMS is most appropriately pursued as part of sound FLMA business management planning. Thus, the FHWA has decided not to address the EMS requirement in this proposed rulemaking action.

**Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program**

The following discussion summarizes the comments received on the ANPRM and the FHWA's response to these comments. This discussion provides the public a general sense of the issues addressed in the comments. As previously stated, this NPRM is intended for the development of management systems. Therefore, this summary contains only comments and responses related to the management systems. There are instances where reference is made to transportation planning issues because the management systems serve as a guide to planning activities.

*Rule Development*

*Comments:* The majority of comments supported the FHWA's proposal to develop ''separate rules'' pertaining to the BIA and the Indian Reservations Roads program, the FWS and the Refuge Roads program, the NPS and the Park Roads and Parkways program, and the FS and the Forest Highway program. The commenters in favor of this proposal pointed out the fact that transportation planning functions for the different Federal lands highways are performed by various Federal, State, and local entities, depending on ownership of the roadways and responsibilities for constructing and maintaining the facilities.

The Wisconsin DOT and the Kentucky Transportation Cabinet offered an opposite view. These two State Transportation Departments requested that we develop only one

[1] More information on how EMS applies to transportation organizations can be found on the AASHTO's Center for Environmental Excellence Web site at the following URL: *http//itre.ncsu.edu/AASHTO/stewardship.*

general rule applicable to all four agencies. The Wisconsin DOT suggested that this rule be flexible so that it recognizes the different approaches used by the States. The Kentucky Transportation Cabinet recommended that the rule should require the Federal land management agencies (FLMAs) to develop Memoranda of Understanding or Agreements that would address the consistency between the Federal land transportation planning procedures and those required under 23 U.S.C. 134 and 135. The Kentucky Transportation Cabinet was concerned that the additional rules might jeopardize existing procedures already in effect.

*Response:* Following the recommendations from the majority of commenters, the FHWA, in consultation with each appropriate Federal land management agency, developed a separate rule pertaining to each agency: the BIA, the FWS, the NPS, and the FS. The variance among the rules allows for the significant differences in the ownership, jurisdiction, and maintenance responsibilities that the FLMAs exercise over the subject roadways addressed in the rule. To ensure uniformity, the FHWA coordinated the development of each NPRM, so that similar text and format are contained in each of the rules.

*Comments:* Tribal representatives from the Committee, the USET, and the Council recommended against the proposed development of a rule relating to transportation planning and management systems for the IRR program in a process separate from the one presently underway through the Committee. In addition, they stated that the Committee would utilize the Indian Reservation Roads Program Transportation Planning Procedures and Guidelines (Guidelines),[2] that had been developed with Tribal consultation and implemented by the DOT in October 1999, to develop regulations that address transportation planning and management issues. These commenters believed that the proposed rule and the rule derived from the Guidelines would be inconsistent with each other.

*Response:* This proposed rule was developed to fulfill the requirement set forth by the TEA–21. This requirement was separate and apart from the negotiated rulemaking requirement for the IRR program. The language set forth in this NPRM is, with the exception of proposed funding sources, consistent with the draft language on management systems set forth in the IRR negotiated rulemaking. While the Guidelines help the Indian Tribal Governments (ITGs) address transportation planning and management system requirements, the Guidelines do not meet the requirements for rulemaking set forth in the TEA–21.

*Addressing the Management Systems Requirements*

*Comments:* Many States believe that the management systems should only be developed as needed and should relate to systems that are already implemented by States and local agencies. It was recommended that the FHWA encourage the Federal agencies to explore and use the States' existing systems. The States also recommended the systems be tailored to fit local conditions, and be applicable solely to the portion of the Federal lands highways owned and maintained by Federal agencies. Many of the States are concerned that the implementation of the management systems may affect the current working relationships among State, local, and Federal agencies. The Wisconsin DOT encouraged the FHWA to work with the FLMAs and State Transportation Departments to clarify ownership discrepancies between Federal and State data. They suggested that the FLMAs have accurate data reflecting the amount of mileage the agencies own by location. Further, these data have to agree with data reported by States in the Highway Performance Monitoring System (HPMS) database.[3]

*Response:* The stakeholders' concerns presented above were considered in the development of this NPRM. Each of the proposed management system rules calls for the FHWA, in cooperation with the FLMA, to develop an implementation plan or implementation procedures for each of the management systems. In addition, flexibility is provided to determine criteria for the need and applicability of each of the FLMA's management systems. These implementation plans will provide the opportunity to relate the FLMA management systems to systems already implemented by States and local agencies. It will also allow the management systems to be tailored to fit a broad range of local conditions, and to avoid inefficient duplication of management systems already in use by the States. Development of the implementation plans will provide an opportunity to strengthen the working relationships among Federal, State, Tribal and local agencies, as well as define responsibility for and ownership of data.

*Comments:* The Wisconsin DOT also stated that the FHWA should clarify that this rule and the National Highway System (NHS) Designation Act of 1995, Public Law 104–59, 109 Stat. 568, do not make the implementation of management systems mandatory.

*Response:* While it is correct that the Public Law 104–59 made the management systems optional for States and Metropolitan Planning Organizations (MPOs), except for the congestion management systems in MPOs with a population of greater than 200,000, section 1115(d) of TEA–21 applies to the Federal land management agencies, not directly to the States; however, the States may be requested to provide information. The TEA–21, enacted on June 9, 1998, amended 23 U.S.C. 204 to specify that ''The Secretary and the Secretary of each appropriate Federal land management agency shall, to the extent appropriate, develop by rule safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program.'' Therefore, the development and implementation of the management systems, where appropriate, is mandated by law for the Federal land management agencies.

**Approach to Structure of Proposed Regulation**

In the development of this proposed rule, the FHWA has attempted to minimize the level of data collection and analyses required. The FHWA now solicits comments on the extent to which this strategy has been achieved. Any comments suggesting that the strategy has not been successful should identify specific reasons why the requirements and/or provisions are burdensome. Suggestions to lessen burdens are welcome.

**Section-by-Section Analysis**

*Subpart A*

*Section 973.100 Purpose*

This section states that subpart A provides definitions for terms used in this rule.

*Section 973.102 Applicability*

This section states that the definitions in subpart A are applicable to this rule.

[2] ''Indian Reservation Roads Program Transportation Planning Procedures and Guidelines,'' October 1999, is available at the URL: *http://www.fhwa.dot.gov/flh/reports/indian/intro.htm.*

[3] ''The HPMS was developed in 1978 as a national highway transportation system datanbase. It includes limited data on all public roads, more detailed data for a sample of the arterial and collector functional system, and certain summary information for urbanized, small urban and rural areas. Additional information about this database is available online at the URL: *http://www.fhwa.dot.gov/ohim.*

*Section 973.104 Definitions*

This section incorporates the terms defined in 23 U.S.C. 101(a), 49 U.S.C. 5302, and 23 CFR part 450; and also includes additional definitions for terms used in this part.

The phrase ''Indian lands'' would be added to the definitions of ''bridge management system (BMS),'' ''congestion management system (CMS),'' ''pavement management system (PMS),'' and ''safety management system (SMS)'' to indicate the distinction between the Indian lands, Federal lands and Federal-aid management systems (refer to 23 CFR part 500 for definitions of the Federal-aid management systems). The NPRMs for the FS, FWS and NPS would use the phrase ''Federal lands'' to indicate the distinction between the Federal lands, Indian lands and Federal-aid management systems. The management system definitions also specify their applicability to the BIA, FS, FWS and NPS, as appropriate.

*Subpart B*

*Section 973.200 Purpose*

This section states the purpose of this proposed rule, which is to fulfill the requirements set forth by the TEA–21.

*Section 973.202 Applicability*

This section defines the applicability of the management systems.

*Section 973.204 Management Systems Requirements*

This section sets forth general requirements for all four management systems. Additional requirements applicable to specific systems are in §§ 973.208 through 973.214.

Paragraph (a) states that the BIA shall develop, establish, and implement the nationwide management systems. Paragraphs (a) and (h) provide flexibility in the development of the nationwide management systems. Paragraph (b) requires the FHWA and the BIA to develop implementation plans for the nationwide management systems.

Paragraph (c) states that a Tribe may develop, establish, and implement Tribal management systems.

Paragraph (d) directs the BIA, in consultation with the Tribes, to develop criteria for cases in which Tribal management systems are not appropriate.

Paragraph (e) directs the BIA or Tribes, as appropriate, to incorporate data provided by States and local governments in the nationwide or Tribal management systems for State and locally owned IRRs.

To ensure the management systems are developed, implemented, and operated systematically, paragraph (f) requires the development of procedures that will include the following: Consideration of management system results in the planning process; system analysis; a description of each management system; operation and maintenance of management systems and databases; and data collection, processing, analysis, and updating. Paragraph (g) ensures that the database has a geographical reference system so that information can be geolocated. Paragraph (h) encourages the use of existing data sources to the maximum extent possible.

Paragraph (i) states that a nationwide congestion management system is not required. The BIA and the FHWA, in consultation with the Tribes, will develop criteria to determine when congestion management systems are required for specific BIA transportation facilities. The BIA or the Tribe may develop, establish and implement the congestion management systems when they are required.

Paragraph (j) requires a periodical evaluation process of the effectiveness of the management systems, preferably as part of the transportation planning process. Paragraph (k) ensures that transportation investment decisions based on management system results would be used at the BIA region or Tribal level and can be used throughout the transportation planning process.

*Section 973.206 Funds for Establishment, Development, and Implementation of the Systems*

This section provides that the funds available for the IRR program can be used for development, establishment, and implementation of the nationwide and required congestion management systems in accordance with legislative provisions for the funds.

*Section 973.208 Indian Lands Pavement Management System (PMS)*

Paragraph (a) defines the applicability of the PMS. Paragraph (b) requires Tribes that collect data for a PMS to provide the data to the BIA to be used in the nationwide PMS. Paragraph (c) recommends the use of the American Association of State Highway and Transportation Officials' (AASHTO) ''Pavement Management Guide'' [4] as a guide for the development of the PMS. Paragraph (d) provides flexibility for the development of the PMS.

This section further sets forth processes and procedures that must be included in a PMS. They include requirements for a basic framework composed of data collection and maintenance, network level analysis, and reporting procedures.

*Section 973.210 Indian Lands Bridge Management System (BMS)*

Paragraph (a) defines the applicability of the BMS. Paragraph (b) requires Tribes that collect data for a BMS to provide the data to the BIA to be used in the nationwide BMS. Paragraph (c) recommends the use of the AASHTO's ''Guidelines for Bridge Management Systems'' [5] as a guide for the development of BMS.

The section sets forth components that must be included in a BMS. They consist of data collection and maintenance, analysis procedures, and reporting procedures.

*Section 973.212 Indian Lands Safety Management System (SMS)*

Paragraph (a) defines the applicability of the SMS. Paragraph (b) requires Tribes that collect data for a SMS to provide the data to the BIA to be used in the nationwide SMS. Paragraph (c) encourages the use of the FHWA publication entitled ''Safety Management Systems: Good Practices for Development and Implementation.'' [6]

Because of the strong emphasis the TEA–21 has on safety, paragraph (d) requires the SMS to be used to ensure that safety is considered and implemented as appropriate in all phases of transportation planning, programming and project implementation. Paragraph (e) states that the level of complexity of the nationwide and Tribal SMS's depends on the nature of the facilities involved.

The section sets forth the components that must be included in a SMS. They include data collection and maintenance, identification and

[4] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[5] ''Guidelines for Bridge Management Systems,'' AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased on line at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[6] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm.* It is available for inspection and copying as prescribed at 49 CFR part 7.

correction of potential safety problems, communications, public education, training needs, and reporting.

To provide flexibility, paragraph (g) states that the extent of SMS requirements set forth in this proposed rule for low volume roads may be tailored to be consistent with the functional classification of the roads. However, each functional classification should include adequate requirements to ensure effective safety decisionmaking.

*Section 973.214 Indian Lands Congestion Management System (CMS)*

Paragraph (b)(1) requires the BIA and the FHWA, in consultation with the Tribes, to develop criteria for determining when a CMS will be required for a specific transportation system.

Paragraph (b)(2) further sets forth the components to be included in a CMS. They include the following: Identification and documentation of measures for congestion; identification of the causes of congestion; development of evaluation processes; identification of benefits; determination of methods to monitor and evaluate performance of the overall transportation system after strategies are implemented; and consideration of example strategies provided in the proposed rule.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

**Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures**

The FHWA has determined preliminarily that the proposed rule would be a significant regulatory action within the meaning of Executive Order 12866, and under the regulatory policies and procedures of the U.S. Department of Transportation, because of the substantial public interest anticipated in the transportation facilities of the Indian lands. The FHWA anticipates that the economic impact of any action taken in this rulemaking process will be minimal. The FHWA anticipates that the proposed changes will not adversely affect any sector of the economy in a material way. Though the proposed action will impact the BIA, it will not likely interfere with any action taken or planned by the BIA or another agency, or materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this proposed action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the proposal described in this document or any alternative proposal submitted.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. Commenters are encouraged to evaluate any options addressed here with regard to the potential for impact.

**Unfunded Mandates Reform Act of 1995**

This proposed rule would not impose a mandate that requires further analysis under the Unfunded Mandates Reform Act of 1995 (Public Law 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local and Tribal Governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). This rulemaking proposes to provide for the development and implementation of pavement, bridge, safety, and congestion management systems for transportation systems providing access to and within Indian lands. These roads are funded under the FLHP; therefore, the proposed rule is not considered an unfunded mandate. Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal Governments and the private sector.

**Executive Order 13132 (Federalism)**

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FHWA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that the proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. However, commenters are encouraged to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule contains a requirement for data and information to be collected and maintained in the four management systems that are to be developed. In order to streamline the process, the FHWA intends to request that the OMB approve a single information collection clearance for all of the data in the four management systems at the time that the requirements in this proposal are made final. The FHWA is sponsoring this proposed clearance on behalf of the Bureau of Indian Affairs.

The FHWA estimates that a total of 5,600 burden hours per year would be imposed on non-Federal entities to provide the required information for the BIA management systems. Respondents to this information collection include State Transportation Departments, Metropolitan Planning Organizations, Tribal governments, regional transportation planning agencies, and county and local governments. The BIA would bear the burden of developing the management systems in a manner that would incorporate any existing data in the most efficient way and without additional burdens to the public. The estimates here only include burdens on the respondents to provide information

that is not usually and customarily collected.

Where a substantial level of effort may be required of non-Federal entities to provide BIA management system information, the effort has been benchmarked to the number of miles of State, local or Tribally owned roads or the number of State, local or Tribally owned bridges within the BIA's jurisdiction. This approach has been applied to the PMS, BMS and SMS. For BIA implementation of the PMS, BMS, and SMS, the total annual burden estimate is 3,600 of the 5,600 hours per year. The level of burden on non-Federal entities for these management systems is modest since the agency will incorporate existing data into the system. Of these three systems, the most substantial burden is associated with the collection of data to implement the BMS. The BMS burden is estimated at 1,400 hours per year. The PMS and SMS burdens are estimated at 1,100 hours per year for each of these management systems.

For the CMS, the non-Federal burden, if applicable, would likely fall to the MPOs, and represents the need for the BIA to coordinate its management system with the MPOs, for those limited instances when a portion of its transportation system is within an MPO area. For estimating purposes, approximately 50 MPOs nationwide may be burdened by the proposed regulation. Forty hours of burden were assigned to each of the 50 MPOs, resulting in a total burden of 2000 hours attributable to the CMS.

The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly, seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

**National Environmental Policy Act**

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this proposed action would not have any effect on the quality of the environment. An environmental impact statement is, therefore, not required.

**Executive Order 13175 (Tribal Consultation)**

The FHWA has analyzed this proposed action under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000, and believes that the proposal will have substantial direct effects on one or more Indian Tribes.

*Section 5 (b) of Executive Order 13175 states:*

> To the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless:
>
> (1) Funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government; or
>
> (2) The agency, prior to formal promulgation of the regulation,
>
> (A) Consulted with Tribal officials early in the process of developing the proposed regulation.

The Executive Order states similar requirements for any regulation that has Tribal implications and preempts Tribal law.

As stated previously, this rulemaking is statutorily required under section 1115(d) of the TEA–21. While there are no specific additional dedicated funds for implementing this regulation, funds already available under the IRR program can be used for the development, establishment, and implementation of the management systems. The FHWA has utilized key Tribal transportation meetings to consult and coordinate with Indian Tribal Governments on this rulemaking since its inception. At these meetings, the FHWA advised the Tribes of the ANPRM and encouraged them to submit comments and suggestions to the docket. In addition, after the docket was closed, the FHWA shared with them all comments submitted to the docket, including those from State Transportation Departments questioning provisions of the IRR statute.

*Tribal Summary Impact Statement*

As stated earlier, the FHWA published an ANPRM on September 1, 1999, to solicit public comments concerning development of this proposed rule pertaining to the BIA and the IRR program (64 FR 47746). Among the comments the FHWA received are the comments from the Tribal representatives to the Indian Reservation Roads Program Negotiated Rulemaking Committee, the United South and Eastern Tribes, Inc., and an intertribal council of twenty-three federally recognized Tribes. These comments are summarized in the section entitled ''Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program.'' Specific comments may be obtained by reviewing the materials in the docket.

Pursuant to Executive Order 13175, during the development process of this NPRM, the FHWA participated in a number of consultation sessions on this rulemaking with numerous Tribal government representatives. The purpose of these sessions was to explain the FHWA's intent in developing the NPRM, as well as to seek input and feedback. These discussions were scheduled agenda items with time provided for questions and answers and took place at the following events: The ''Transportation Improvements: Experiences Among Tribal, Local, State, and Federal Governments Conference,'' Albuquerque, NM, October 2000; the ''Annual Providers Conference,'' Anchorage, AK, November 2000; the ''Intertribal Transportation Association Annual Meeting,'' Las Vegas, NV, December 2000; and the ''Northern Plains Transportation Exposition,'' Aberdeen, SD, March 2001.

During these discussions, the Tribes addressed two major concerns. The first concern dealt with the funding for the establishment, development, and implementation of the management systems. As a response, § 973.206 of this proposed action states that the IRR program management funds may be used to conduct nationwide management systems activities. Additionally, the IRR two-percent Tribal transportation planning or construction funds may be used for Tribal management systems activities.

The second concern surrounded the Tribes' desire to utilize the IRR Negotiated Rulemaking in lieu of this proposed rule. This comment also was addressed to the ANPRM published on September 1, 1999. The FHWA responds to this comment in this NPRM in the ''Summary of Comments Received on the ANPRM Pertaining to the BIA and the Indian Reservation Roads Program'' section. As the response indicates, the requirements for the management systems and the requirements for the IRR program are separate. However with the exception of funding, the language set forth in this NPRM is consistent with the draft language on management systems set forth in the IRR Negotiated Rulemaking Notice.

**Executive Order 12988 (Civil Justice Reform)**

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

**Executive Order 13045 (Protection of Children)**

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

**Executive Order 12630 (Taking of Private Property)**

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

**Executive Order 13211 (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, although this proposed action is considered to be a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 973**

Bridges, Grant programs—transportation, Highway safety, Highways and roads, Indians—Lands, Public lands. Transportation.

For reasons set forth in the preamble, the Federal Highway Administration proposes to amend chapter I of title 23, Code of Federal Regulations, as set forth below.

Issued on: December 20, 2002.

**Mary E. Peters,**

*Federal Highway Administrator.*

1. Add part 973 to read as follows:

## PART 973—BUREAU OF INDIAN AFFAIRS MANAGEMENT SYSTEMS

### Subpart A—Definitions

Sec.
973.100 Purpose.
973.102 Applicability.
973.104 Definitions.

### Subpart B—Bureau of Indian Affairs Management Systems

973.200 Purpose.
973.202 Applicability.
973.204 Management systems requirements.
973.206 Funds for establishment, development and implementation of the systems.
973.208 Indian lands Pavement Management System (PMS).
973.210 Indian lands Bridge Management System (BMS).
973.212 Indian lands Safety Management System (SMS).
973.214 Indian lands Congestion Management System (CMS).

**Authority:** 23 U.S.C. 204, 315, 42 U.S.C. 7410 *et seq.*; 49 CFR 1.48.

### Subpart A—Definitions

#### § 973.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

#### § 973.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

#### § 973.104 Definitions.

*Alternative transportation systems* means modes of transportation other than private vehicles, including methods to improve system performance such as transportation demand management, congestion management, and intelligent transportation systems. These mechanisms help reduce the use of private vehicles and thus improve overall efficiency of transportation systems and facilities.

*Elements* means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

*Federal Lands Highway program (FLHP)* means a federally funded program established in 23 U.S.C. 204 to address transportation needs of Federal and Indian lands.

*Indian lands bridge management system (BMS)* means a systematic process used by the Bureau of Indian Affairs (BIA) or Tribal governments for analyzing bridge data to make forecasts and recommendations, and provides the means by which bridge maintenance, rehabilitation, and replacement programs and policies may be efficiently considered.

*Indian lands congestion management system (CMS)* means a systematic process used by the BIA or Tribal governments for managing congestion that provides information on transportation system performance and alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet Federal, State and local needs.

*Indian lands pavement management system (PMS)* means a systematic process used by the BIA or Tribal governments that provides information for use in implementing cost-effective pavement reconstruction, rehabilitation, and preventive maintenance programs and policies, and that results in pavement designed to accommodate current and forecasted traffic in a safe, durable, and cost-effective manner.

*Indian lands safety management system (SMS)* means a systematic process used by the BIA or Tribal governments with the goal of reducing the number and severity of traffic accidents by ensuring that all opportunities to improve roadway safety are identified, considered, implemented and evaluated, as appropriate, during all phases of highway planning, design, construction, operation and maintenance by providing information for selecting and implementing effective highway safety strategies and projects.

*Indian reservation road* means a public road that is located within or provides access to an Indian reservation or Indian trust land or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian and Alaska Native villages, groups, or communities in which Indians and Alaskan Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

*Indian Reservation Roads (IRR) program* means a part of the FLHP established in 23 U.S.C. 204 to address the transportation needs of federally recognized Indian Tribal Governments (ITG).

*Indian Reservation Roads transportation improvement program (IRRTIP)* means a multi-year, financially constrained list by year, State, and Tribe of IRR-funded projects selected by ITGs from Tribal TIP's, or other Tribal

actions, that are programmed for construction in the next 3 to 5 years.

*Indian Reservation Roads transportation plan* means a document setting out a Tribe's long-range transportation priorities and needs. The IRR transportation plan, which can be developed by either the Tribe or the BIA on behalf of that Tribe, is developed through the IRR transportation planning process pursuant to 23 U.S.C. 204.

*Indian Tribal Government (ITG)* means a duly formed governing body of an Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village, or Community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

*Life-cycle cost analysis* means an evaluation of costs incurred over the life of a project allowing a comparative analysis between or among various alternatives. Life-cycle cost analysis promotes consideration of total cost, to include maintenance and operation expenditures. Comprehensive life-cycle costs analysis includes all economic variables essential to the evaluation: Safety costs associated with maintenance and rehabilitation projects, agency capital cost, and life-cycle maintenance costs.

*Operations* means those activities associated with managing, controlling, and regulating highway traffic.

*Secretary* means the Secretary of Transportation.

*Serviceability* means the degree to which a bridge provides satisfactory service from the point of view of its users.

*State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

*Transportation facilities* means roads, streets, bridges, parking areas, transit vehicles, and other related transportation infrastructure.

## Subpart B—Bureau of Indian Affairs Management Systems

### § 973.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 204 which requires the Secretary and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP.

### § 973.202 Applicability.

The provisions in this subpart are applicable to the Bureau of Indian Affairs (BIA) and the Indian Tribal Governments (ITGs) that are responsible for satisfying these requirements for management systems pursuant to 23 U.S.C. 204.

### § 973.204 Management systems requirements.

(a) The BIA, in consultation with the Tribes, shall develop, establish and implement nationwide pavement, bridge, and safety management systems for Federally and Tribally owned IRR. The BIA may tailor the nationwide management systems to meet the agency's goals, policies, and needs.

(b) The BIA and the FHWA, in consultation with the Tribes, shall develop an implementation plan for each of the nationwide management systems. These plans will include, but are not limited to, the following: Overall goals and policies concerning the nationwide management systems, each agency's responsibilities for developing and implementing the nationwide management systems, implementation schedule, data sources, and cost estimate.

(c) Tribes may develop, establish, and implement Tribal management systems under a self-determination contract or self-governance annual funding agreement. The Tribe may tailor the management systems to meet its goals, policies, and needs.

(d) The BIA, in consultation with Tribes, shall develop criteria for cases in which Tribal management systems are not appropriate.

(e) The BIA, in consultation with Tribes, or the Tribes under a self-determination contract, shall incorporate data provided by States and local governments into the nationwide or Tribal management systems, as appropriate, for State and locally owned IRRs.

(f) The BIA, in consultation with the Tribes, shall develop and implement procedures for the development, establishment, implementation and operation of nationwide management systems. If a Tribe develops Tribal management systems, the Tribe shall develop and implement procedures for the development, establishment, implementation and operation of Tribal management systems. The procedures shall include:

(1) A description of each management system;

(2) A process to operate and maintain the management systems and their associated databases;

(3) A process for data collection, processing, analysis and updating for each management system;

(4) A process for ensuring the results of the management systems are considered in the development of IRR transportation plans and transportation improvement programs and in making project selection decisions under 23 U.S.C. 204; and

(5) A process for the analysis and coordination of all management systems outputs to systematically operate, maintain, and upgrade existing transportation assets cost-effectively;

(g) All management systems shall use databases with a common or coordinated reference system that can be used to geolocate all database information.

(h) Existing data sources may be used by the BIA and Tribes to the maximum extent possible to meet the management system requirements.

(i) A nationwide congestion management system is not required. The BIA and the FHWA shall develop criteria for determining when congestion management systems are required for BIA or Tribal transportation facilities providing access to and within the Indian reservations. Either the Tribes or the BIA, in consultation with the Tribes, shall develop, establish and implement congestion management systems for the transportation facilities that meet the criteria.

(j) The BIA shall develop an appropriate means to evaluate the effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the affected transportation systems and facilities. This evaluation is to be conducted periodically, preferably as part of the BIA planning process.

(k) The management systems shall be operated so investment decisions based on management system outputs can be accomplished at the BIA region and Tribal level and can be utilized throughout the transportation planning process.

### § 973.206 Funds for establishment, development, and implementation of the systems.

The IRR program management funds may be used to accomplish nationwide management system activities. For Tribal management system activities, the IRR two percent Tribal transportation planning or construction funds may be used. (Refer to 23 U.S.C. 204(b) and 204(j)). These funds are to be administered in accordance with the procedures and requirements applicable to the funds.

### § 973.208 Indian lands Pavement Management System (PMS).

In addition to the requirements provided in § 973.204, the PMS must meet the following requirements:

(a) The BIA shall have a PMS for all federally and Tribally owned IRRs included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's PMS, the Tribe shall provide the data to the BIA to be used in the nationwide PMS.

(c) The nationwide and Tribal PMSs may be based on the concepts described in the AASHTO's ''Pavement Management Guide.'' [1]

(d) The nationwide and Tribal PMSs may be utilized at various levels of technical complexity depending on the nature of the pavement network. These different levels may depend on mileage, functional classes, volumes, loading, usage, surface type, or other criteria the BIA and ITGs deem appropriate.

(e) A PMS shall be designed to fit the BIA's or Tribes' goals, policies, criteria, and needs using the following components, at a minimum, as a basic framework for a PMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the PMS. The minimum PMS database shall include:

(i) An inventory of the physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information;

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance. If some of the inventory or historic data is difficult to establish, it may be collected when preservation or reconstruction work is performed;

(iii) A condition survey that includes ride, distress, rutting, and surface friction (as appropriate);

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) Data for estimating the costs of actions.

(2) A system for applying network level analytical procedures that are capable of analyzing data for all federally and Tribally owned IRR in the inventory or any subset. The minimum analyses shall include:

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction (as appropriate);

(ii) A pavement performance analysis that includes present and predicted performance and an estimate of the remaining service life (performance and remaining service life to be developed with time); and

(iii) An investment analysis that:

(A) Identifies alternative strategies to improve pavement conditions;

(B) Estimates costs of any pavement improvement strategy;

(C) Determines maintenance, repair, and rehabilitation strategies for pavements using life-cycle cost analysis or a comparable procedure;

(D) Performs short and long term budget forecasting; and

(E) Recommends optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(f) For any roads in the inventory or subset thereof, PMS reporting requirements shall include, but are not limited to, percentage of roads in good, fair, and poor condition.

**§ 973.210 Indian lands Bridge Management System (BMS).**

In addition to the requirements provided in § 973.204, the BMS must meet the following requirements:

(a) The BIA shall have a nationwide BMS for the federally and Tribally owned IRR bridges that are funded under the FLHP and required to be inventoried and inspected under 23 CFR part 650, subpart C, National Bridge Inspection Standards (NBIS).

(b) Where a Tribe collects data for the Tribe's BMS, the Tribe shall provide the data to the BIA to be used in the nationwide BMS.

(c) The nationwide and Tribal BMSs may be based on the concepts described in the AASHTO's ''Guidelines for Bridge Management Systems.'' [2]

(d) A BMS shall be designed to fit the BIA or Tribe's goals, policies, criteria, and needs using the following components, as a minimum, as a basic framework for a BMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The minimum BMS database shall include:

(i) The inventory data described by the NBIS (23 CFR 650.311);

(ii) Data characterizing the severity and extent of deterioration of bridge components;

(iii) Data for estimating the cost of improvement actions;

(iv) Traffic information including volumes and vehicle classification (as appropriate); and

(v) A history of conditions and actions taken on each bridge, excluding minor or incidental maintenance.

(2) A systematic procedure for applying network level analytical procedures that are capable of analyzing data for all bridges in the inventory or any subset. The minimum analyses shall include:

(i) A prediction of performance and estimate of the remaining service life of structural and other key elements of each bridge, both with and without intervening actions; and

(ii) A recommendation for optimal allocation of limited funds by developing a prioritized list of candidate projects over a predefined planning horizon (both short and long term).

(e) The BMS may include the capability to perform an investment analysis (as appropriate, considering size of structure, traffic volume, and structural condition). The investment analysis may include the ability to:

(1) Identify alternative strategies to improve bridge condition, safety and serviceability;

(2) Estimate the costs of any strategies ranging from maintenance of individual elements to full bridge replacement;

(3) Determine maintenance, repair, and rehabilitation strategies for bridge elements using life cycle cost analysis or a comparable procedure; and

(4) Perform short and long term budget forecasting.

(f) For any bridge in the inventory or subset thereof, BMS reporting requirements shall include, but are not limited to, percentage of non-deficient bridges.

**§ 973.212 Indian lands Safety Management System (SMS).**

In addition to the requirements provided in § 973.204, the SMS must meet the following requirements:

(a) The BIA shall have a nationwide SMS for all federally and Tribally owned IRR and public transit facilities included in the IRR inventory.

(b) Where a Tribe collects data for the Tribe's SMS, the Tribe shall provide the data to the BIA to be used in the nationwide SMS.

(c) The nationwide and Tribal SMS may be based on the guidance in ''Safety Management Systems: Good Practices

[1] ''Pavement Management Guide,'' AASHTO, 2001, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

[2] ''Guidelines for Bridge Management Systems,'' AASHTO, 1993, is available for inspection as prescribed at 49 CFR part 7. It may be purchased online at *http://www.transportation.org/publications/bookstore.nsf* or mail addressed to the American Association of State Highway and Transportation Officials (AASHTO), Publication Order Dept., P.O. Box 96716, Washington, DC 20090–6716.

for Development and Implementation.'' [3]

(d) The BIA and ITGs shall utilize the SMSs to ensure that safety is considered and implemented as appropriate in all phases of transportation system planning, design, construction, maintenance, and operations.

(e) The nationwide and Tribal SMSs may be utilized at various levels of complexities depending on the nature of the IRR facility involved.

(f) A SMS shall be designed to fit the BIA or ITG's goals, policies, criteria, and needs using, as a minimum, the following components as a basic framework for a SMS:

(1) A database and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the SMS. The minimum SMS database shall include:

(i) Accident records;

(ii) An inventory of safety hardware including signs, guardrails, and lighting appurtenances (including terminals); and

(iii) Traffic information including volume and vehicle classification (as appropriate).

(2) Development, establishment and implementation of procedures for:

(i) Routinely maintaining and upgrading safety appurtenances including highway-rail crossing warning devices, signs, highway elements, and operational features where appropriate;

(ii) Routinely maintaining and upgrading safety features of transit facilities;

(iii) Identifying and investigating hazardous or potentially hazardous transportation system safety problems, roadway locations and features; and

(iv) Establishing countermeasures and setting priorities to correct the identified hazards and potential hazards.

(3) A process for communication, coordination, and cooperation among the organizations responsible for the roadway, human, and vehicle safety elements;

(4) Development and implementation of public information and education activities on safety needs, programs, and countermeasures which affect safety on the BIA's and ITG's transportation systems; and

(5) Identification of skills, resources and training needs to implement safety programs for highway and transit facilities and the development of a program to carry out necessary training.

(g) While the SMS applies to all IRRs in the IRR inventory, the extent of system requirements (*e.g.*, data collection, analyses, and standards) for low volume roads may be tailored to be consistent with the functional classification of the roads. However, adequate requirements should be included for each BIA functional classification to provide for effective inclusion of safety decisions in the administration of transportation by the BIA and ITGs.

(h) For any transportation facilities in the IRR inventory or subset thereof, SMS reporting requirements shall include, but are not limited to, the following:

(1) Accident types such as right-angle, rear-end, left turn, head-on, sideswipe, pedestrian-related, run-off-road, fixed object, and parked vehicle;

(2) Accident severity per year measured as number of accidents with fatalities, injuries, and property damage only; and

(3) Accident rates measured as number of accidents (fatalities, injuries, and property damage only) per 100 million vehicle miles of travel, number of accidents (fatalities, injuries, and property damage only) per 1000 vehicles, or number of accidents (fatalities, injuries, and property damage only) per mile.

**§ 973.214 Indian lands Congestion Management System (CMS).**

(a) For purposes of this section, congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The BIA and the FHWA, in consultation with the Tribes, shall develop criteria to determine when a CMS is to be implemented for a specific Federally or Tribally owned IRR transportation system that is experiencing congestion. Either the Tribe or the BIA, in consultation with the Tribe, shall consider the results of the CMS in the development of the IRR transportation plan and the IRRTIP, when selecting strategies for implementation that provide the most efficient and effective use of existing and future transportation facilities to alleviate congestion and enhance mobility.

(b) In addition to the requirements provided in § 973.204, the CMS must meet the following requirements:

(1) For those BIA or Tribal transportation systems that require a CMS, consideration shall be given to strategies that reduce private automobile travel and improve existing transportation system efficiency. Approaches may include the use of alternate mode studies and implementation plans as components of the CMS.

(2) A CMS will:

(i) Identify and document measures for congestion (*e.g.*, level of service);

(ii) Identify the causes of congestion;

(iii) Include processes for evaluating the cost and effectiveness of alternative strategies;

(iv) Identify the anticipated benefits of appropriate alternative traditional and nontraditional congestion management strategies;

(v) Determine methods to monitor and evaluate the performance of the multi-modal transportation system; and

(vi) Appropriately consider the following example categories of strategies, or combinations of strategies for each area:

(A) Transportation demand management measures;

(B) Traffic operational improvements;

(C) Public transportation improvements;

(D) ITS technologies; and

(E) Additional system capacity.

[FR Doc. 03–105 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–22–P

[3] ''Safety Management Systems: Good Practices for Development and Implementation,'' FHWA and NHTSA, May 1996, may be obtained at the FHWA, Office of Safety, Room 3407, 400 Seventh St., SW., Washington, DC 20590, or electronically at *http://safety.fhwa.dot.gov/media/documents.htm*. It is available for inspection and copying as prescribed at 49 CFR part 7.

Federal Register

Wednesday,
January 8, 2003

# Part III

## Department of the Treasury

**Office of the Comptroller of the Currency**

**12 CFR Part 19**

## Board of Governors of the Federal Reserve System

**12 CFR Part 263**

## Federal Deposit Insurance Corporation

**12 CFR Part 308**

## Department of the Treasury

**Office of Thrift Supervision**

**12 CFR Part 513**

**Removal, Suspension, and Debarment of Accountants From Performing Audit Services; Proposed Rule**

**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 19**

**[Docket No. 02–15]**

**RIN 1557–AB43**

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**12 CFR Part 263**

**[Docket No. R–1139]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 308**

**RIN 3064–AC57**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 513**

**[No. 2002–58]**

**RIN 1550–AB53**

## Removal, Suspension, and Debarment of Accountants From Performing Audit Services

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

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

**SUMMARY:** The OCC, Board, FDIC, and OTS (each an Agency, and collectively, the Agencies) propose to revise their respective rules of practice pursuant to section 36 of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m). Section 36, as implemented by 12 CFR part 363, requires that each insured depository institution with total assets of $500 million or more produce an annual report containing the institution's financial statements and certain management assessments. The depository institution must provide the report to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor. Section 36 also requires that the depository institution obtain an audit of its financial statements and an attestation on management's assertions concerning internal controls over financial reporting by an independent public accountant (accountant) and include the accountant's audit and attestation reports in its annual report.

Congress gave the Agencies authority to remove, suspend, or debar accountants from performing the audit services required by section 36 if there is good cause to do so. This proposal would amend the Agencies' rules to establish rules of practice and procedure for the removal, suspension, and debarment of accountants and their firms from performing section 36 audit services for insured depository institutions. The proposal reflects the Agencies' increasing concern with the quality of audits and internal controls for financial reporting at insured depository institutions. Although there have been few bank and thrift failures in recent years, the circumstances of the failures that have occurred illustrate the importance of maintaining high quality in the audits of the financial position and attestations of management assessments of insured depository institutions. The proposed regulations enhance the Agencies' ability to address misconduct by accountants who perform annual audit and attestation services.

**DATES:** Comments must be received by March 10, 2003.

**ADDRESSES:**

*OCC:* Please direct comments to: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW, Mailstop 1–5, Washington, DC 20219, Attention Docket No. 02–15. Comments are available for inspection and photocopying at that address. You can make an appointment to inspect the comments by calling (202) 874–5043. In addition, comments may be sent by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* Due to delays in paper mail delivery in the Washington area, commenters are encouraged to use fax or e-mail delivery, if possible.

*Board:* Comments should refer to Docket No. R–1139 and may be mailed to Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551; sent by FAX to (202) 452–3819 or (202) 452–3102; or sent by e-mail to *regs.comments@federalreserve.gov.* Members of the public may inspect comments in Room MP–500 between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12 (except as provided in section 261.14) of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

*FDIC:* Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Commenters are encouraged to submit comments by facsimile transmission to FAX number (202) 898–3838 or by electronic mail to *Comments@FDIC.gov.* Comments also may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 8:30 am and 5 p.m. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 am and 4:30 p.m. on business days.

*OTS: Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention No. 2002–58.

*Delivery:* Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, N.W. from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention No. 2002–58.

*Facsimiles:* Send facsimile transmissions to FAX Number (202) 906–6518, Attention Docket No. 2002–58.

*E-mail:* Send e-mails to <*regs.comments@ots.treas.gov*>, Attention Docket No. 2002–58 and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, D.C. area, commenters are encouraged to send comments by fax or e-mail if possible.

*Public Inspection:* Interested persons may inspect comments at the Public Reading Room, 1700 G St. NW., from 10 a.m. until 4 p.m. on business days by appointment or obtain comments and/or an index of comments by facsimile by telephoning the Public Reading Room at (202) 906–5922 from 9 a.m. until 5 p.m. on business days. Comments and the related index will also be posted on the OTS Internet site at <*http://www.ots.treas.gov*>.

**FOR FURTHER INFORMATION CONTACT:**

OCC: Mitchell Plave, Counsel, Legislative and Regulatory Activities Division, (202) 874–5090; Richard Shack, Senior Accountant, Office of the Chief Accountant, (202) 874–4911; and Karen Besser, National Bank Examiner, Special Supervision/Fraud, (202) 874–4464.

*Board:* Richard Ashton, Associate General Counsel, (202) 452–3750; Nina Nichols, Counsel, (202) 452–2961; Arthur Lindo, Project Manager, (202)

452–2695; and Salome Tinker, Senior Financial Analyst, (202) 452–3034, Division of Banking Supervision and Regulation; for users of Telecommunication Devices for the Deaf (TDD) only, contact (202) 263–4869.

*FDIC:* Richard Bogue, Counsel, Enforcement Unit, (202) 898–3726; Robert F. Storch, Chief, Accounting and Securities Disclosure Section, (202) 898–8906.

*OTS:* Christine A. Smith, Project Manager, (202) 906–5740, Supervision Policy; Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 36 of the FDIA, as implemented by FDIC regulations, requires every large insured depository institution to submit an annual report containing its financial statements and certain management assessments to the FDIC, the appropriate Federal banking agency, and any appropriate state bank supervisor.[1] Section 36 of the FDIA also requires that an independent public accountant audit such insured depository institution's annual financial statements to determine whether those statements are presented fairly in accordance with generally accepted accounting principles (GAAP) and with the accounting objectives, standards, and requirements described in section 37 of the FDIA.

Under section 37, the accounting principles applicable to financial statements required to be filed with the Agencies must be uniform and consistent with GAAP.[2] In addition, the accountant must attest to and report on management's assertions concerning internal controls over financial reporting.[3] The institution's annual report also must contain the accountant's audit and attestation reports.[4] Section 36 of the FDIA gives the Agencies the authority to remove, suspend, or bar an accountant from performing the audit services required under section 36 for good cause.[5] This authority is in addition to the enforcement tools the Agencies have under section 8 of the FDIA, which enable the Agencies to remove or prohibit an institution-affiliated party (IAP), including an accountant, from further participation in the affairs of an insured depository institution for certain types of misconduct.[6] Section 36 authority is also distinct from the Agency's capability to remove, suspend, or debar from practice before the Agency parties, such as accountants, who represent others.[7]

Section 36 does not define good cause, but authorizes the Agencies to implement section 36 through the joint issuance of rules of practice.[8] A removal, suspension, or debarment under section 36 would limit an accountant's or accounting firm's eligibility to provide audit services to insured depository institutions with total assets of $500 million or more. A section 36 action would not restrict the ability of accountants and firms to provide audit services to financial institutions with less than $500 million in total assets, however, or to provide other types of services to all financial institutions.

The Agencies have jointly prepared proposed rules of practice to implement the provisions of section 36. The texts of the Agencies' proposed regulations are substantively identical and differ with respect to conforming changes each Agency is making to its existing rules. These proposed rules do not create independent professional standards or obligations for accountants or firms. Rather, they are consistent with an accountant's existing responsibility to adhere to applicable professional standards such as generally accepted auditing standards and generally accepted standards for attestation engagements. The proposed rules are also consistent with the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act),[9] which, among other things, provides for significant reforms in the oversight of the accounting industry. The discussion that follows refers more specifically to the provisions of the Sarbanes-Oxley Act that are relevant to this proposal.

## II. Discussion of the Proposal and Request for Comment

The proposal would amend the Agencies' rules of practice by adding provisions for removal, suspension, or debarment of accountants or accounting firms from performing the audit services required by section 36 of the FDIA. The proposed rules would define ''good cause'' to remove, suspend, or debar an accountant or firm from performing audit services and establish procedures for removal, suspension, or debarment of accountants or firms if the ''good cause'' standards are satisfied.

The first part of the discussion that follows describes the common elements of the proposed rules. The second part explains proposed technical and conforming changes to the existing rules of the OCC, Board, and FDIC. The Agencies invite comment on all aspects of the proposed rules.

### *A. Proposed Additions to the Rules of All the Agencies*

#### 1. Audit Services

The proposed rules define ''audit services'' as any service required to be performed under section 36 of the FDIA (12 U.S.C. 1831m) and 12 CFR part 363, including attestation services.[10]

#### 2. Good Cause for Agency Action

The proposed rules define good cause for removal, suspension, or debarment of accountants from providing audit services required by section 36. Under the proposal, the Agencies would have ''good cause'' if the accountant does not possess the requisite qualifications to perform audit services; engages in knowing or reckless conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act and developed by the Public Company Accounting Oversight Board (Accounting Oversight Board) and the Securities and Exchange Commission (SEC), as such standards and provisions become effective;[11]

[1] 12 U.S.C. 1831m, 1831m(j)(2); *see also* 12 CFR part 363 (describing the requirements for independent audits and reporting for all insured depository institutions). The statute gives the FDIC Board of Directors the discretion to establish the threshold asset size at which a section 36 annual report is required. That amount is currently set at $500 million. *See* 12 CFR 363.1(a). While a section 36 audit is not required of financial institutions with less than $500 million in total assets, the Agencies encourage every insured depository institution, regardless of its size or character, to have an annual audit of its financial statements performed by an independent public accountant. *See* 12 CFR part 363 App. A (Introduction).

[2] 12 U.S.C. 1831m(d), 1831n.

[3] *Id.* 1831m(c): *see also* 12 CFR part 363 (independent audit and reporting requirements).

[4] 12 U.S.C. 1831m(a)(1) and (2).

[5] *Id.* 1831m(g)(4)(A).

[6] *Id.* 1813(u)(4), 1818(e)(1).

[7] *See* 12 CFR part 19, subpart K; 12 CFR part 263, subpart F; and 12 CFR part 513.

[8] 12 U.S.C. 1831m(g)(4)(B).

[9] The Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat 745 (2002).

[10] For the Board and OTS, ''audit services'' also includes services provided to a bank holding company or thrift holding company that satisfy the audit requirements under section 36 of a subsidiary bank or thrift of that holding company.

[11] The FDIC's Guidelines and Interpretations concerning annual independent audits and reporting requirements, *see* 12 CFR part 363 app. A, at para. 14, call for accountants who perform audit and attestation services to comply with the American Institute of Certified Public Accountants' *Code of Professional Conduct* and meet the independence requirements and interpretations of the SEC and its staff. Title II of the Sarbanes-Oxley Act amended the Securities and Exchange Act of 1934 by adding new auditor indepdence provisions.

Continued

in a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or engages in repeated instances of unreasonable conduct, each resulting in a violation of applicable standards, that indicate a lack of competence to perform annual audit services.

Good cause also includes knowingly or recklessly giving false or misleading information to the Agencies with respect to any matter before the Agency; knowingly or recklessly materially violating any provision of the Federal banking or securities laws or regulations, or any other law, including the Sarbanes-Oxley Act; and removal, suspension, or debarment from practice before any Federal or state agency regulating the banking, insurance, or securities industries on grounds relevant to the provision of audit services, other than those actions that result in automatic removal, suspension, and debarment under the proposed rules.

Conduct giving rise to good cause under the proposed rules does not have to occur in connection with the provision of audit services or in connection with services provided to depository institutions. Any actions or failures to act by an independent public accountant or accounting firm that meet the criteria for good cause set forth in the regulation, whether or not related to the banking industry, could constitute good cause for Agency action. The standards in the proposed rules for removal, suspension, and debarment are drawn principally from the Agencies' existing practice rules and from the practice rules of the SEC.[12] The proposal thus promotes consistency with respect to professional standards for accountants.

3. Removal, Suspension, or Debarment of Accounting Firms or Offices of Firms

The proposed rules provide for the removal, suspension, or debarment of accounting firms as a whole and identify factors the Agencies may consider in determining the appropriate remedy. Under current regulations governing practice before the Agencies, the Agencies generally can remove, suspend, or debar a firm by naming each member of the firm or office in the order of suspension or debarment. The proposal retains this flexibility and provides guidance on conduct that may result in a firm-wide sanction.

The proposed rules provide that, in considering whether to take action against a firm and the severity of the sanction against a firm, the Agencies may assess the gravity, scope, or repetition of the act or failure to act; the adequacy of and adherence to applicable policies, practices, or procedures for the firm's conduct of its business and the performance of audit services; the selection, training, supervision, and conduct of members or employees of the firm involved in the performance of audit services; the extent to which managing partners or senior officers of the firm participated, directly or indirectly through oversight or review, in the act or failure to act; and the extent to which the firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence. This is not an exclusive list of factors the Agencies may consider, and circumstances may present other facts that the Agencies will take into account in determining whether to take an action against a firm.

The Agencies anticipate that there may be circumstances in which it will not be appropriate to remove, suspend, or debar an entire firm, but that action should be taken against a particular office or offices of a firm. The proposed rules permit that more limited action.

4. Removal, Suspension, and Debarment Procedures

Under the proposed rules, the Agencies would hold hearings on removals, suspensions, and debarments under rules that are consistent with the Agencies' Uniform Rules of Practice and Procedure (Uniform Rules).[13] The Uniform Rules provide, among other things, for written notice to the respondent of the intended Agency action and the opportunity for a public hearing before an administrative law judge. The administrative law judge would refer a recommended decision to the Agency, which would issue a final decision and order. Each Agency would have the discretion to limit an order of removal, suspension, or debarment from providing audit services to a limited number of insured depository institutions, rather than to all insured depository institutions supervised by the issuing Agency. This is referred to in the proposed regulations as a ''limited scope order.'' [14]

The Agencies do not intend the proposed rules to create any new or different procedural mechanisms for Agency removal, suspension, or debarment of accountants. Rather, the Agencies generally intend to apply to these proceedings established rules and practices.

5. Immediate Suspensions

Section 36 of the FDIA provides that the appropriate Federal banking agency may ''remove, suspend, or bar'' an independent public accountant from performing audit services.[15] The proposed rules would implement the authority to suspend by providing that an Agency may issue a notice of immediate suspension when an Agency has a reasonable basis to believe that an accountant or accounting firm is engaged in conduct that would constitute grounds for an order of removal, suspension, or debarment and if immediate suspension is necessary for the protection of an insured depository institution, its depositors, or the depository system as a whole. The discretion to impose immediate suspensions can be critical to the safety and soundness of one or more insured depository institutions. For example, once misconduct is identified, immediate suspensions would prevent additional or escalating instances of misconduct.

Under the proposed rules, a notice of immediate suspension would remain in effect until the Agency dismisses the charges in the notice or issues a final order of removal, suspension, or debarment. The proposals establish a system for expedited review of a notice of immediate suspension. The accountant or accounting firm has the right to petition for a stay of a notice of immediate suspension within 10 calendar days after receiving service of

Title II also requires that the SEC promulgate regulations, within 180 days after enactment of the Act, or by January 23, 2003, to implement these provisions. *See* Sarbanes-Oxley Act, section 208. Most of the provisions, however, are not effective until after an accountant is required to register with the Accounting Oversight Board created by this legislation. This requirement will not be effective until later in 2003. Therefore, accountants who perform section 36 annual audits and attestation services for insured depository institutions, regardless of whether the institution or its holding company is an issuer directly subject to the Sarbanes-Oxley Act, must comply with the SEC's upcoming regulations on auditor independence, once those regulations become effective for registered public accounts under the Sarbanes-Oxley Act.

[12] *See* 17 CFR 201.102(e) (SEC's rules on suspension and debarment of those who practice before the Commission, including accountants). Congress recently codified the SEC's suspension and debarment rules in section 602 of the Sarbanes-Oxley Act.

[13] *See* 12 CFR part 19, subpart A (OCC); 12 CFR part 263, subpart A (Board); 12 CFR part 308, subpart A (FDIC); 12 CFR 509, supart A (OTS).

[14] The Agencies will also have the discretion to issue suspension orders where the duration of the suspension would be dependent on the satisfactory completion of remedial action.

[15] 12 U.S.C. 1831m(g)(4)(A).

the notice. A presiding officer appointed by the Agency would hold a hearing on the stay petition not more than 30 days after receipt of the petition. The presiding officer would be required to issue a decision within 30 days of the hearing. The presiding officer could grant a stay of an immediate suspension upon a demonstration that a substantial likelihood exists of the accountant's or firm's success on the issues raised by the notice and that, absent such relief, the accountant or firm would suffer immediate and irreparable injury, loss, or damage. Any party may appeal the presiding officer's decision to the Agency.

The Agencies modeled the procedures set out in the proposed rules for imposing an immediate suspension of an accountant or accounting firm pending completion of a formal removal, suspension, or debarment administrative hearing after the procedures that apply to other types of temporary suspensions by regulatory agencies. In particular, the proposed immediate suspension procedures are substantially the same as those in section 8(g) of the FDIA governing the suspension by a Federal banking agency of an institution-affiliated party who has been charged with a felony.[16] The courts have upheld the procedures established in section 8(g) as meeting constitutional due process requirements.[17] Nevertheless, the Agencies invite comment on whether additional procedures should be provided to ensure that parties have adequate due process protections when they are suspended prior to a hearing on the charges made by an Agency.

6. Automatic Removal, Suspension, and Debarment

Under the proposed rules, an accountant or accounting firm that is subject to a final order of removal, suspension, or debarment issued by one Agency would be automatically precluded from performing audit services for insured depository institutions regulated by the other Agencies. In addition, automatic removal, suspension, or debarment would result from a final order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission, a currently effective disciplinary sanction by the Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act,[18] or a suspension or debarment from practice for cause by a state, possession, commonwealth, or District of Columbia licensing authority.

Each Agency would have the discretion to waive the automatic suspension on a case-by-case basis with respect to an institution it supervises by issuing written permission to the accountant or accounting firm. The Agencies intend that neither a limited scope order nor a notice of immediate suspension would bar an accountant or accounting firm from performing audit services for insured depository institutions outside the scope of that order or notice.

7. Notice

The proposed rules would require the Agencies to make public any final order of removal, suspension, or debarment against an accountant or accounting firm and notify the other Agencies of such orders. This is consistent with the presumption in favor of public notice for enforcement actions in the FDIA.[19]

The rules also contain notification provisions for accountants and firms. The proposal would require that an accountant or accounting firm that performs section 36 audit services for any insured depository institution provide the Agencies with written notice of any currently effective disciplinary sanction against the accountant or firm issued by the Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act, relating to revocation of registration and association with a public accounting firm or issuer; any current suspension or denial of the privilege of appearing or practicing before the SEC; or any suspensions or debarments for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia. Written notice is also required respecting any removal, suspension, or debarment from practice before any Federal or state agency regulating the banking, insurance, or securities industries on grounds relevant to the provision of audit services; and any action by the Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act, relating to limitations on the activities of accountants and accounting firms and any other appropriate sanction provided in the rules of the Accounting Oversight Board. Written notice must be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

8. Reinstatement

The Agencies would have the discretion to grant an accountant's or accounting firm's request for reinstatement. Under the proposals, a removed, suspended, or debarred individual or firm would be able to request reinstatement by the Agency that issued the order. The individual or firm would be able to request reinstatement at any time more than one year after the effective date of the order and, thereafter, at any time more than one year after the most recent request for reinstatement.

*B. Conforming and Technical Changes to the Rules of the Agencies*

1. OCC

The OCC proposes to add ''recklessness'' to its description of ''disreputable conduct'' that may lead to removal, suspension, or debarment of parties or their representatives who practice or appear before the OCC.[20] This change would conform the OCC's general rules of practice with the standards in the proposal for removal, suspension, or debarment of accountants from performance of section 36-required audit services, which in turn reflects the addition of the recklessness standard to the SEC's rules of practice by the Sarbanes-Oxley Act. The purpose of adding the recklessness standard is to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment.

The OCC also proposes to broaden the scope of ''disreputable conduct'' to allow the OCC to consider suspensions or debarments of accountants—for any reason—by the other Agencies, the SEC, the Commodity Futures Trading Commission, or any other Federal agency. This change would remove the requirement in the current section 19.196(g) that suspensions by other agencies concern ''matters relating to the supervisory responsibilities of the OCC.'' This change takes into account the possibility that a suspension of an accountant by another agency, relating to the professional conduct of an accountant, could be grounds for

[16] *Id.* 1818(g).

[17] *See FDIC* v. *Mallen,* 486 U.S. 230 (1988).

[18] Section 105(c)(4)(A) of the Sarbanes-Oxley Act allows the Accounting Oversight Board to revoke the registration of an accounting firm for violation of the Act or other laws or regulations cited. Section 105(c)(4)(B) gives the Accounting Oversight Board authority to suspend or bar a person from further association with any registered public accounting firm.

[19] 12 U.S.C. 1818(u)(1).

[20] *See* 12 CFR 19.196 (describing disreputable conduct).

removal, suspension, or debarment by the OCC, even if the suspension by the other agency did not relate to a banking matter.

Unlike the other amendments in the proposal, which would address an accountant's or firm's ability to perform section 36-required audits, this part of the proposal concerns who may practice before the OCC in other capacities, such as in adjudications, or through preparation of documents for submission to the OCC.

The OCC would also revise a number of sections within part 19 to make conforming and technical changes to implement section 36 of the FDIA and bring procedural aspects of part 19 up to date.

2. Board

The Board proposes to amend its Rules of Practice Before the Board (12 CFR part 263, subpart F) to expand the type of conduct for which an individual may be censured, debarred, or suspended from practice before the Agency. In particular, the Board proposes to revise the description of the conduct that would warrant sanctions to include reckless violations, or reckless aiding and abetting violations, of specified laws and the reckless provision of false or misleading information, or reckless participation in the provision of false or misleading information, to the Board. The regulation currently provides for sanctions only for willful misconduct. The purpose of this proposed amendment is to clarify that conduct more culpable than incompetence, but less culpable than willful or knowing action, may form the basis for a suspension or debarment from practice before the Agency. This change also reflects the modification made to the SEC's rules of practice by the Sarbanes-Oxley Act.

3. FDIC

The FDIC proposes to make a clarifying and conforming amendment to 12 CFR 308.109, which deals with the suspension and disbarment of the right of any counsel to appear or practice before the FDIC, to specify that an application for reinstatement must comply with the general filing procedures established by part 303. The amendment would add a new sentence before the current last sentence of section 308.109(b)(3) to read as follows: ''The application shall comply with the requirements of 12 CFR 303.3.''

*C. Comment Solicitation*

The Agencies ask for comment on all aspects of the proposed rules. Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12. 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

*D. Community Bank Comment Request*

The Agencies invite comment on the impact of this proposal on community banks. The Agencies recognize that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, we specifically request comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

*E. Regulatory Flexibility Act*

*OCC:* Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), the appropriate Federal banking agencies must either provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis and proposed regulation, the OCC defines ''small entities'' to be those national banks with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts.

We have reviewed the impact this proposed rule will have on small banks. Based on that review, we certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the requirement for audits does not apply to national banks with less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to national banks. For these reasons, the OCC does not anticipate that the proposal will affect a substantial number of small entities.

*Board:* Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the suspension and debarment amendments proposed in this rulemaking will not have a significant adverse economic impact on a substantial number of small entities. For purposes of this Regulatory Flexibility Analysis, the Board defines ''small entity'' as (1) any insured state member bank with less than $150 million in total assets, or (2) any bank holding company with a subsidiary insured state member bank with less than $150 million in total assets. For other entities that could be affected by this rule, such as accountants and accounting firms, a small entity is defined as an accounting office with $7 million or less in annual receipts. The basis for the Board's certification is that the rule will not apply to state member banks that have less than $500 million in total assets. In addition, only a limited number of small accounting firms provide section 36 audit services to institutions that are regulated by the Federal Reserve.

*FDIC:* The rule proposes and requests comment on amendments to the FDIC's rules of practice (12 CFR part 308). These amendments would add rules of practice and standards of conduct with regard to accountants and accounting firms engaged by State nonmember banks. The FDIC hereby certifies, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), that the proposed suspension and debarment amendments will not, if promulgated through a final rule, have a significant economic impact on a substantial number of small entities. The basis for the certification is that the rule will not apply to insured depository institutions that have less than $150 million in total assets. Furthermore, only a limited number of small accounting firms provide section 36 audit services to insured depository institutions for which the FDIC is the appropriate Federal banking agency.

*OTS:* Under the RFA, OTS must either provide an IRFA with this proposed rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. For purposes of this RFA analysis and

proposed regulation, the OTS defines ''small banks'' to be those savings associations with less than $150 million in total assets.

Pursuant to section 605(b) of the RFA, OTS certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this rule does not apply to savings associations with less than $500 million in assets.

*F. Executive Order 12866*

The OCC and OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866.

*G. Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

**H. Paperwork Reduction Act**

The Agencies have determined that this proposed rule does not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

**List of Subjects**

*12 CFR Part 19*

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

*12 CFR Part 263*

Administrative practice and procedure, Claims, Crime, Equal access to justice, Federal Reserve System, Lawyers, Penalties.

*12 CFR Part 308*

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, investigations, Lawyers, Penalties, State nonmember banks.

*12 CFR Part 513*

Accountants, Administrative practice and procedure, Lawyers.

**Deparment of the Treasury**

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

**Authority and Issuance**

For reasons set out in the joint preamble, the OCC proposes to amend part 19 of chapter I of title 12 of the Code of Federal Regulations to read as follows:

## PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is amended to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; and 42 U.S.C. 4012a.

2. Section 19.100 of subpart B is revised to read as follows:

### § 19.100 Filing documents.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceeding under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition (except that in removal and prohibition cases instituted pursuant to 12 U.S.C. 1818, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System); referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

3. In § 19.111 of subpart C, the section heading and the fourth and fifth sentences are revised to read as follows:

### § 19.111 Suspension, removal, or prohibition.

* * * The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Deputy Comptroller in the OCC district in which the bank, accountant, or accounting firm in question is located, or, if the bank is supervised by the Large Bank Supervision Department, to the appropriate Deputy Comptroller for Large Bank Supervision for the Office of the Comptroller of the Currency, or if the bank is supervised by the Mid-Size/Community Banks Department, to the Deputy Comptroller for Mid-Size/Community Banks for Office of the Comptroller of the Currency, Washington, DC 20219. The request must state specifically the relief desired and the grounds on which that relief is based.

4. In § 19.196 of subpart K, the introductory text and paragraphs (a), (b), and (g) are revised to read as follows:

### § 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred, or suspended from practice before the OCC includes:

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term ''information'' includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement;

* * * * *

(g) Suspension, debarment or removal from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or state agency; and

* * * * *

5. A new subpart P is added to read as follows:

**Subpart P—Removal, Suspension, and Debarment of Accountants From Performing Audit Services**

Sec.
19.241 Scope.
19.242 Definitions.
19.243 Removal, suspension, or debarment.
19.244 Automatic removal, suspension, or debarment.
19.245 Notice of removal, suspension, or debarment.
19.246 Petition for reinstatement.

## Subpart P—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

### § 19.241 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured national banks, District of Columbia banks, and Federal branches and agencies of foreign banks.

### § 19.242 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

### § 19.243 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment*—(1) *Individuals.* The Comptroller may remove, suspend, or debar an independent public accountant from performing audit services for insured national banks that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Comptroller finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the OCC or any officer or employee of the OCC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law;

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 19.244, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Comptroller determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Comptroller also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Comptroller may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Comptroller, be made applicable to a particular national bank or class of national banks.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the OCC may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar*—(1) *Initiation of formal removal, suspension, or debarment proceedings.* The Comptroller may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 19, subpart A.)

(c) *Immediate suspension from performing audit services*—(1) *In general.* If the Comptroller serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Comptroller may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured national banks, if the Comptroller:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository

institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Comptroller dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Comptroller to the respondent.

(3) *Petition for stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Office of the Comptroller of the Currency, Washington, DC 20219 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Comptroller will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 19.6 through 19.12, 19.16, and 19.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer shall promptly certify the entire record to the Comptroller. Within 60 calendar days of the presiding officer's certification, the Comptroller shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Comptroller's decision.

**§ 19.244 Automatic removal, suspension, and debarment.**

(a) An independent public accountant or accounting firm may not perform audit services for insured national banks if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision under section 36 of the FDIA.

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the Comptroller, for good cause shown, may grant written permission to such accountant or firm to perform audit services for national banks. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

**§ 19.245 Notice of removal, suspension or debarment.**

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Comptroller shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Comptroller by accountants and firms.* An accountant or accounting firm that provides audit services to a national bank must provide the Comptroller with written notice of:

(1) Any currently effective order or other action described in § 19.243(a)(1)(vi) or §§ 19.244(a)(2) through (a)(4); or

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act) (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

**§ 19.246 Petition for reinstatement.**

(a) *Form of petition.* Unless otherwise ordered by the Comptroller, a petition for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 19.243 may be made in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or firm's most recent petition for reinstatement. The request shall contain a concise statement of the action requested. The Comptroller may require the applicant to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Comptroller, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application. The Comptroller may, in his sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Comptroller, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: November 27, 2002.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

**Federal Reserve System**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons set out in the joint preamble, the Board proposes to amend part 263, chapter II, title 12 of the Code of Federal Regulations as follows:

## PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

**Authority:** 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 506, 1817(j), 1818, 1828(c), 1831m, 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, 78u–2, 6801, 6805; and 28 U.S.C. 2461 note.

2. In § 263.94, paragraphs (a) and (b) are revised to read as follows:

### § 263.94 Conduct warranting sanctions.

* * * * *

(a) Willfully or recklessly violating or willfully or recklessly aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly or recklessly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term ''information'' includes facts or other statements contained in testimony, financial statements, applications, affidavits, declarations, or any other document or written or oral statement;

* * * * *

3. A new subpart J is added as follows:

### Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

Sec.
263.400 Scope.
263.401 Definitions.
263.402 Removal, suspension, or debarment.
263.403 Automatic removal, suspension, and debarment
263.404 Notice of removal, suspension, or debarment.
263.405 Petition for reinstatement.

### Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

#### § 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks and for bank holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

#### § 263.401 Definitions.

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to the holding company of an insured bank that is used to satisfy requirements imposed by section 36 or part 363 on that bank.

(c) *Banking organization* means an insured state member bank or a bank holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank of that holding company.

(d) *Independent public accountant* (accountant) means any individual who performs or participates in providing audit services.

#### § 263.402 Removal, suspension, or debarment.

(a) *Good cause for removal, suspension, or debarment*—

(1) *Individuals.* The Board may remove, suspend, or debar an independent public accountant from performing audit services for banking organizations that are subject to section 36 of the FDIA, if, after notice of and opportunity for hearing in the matter, the Board finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflict of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002, Pub. L. No. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the Board or any officer or employee of the Board;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 263.403, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Board determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (a)(1) of this section, the Board also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend or debar a firm or an office thereof, and the term of any sanction against a firm under this section, the Board may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight

or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board, be made applicable to a particular banking organization or class of banking organizations.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the Board may have under any other applicable provisions of law, rule, or regulation.

(b) *Proceedings to remove, suspend, or debar*—(1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearing under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(2) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 263, subpart A).

(c) *Immediate suspension from performing audit services*—(1) *In general.* If the Board serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for banking organizations, if the Board:

(i) Has a reasonable basis to believe that the accountant or firm has engaged in conduct (specified in the notice served on the accountant or firm under paragraph (b) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Board to the respondent.

(3) *Petition to stay.* Any accountant or firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551 for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension shall remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Secretary will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph there shall be no discovery and the provisions of §§ 263.6 through 263.12, 263.16, and 263.21 of this part shall apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer shall promptly certify the entire record to the Board. Within 60 calendar days of the presiding officer's certification, the Board shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Board's decision.

**§ 263.403 Automatic removal, suspension, and debarment.**

(a) An independent public accountant or accounting firm may not perform audit services for banking organizations if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the Board, for good cause shown, may grant written permission to such accountant or firm to perform audit services for banking organizations. The request shall contain a concise statement of the action requested. The Board may require the applicant to submit additional information.

**§ 263.404. Notice of removal, suspension, or debarment.**

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Board shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the Board by accountants and firms.* An accountant or accounting firm that provides audit services to a banking organization must provide the Board with written notice of:

(1) Any currently effective order or other action described in § 263.402(a)(1)(vi) or §§ 263.403(a)(2) through (a)(4); or

(2) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or firm accepts an engagement to provide audit services, whichever date is earlier.

**§ 263.405 Petition for reinstatement.**

(a) *Form of petition.* Unless otherwise ordered by the Board, a petition for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 263.402 may be made in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or firm's most recent petition for reinstatement. The request shall contain a concise statement of the action requested. The Board may require the petitioner to submit additional information.

(b) *Procedure.* A petitioner for reinstatement under this section may, in the sole discretion of the Board, be afforded a hearing. The accountant or firm shall bear the burden of going forward with a petition and proving the grounds asserted in support of the petition. The Board may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board, for good cause shown, has reinstated the petitioner or until the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

By order of the Board of Governors of the Federal Reserve System, December 17, 2002.

**Jennifer J. Johnson,**

*Secretary of the Board.*

**Federal Deposit Insurance Corporation**

## PART 308—RULES OF PRACTICE AND PROCEDURE

1.The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

2. Section 308.109(b)(3) is amended to add a new sentence before the last sentence to read as follows:

**§ 308.109 Suspension and disbarment**

* * * * *

(b) * * *

(3) * * * The application must comply with the requirements of § 303.3 of this chapter. * * *

* * * * *

3. A new Subpart U is added to read as follows:

**Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service**

Sec.
308.600 Scope.
308.601 Definitions.
308.602 Removal, suspension, or debarment.
308.603 Automatic removal, suspension, and debarment.
308.604 Notice of removal, suspension, or debarment.
308.605 Application for reinstatement.

## Subpart U—Removal, Suspension, and Debarment of Accountants From Performing Audit Service

**§ 308.600 Scope.**

This subpart, which implements section 36(g)(4) of the FDIA (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured depository institutions for which the FDIC is the appropriate Federal banking agency.

**§ 308.601 Definitions.**

As used in this subpart, the following terms shall have the meaning given below unless the context requires otherwise:

(a) *Accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(b) *Audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA and 12 CFR part 363, including attestation services.

(c) *Independent public accountant (accountant)* means any individual who performs or participates in providing audit services.

**§ 308.602 Removal, suspension, or debarment.**

(a) *Good cause for removal, suspension, or debarment*—(1) *Individuals.* The Board of Directors may remove, suspend, or debar an independent public accountant from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency under section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Board of Directors finds that the accountant:

(i) Lacks the requisite qualifications to perform audit services;

(ii) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to accountants through the Sarbanes-Oxley Act of 2002 (Pub. L. 107–204, 116 Stat. 745 (2002)) (Sarbanes-Oxley Act) and developed by the Public Company Accounting Oversight Board and the Securities and Exchange Commission;

(iii) Has engaged in negligent conduct in the form of:

(A) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or

(B) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(iv) Has knowingly or recklessly given false or misleading information, or knowingly or recklessly participated in any way in the giving of false or misleading information, to the FDIC or any officer or employee of the FDIC;

(v) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(vi) Has been removed, suspended, or debarred from practice before any Federal or state agency regulating the banking, insurance, or securities industries, other than by an action listed in § 308.603, on grounds relevant to the provision of audit services.

(2) *Accounting firms.* If the Board of Directors determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph

(a)(1) of this section, the Board of Directors also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or an office thereof, and the term of any sanction against an accounting firm under this section, the Board of Directors may consider, for example:

(i) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(ii) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(iii) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(iv) The extent to which managing partners or senior officers of the accounting firm have participated, directly, or indirectly through oversight or review, in the act or failure to act; and

(v) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(3) *Limited scope orders.* An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Board of Directors, be made applicable to a limited number of insured depository institutions for which the FDIC is the appropriate Federal banking agency.

(4) *Remedies not exclusive.* The remedies provided in this subpart are in addition to any other remedies the FDIC may have under any other applicable provision of law, rule, or regulation.

(b) *Proceedings to remove, suspend or debar*— (1) *Initiation of formal removal, suspension, or debarment proceedings.* The Board of Directors may initiate a proceeding to remove, suspend, or debar an accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) *Hearings under paragraph (b) of this section.* An accountant or firm named as a respondent in the notice issued under paragraph (b)(1) of this section may request a hearing on the allegations contained in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 308, subpart A) (Uniform Rules).

(c) *Immediate suspension from performing audit service*— (1) *In general.* If the Board of Directors serves a written notice of intention to remove, suspend, or debar an accountant or accounting firm from performing audit services, the Board of Directors may, with due regard for the public interest and without a preliminary hearing, immediately suspend such accountant or firm from performing audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the Board of Directors:

(i) Has a reasonable basis to believe that the accountant or accounting firm has engaged in conduct (specified in the notice served upon the accountant or accounting firm under paragraph (b)(1) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (a) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such respondent with written notice of the immediate suspension.

(2) *Procedures.* An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Board of Directors dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Board of Directors to the respondent.

(3) *Petition to stay.* Any accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (c)(1) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Executive Secretary for a stay of such immediate suspension. If no petition is filed within 10 calendar days, the immediate suspension will remain in effect.

(4) *Hearing on petition.* Upon receipt of a stay petition, the Executive Secretary will designate a presiding officer who will fix a place and time (not more than 30 calendar days after receipt of the petition, unless extended at the request of petitioner) at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses also may be presented. Enforcement counsel may represent the agency at the hearing. In hearings held pursuant to this paragraph there shall be no discovery, and the provisions of §§ 308.6 through 308.12, § 308.16, and § 308.21 of the Uniform Rules will apply.

(5) *Decision on petition.* Within 30 calendar days after the hearing, the presiding officer will issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice of intention. The presiding officer will serve a copy of the decision on, and simultaneously certify the record to, the Executive Secretary.

(6) *Review of presiding officer's decision.* The parties may seek review of the presiding officer's decision by filing a petition for review with the Executive Secretary within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the Executive Secretary will promptly certify the entire record to the Board of Directors. Within 60 calendar days of the Executive Secretary's certification, the Board of Directors will issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order will state the basis of the Board's decision.

**§ 308.603 Automatic removal, suspension, and debarment.**

(a) An independent public accountant or accounting firm may not perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency if the accountant or firm:

(1) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision under section 36 of the FDIA;

(2) Is subject to a temporary suspension or permanent revocation of

registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(3) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; or

(4) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(b) Upon written request, the FDIC, for good cause shown, may grant written permission to such accountant or firm to perform audit services for insured depository institutions for which the FDIC is the appropriate Federal banking agency. The written request must comply with the requirements of § 303.3 of this chapter.

**§ 308.604 Notice of removal, suspension, or debarment.**

(a) *Notice to the public.* Upon the issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the FDIC will make the order publicly available and provide notice of the order to the other Federal banking agencies.

(b) *Notice to the FDIC by accountants and firms.* An accountant or accounting firm that provides audit services to any insured depository institution for which the FDIC is the appropriate Federal banking agency must provide the FDIC with written notice of:

(1) any currently effective order or other action described in § 308.602(a)(1)(vi) or §§ 308.603(b) through (d); or

(2) any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(c) *Timing of Notice.* Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action, or 15 calendar days before an accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

**§ 308.605 Application for reinstatement.**

(a) *Form of petition.* Unless otherwise ordered by the Board of Directors, an application for reinstatement by an independent public accountant or accounting firm removed, suspended, or debarred under § 308.602 may be made in writing at any time more than one year after the effective date of the removal, suspension, or debarment and, thereafter, at any time more than one year after the accountant's or accounting firm's most recent application for reinstatement. The application must comply with the requirements of § 303.3 of this chapter.

(b) *Procedure.* An applicant for reinstatement under this section may, in the sole discretion of the Board of Directors, be afforded a hearing. In reinstatement proceedings, the person seeking reinstatement shall bear the burden of going forward with an application and proving the grounds asserted in support of the application, and the Board of Directors may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Board of Directors, for good cause shown, has reinstated the applicant or until the suspension period has expired. The filing of an application for reinstatement will not stay the effectiveness of the removal, suspension, or debarment of an accountant or firm.

Dated: December 17, 2002.

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

**Robert Feldman,**

*Executive Secretary.*

## Office of Thrift Supervision

## 12 CFR Chapter V

## Authority and Issuance

For the reasons set out in the preamble, the Office of Thrift Supervision proposes to amend part 513 of chapter V of title 12 of the Code of Federal Regulations as follows:

1. The authority citation for part 513 is revised to read as follows:

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, 1813, 1831m, and 15 U.S.C. 78.

2. Add § 513.8 to read as follows:

**§ 513.8 Removal, suspension, or debarment of independent public accountants and accounting firms performing audit services.**

(a) *Scope.* This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDIA (12 U.S.C. 1831m) for insured savings associations and savings and loan holding.

(b) *Definitions.* As used in this section, the following terms have the meaning given below unless the context requires otherwise:

(1) *Accounting firm.* The term *accounting firm* means a corporation, proprietorship, partnership, or other business firm providing audit services.

(2) *Audit services.* The term *audit services* means any service required to be performed by an independent public accountant by section 36 of the FDIA Act and 12 CFR part 363, including attestation services. Audit services include any service performed with respect to a savings and loan holding company of a savings association that is used to satisfy requirements imposed by section 36 or part 363 on that savings association.

(3) *Independent public accountant.* The term *independent public accountant* means any individual who performs or participates in providing audit services.

(c) *Removal, suspension, or debarment of independent public accountants.* The Office may remove, suspend, or debar an independent public accountant from performing audit services for savings associations that are subject to section 36 of the FDIA if, after service of a notice of intention and opportunity for hearing in the matter, the Office finds that the independent public accountant:

(1) Lacks the requisite qualifications to perform audit services;

(2) Has knowingly or recklessly engaged in conduct that results in a violation of applicable professional standards, including those standards and conflicts of interest provisions applicable to independent public accountants through the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (Sarbanes-Oxley Act), and developed by the Public Company Oversight Board and the Securities and Exchange Commission;

(3) Has engaged in negligent conduct in the form of:

(i) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an independent public accountant knows, or should know, that heightened scrutiny is warranted; or

(ii) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to perform audit services;

(4) Has knowingly or recklessly given false or misleading information or knowingly or recklessly participated in

any way in the giving of false or misleading information to the Office or any officer or employee of the Office;

(5) Has engaged in, or aided and abetted, a material and knowing or reckless violation of any provision of the Federal banking or securities laws or the rules and regulations thereunder, or any other law; or

(6) Has been removed, suspended, or debarred from practice before any federal or state agency regulating the banking, insurance, or securities industries, other than by action listed in paragraph (j) of this section, on grounds relevant to the provision of audit services.

(d) *Removal, suspension or debarment of an accounting firm.* If the Office determines that there is good cause for the removal, suspension, or debarment of a member or employee of an accounting firm under paragraph (c) of this section, the Office also may remove, suspend, or debar such firm or one or more offices of such firm. In considering whether to remove, suspend, or debar an accounting firm or office thereof, and the term of any sanction against an accounting firm under this section, the Office may consider, for example:

(1) The gravity, scope, or repetition of the act or failure to act that constitutes good cause for the removal, suspension, or debarment;

(2) The adequacy of, and adherence to, applicable policies, practices, or procedures for the accounting firm's conduct of its business and the performance of audit services;

(3) The selection, training, supervision, and conduct of members or employees of the accounting firm involved in the performance of audit services;

(4) The extent to which managing partners or senior officers of the accounting firm have participated, directly or indirectly through oversight or review, in the act or failure to act; and

(5) The extent to which the accounting firm has, since the occurrence of the act or failure to act, implemented corrective internal controls to prevent its recurrence.

(e) *Remedies.* The remedies provided in this section are in addition to any other remedies the Office may have under any other applicable provisions of law, rule, or regulation.

(f) *Proceedings to remove, suspend, or debar.* (1) The Office may initiate a proceeding to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services by issuing a written notice of intention to take such action that names the individual or firm as a respondent and describes the nature of the conduct that constitutes good cause for such action.

(2) An independent public accountant or accounting firm named as a respondent in the notice issued under paragraph (f)(1) of this section may request a hearing on the allegations in the notice. Hearings conducted under this paragraph shall be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 509).

(g) *Immediate suspension from performing audit services.* (1) If the Office serves written notice of intention to remove, suspend, or debar an independent public accountant or accounting firm from performing audit services, the Office may, with due regard for the public interest and without preliminary hearing, immediately suspend an independent public accountant or accounting firm from performing audit services for savings associations, if the Office:

(i) Has a reasonable basis to believe that the independent public accountant or accounting firm engaged in conduct (specified in the notice served upon the independent public accountant or accounting firm under paragraph (f) of this section) that would constitute grounds for removal, suspension, or debarment under paragraph (c) or (d) of this section;

(ii) Determines that immediate suspension is necessary for the protection of an insured depository institution or its depositors or for the protection of the depository system as a whole; and

(iii) Serves such independent public accountant or accounting firm with written notice of the immediate suspension.

(2) An immediate suspension notice issued under this paragraph will become effective upon service. Such suspension will remain in effect until the date the Office dismisses the charges contained in the notice of intention, or the effective date of a final order of removal, suspension, or debarment issued by the Office to the independent public accountant or accounting firm.

(h) *Petition to stay.* (1) Any independent public accountant or accounting firm immediately suspended from performing audit services in accordance with paragraph (g) of this section may, within 10 calendar days after service of the notice of immediate suspension, file a petition with the Office for a stay of such suspension. If no petition is filed within 10 calendar days, the immediate suspension will remain in effect.

(2) Upon receipt of a stay petition, the Office will designate a presiding officer who shall fix a place and time (not more than 30 calendar days after receipt of such petition, unless extended at the request of the petitioner), at which the immediately suspended party may appear, personally or through counsel, to submit written materials and oral argument. In the sole discretion of the presiding officer, upon a specific showing of compelling need, oral testimony of witnesses may also be presented. In hearings held pursuant to this paragraph, there will be no discovery and the provisions of §§ 509.6 through 509.12, 509.16, and 509.21 of the Uniform Rules will apply.

(3) Within 30 calendar days after the hearing, the presiding officer shall issue a decision. The presiding officer will grant a stay upon a demonstration that a substantial likelihood exists of the respondent's success on the issues raised by the notice of intention and that, absent such relief, the respondent will suffer immediate and irreparable injury, loss, or damage. In the absence of such a demonstration, the presiding officer will notify the parties that the immediate suspension will be continued pending the completion of the administrative proceedings pursuant to the notice.

(4) The parties may seek review of the presiding officer's decision by filing a petition for review with the presiding officer within 10 calendar days after service of the decision. Replies must be filed within 10 calendar days after the petition filing date. Upon receipt of a petition for review and any reply, the presiding officer must promptly certify the entire record to the Director. Within 60 calendar days of the presiding officer's certification, the Director shall issue an order notifying the affected party whether or not the immediate suspension should be continued or reinstated. The order shall state the basis of the Director's decision.

(i) *Scope of any order of removal, suspension, or debarment.* (1) Except as provided in paragraph (i)(2), any independent public accountant or accounting firm that has been removed, suspended (including an immediate suspension), or debarred from performing audit services by the Office may not, while such order is in effect, perform audit services for any savings association.

(2) An order of removal, suspension (including an immediate suspension), or debarment may, at the discretion of the Office, be made applicable to a limited number of savings associations or savings and loan holding companies (limited scope order).

*(j) Automatic removal, suspension, and debarment.* (1) An independent public accountant or accounting firm may not perform audit services for a savings association if the independent public accountant or accounting firm:

(i) Is subject to a final order of removal, suspension, or debarment (other than a limited scope order) issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of the Comptroller of the Currency under section 36 of the FDIA;

(ii) Is subject to a temporary suspension or permanent revocation of registration or a temporary or permanent suspension or bar from further association with any registered public accounting firm issued by the Public Company Accounting Oversight Board under sections 105(c)(4)(A) or (B) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(A) or (B));

(iii) Is subject to an order of suspension or denial of the privilege of appearing or practicing before the Securities and Exchange Commission; and

(iv) Is suspended or debarred for cause from practice as an accountant by any duly constituted licensing authority of any state, possession, commonwealth, or the District of Columbia.

(2) Upon written request, the Office, for good cause shown, may grant written permission to an independent public accountant or accounting firm to perform audit services for savings associations. The request must contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(k) *Notice of removal, suspension, or debarment.* (1) Upon issuance of a final order for removal, suspension, or debarment of an independent public accountant or accounting firm from providing audit services, the Office shall make the order publicly available and provide notice of the order to the other Federal banking agencies.

(2) An independent public accountant or accounting firm that provides audit services to a savings association must provide the Office with written notice of:

(i) Any currently effective order or other action described in paragraph (c)(6) or paragraphs (j)(1)(ii) through (j)(1)(iv) of this section; or

(ii) Any currently effective action by the Public Company Accounting Oversight Board under sections 105(c)(4)(C) or (G) of the Sarbanes-Oxley Act (15 U.S.C. 7215(c)(4)(C) or (G)).

(3) Written notice required by this paragraph shall be given no later than 15 calendar days following the effective date of an order or action or 15 calendar days before an independent public accountant or accounting firm accepts an engagement to provide audit services, whichever date is earlier.

(l) *Application for reinstatement.* (1) Unless otherwise ordered by the Office, an independent public accountant or accounting firm removed, suspended or debarred under this section may apply for reinstatement in writing at any time one year after the effective date of the order of removal, suspension, or debarment and, thereafter, at any time more than one year after the independent public accountant's or accounting firm's most recent application for reinstatement. The request shall contain a concise statement of action requested. The Office may require the applicant to submit additional information.

(2) An applicant for reinstatement under paragraph (l)(1) of this section may, in the Office's sole discretion, be afforded a hearing. The independent public accountant or accounting firm shall bear the burden of going forward with an application and the burden of proving the grounds supporting the application. The Office may, in its sole discretion, direct that any reinstatement proceeding be limited to written submissions. The removal, suspension, or debarment shall continue until the Office, for good cause shown, has reinstated the applicant or until, in the case of a suspension, the suspension period has expired. The filing of a petition for reinstatement shall not stay the effectiveness of the removal, suspension, or debarment of an independent public accountant or accounting firm.

Dated: December 2, 2002.

By the Office of Thrift Supervision.

**James Gilleran,**

*Director.*

[FR Doc. 03–98 Filed 1–7–03; 8:45 am]

**BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P**

Federal Register

Wednesday,
January 8, 2003

# Part IV

# The President

## Executive Order 13282—Adjustments of Certain Rates of Pay

Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13282 of December 31, 2002**

## Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

**Section 1.** *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303(a), are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

**Sec. 2.** *Senior Executive Service.* The rates of basic pay for senior executives in the Senior Executive Service, as adjusted under 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

**Sec. 3.** *Executive Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

**Sec. 4.** *Uniformed Services.* Pursuant to section 601(a)-(b) of Public Law 107–314, the rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

**Sec. 5.** *Locality-Based Comparability Payments.*

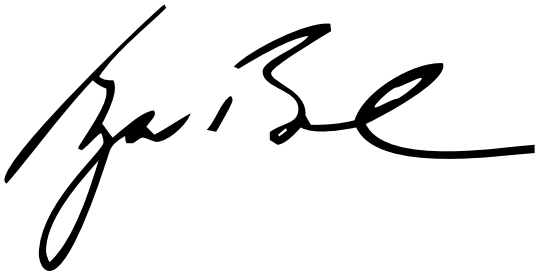
(a) Pursuant to sections 5304 and 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

**Sec. 6.** *Administrative Law Judges.* The rates of basic pay for administrative law judges, as adjusted under 5 U.S.C. 5372(b)(4), are set forth on Schedule 10 attached hereto and made a part hereof.

**Sec. 7.** *Effective Dates.* Schedule 8 is effective on January 1, 2003. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2003.

**Sec. 8.** *Prior Order Superseded.* Executive Order 13249 of December 28, 2001, is superseded.



THE WHITE HOUSE,

*December 31, 2002.*

Billing code 3195–01–P

**SCHEDULE 1--GENERAL SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| GS-1 | $15,214 | $15,722 | $16,228 | $16,731 | $17,238 | $17,536 | $18,034 | $18,538 | $18,559 | $19,031 |
| GS-2 | 17,106 | 17,512 | 18,079 | 18,559 | 18,767 | 19,319 | 19,871 | 20,423 | 20,975 | 21,527 |
| GS-3 | 18,664 | 19,286 | 19,908 | 20,530 | 21,152 | 21,774 | 22,396 | 23,018 | 23,640 | 24,262 |
| GS-4 | 20,952 | 21,650 | 22,348 | 23,046 | 23,744 | 24,442 | 25,140 | 25,838 | 26,536 | 27,234 |
| GS-5 | 23,442 | 24,223 | 25,004 | 25,785 | 26,566 | 27,347 | 28,128 | 28,909 | 29,690 | 30,471 |
| GS-6 | 26,130 | 27,001 | 27,872 | 28,743 | 29,614 | 30,485 | 31,356 | 32,227 | 33,098 | 33,969 |
| GS-7 | 29,037 | 30,005 | 30,973 | 31,941 | 32,909 | 33,877 | 34,845 | 35,813 | 36,781 | 37,749 |
| GS-8 | 32,158 | 33,230 | 34,302 | 35,374 | 36,446 | 37,518 | 38,590 | 39,662 | 40,734 | 41,806 |
| GS-9 | 35,519 | 36,703 | 37,887 | 39,071 | 40,255 | 41,439 | 42,623 | 43,807 | 44,991 | 46,175 |
| GS-10 | 39,115 | 40,419 | 41,723 | 43,027 | 44,331 | 45,635 | 46,939 | 48,243 | 49,547 | 50,851 |
| GS-11 | 42,976 | 44,409 | 45,842 | 47,275 | 48,708 | 50,141 | 51,574 | 53,007 | 54,440 | 55,873 |
| GS-12 | 51,508 | 53,225 | 54,942 | 56,659 | 58,376 | 60,093 | 61,810 | 63,527 | 65,244 | 66,961 |
| GS-13 | 61,251 | 63,293 | 65,335 | 67,377 | 69,419 | 71,461 | 73,503 | 75,545 | 77,587 | 79,629 |
| GS-14 | 72,381 | 74,794 | 77,207 | 79,620 | 82,033 | 84,446 | 86,859 | 89,272 | 91,685 | 94,098 |
| GS-15 | 85,140 | 87,978 | 90,816 | 93,654 | 96,492 | 99,330 | 102,168 | 105,006 | 107,844 | 110,682 |

**SCHEDULE 2--FOREIGN SERVICE SCHEDULE**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| Step | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 7 | Class 8 | Class 9 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | $85,140 | $68,988 | $55,901 | $45,296 | $36,703 | $32,811 | $29,332 | $26,222 | $23,442 |
| 2 | 87,694 | 71,058 | 57,578 | 46,655 | 37,804 | 33,795 | 30,212 | 27,009 | 24,145 |
| 3 | 90,325 | 73,189 | 59,305 | 48,055 | 38,938 | 34,809 | 31,118 | 27,819 | 24,870 |
| 4 | 93,035 | 75,385 | 61,085 | 49,496 | 40,106 | 35,853 | 32,052 | 28,653 | 25,616 |
| 5 | 95,826 | 77,647 | 62,917 | 50,981 | 41,310 | 36,929 | 33,013 | 29,513 | 26,384 |
| 6 | 98,701 | 79,976 | 64,805 | 52,510 | 42,549 | 38,037 | 34,004 | 30,398 | 27,176 |
| 7 | 101,662 | 82,375 | 66,749 | 54,086 | 43,825 | 39,178 | 35,024 | 31,310 | 27,991 |
| 8 | 104,711 | 84,847 | 68,751 | 55,708 | 45,140 | 40,353 | 36,075 | 32,250 | 28,831 |
| 9 | 107,853 | 87,392 | 70,814 | 57,380 | 46,494 | 41,564 | 37,157 | 33,217 | 29,696 |
| 10 | 110,682 | 90,014 | 72,938 | 59,101 | 47,889 | 42,811 | 38,272 | 34,214 | 30,586 |
| 11 | 110,682 | 92,714 | 75,126 | 60,874 | 49,326 | 44,095 | 39,420 | 35,240 | 31,504 |
| 12 | 110,682 | 95,496 | 77,380 | 62,700 | 50,806 | 45,418 | 40,602 | 36,297 | 32,449 |
| 13 | 110,682 | 98,360 | 79,701 | 64,581 | 52,330 | 46,781 | 41,820 | 37,386 | 33,423 |
| 14 | 110,682 | 101,311 | 82,093 | 66,519 | 53,900 | 48,184 | 43,075 | 38,508 | 34,425 |

**SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES**
**DEPARTMENT OF VETERANS AFFAIRS**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*

| | |
|---|---|
| Deputy Under Secretary for Health | $144,591 ** |
| Associate Deputy Under Secretary for Health | 138,491 *** |
| Assistant Under Secretaries for Health | 134,408 *** |

| | Minimum | Maximum |
|---|---|---|
| Medical Directors | $114,678 | $129,972 *** |
| Service Directors | 99,853 | 124,011 |
| Director, National Center for Preventive Health | 85,140 | 124,011 |

Physician and Dentist Schedule

| | | |
|---|---|---|
| Director Grade | $99,853 | $124,011 |
| Executive Grade | 92,204 | 117,511 |
| Chief Grade | 85,140 | 110,682 |
| Senior Grade | 72,381 | 94,098 |
| Intermediate Grade | 61,251 | 79,629 |
| Full Grade | 51,508 | 66,961 |
| Associate Grade | 42,976 | 55,873 |

Clinical Podiatrist and Optometrist Schedule

| | | |
|---|---|---|
| Chief Grade | $85,140 | $110,682 |
| Senior Grade | 72,381 | 94,098 |
| Intermediate Grade | 61,251 | 79,629 |
| Full Grade | 51,508 | 66,961 |
| Associate Grade | 42,976 | 55,873 |

Physician Assistant and Expanded-Function Dental Auxiliary Schedule ****

| | | |
|---|---|---|
| Director Grade | $85,140 | $110,682 |
| Assistant Director Grade | 72,381 | 94,098 |
| Chief Grade | 61,251 | 79,629 |
| Senior Grade | 51,508 | 66,961 |
| Intermediate Grade | 42,976 | 55,873 |
| Full Grade | 35,519 | 46,175 |
| Associate Grade | 30,565 | 39,736 |
| Junior Grade | 26,130 | 33,969 |

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* This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Services. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

** Pursuant to section 7404(d)(1) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level IV of the Executive Schedule, which is $134,000.

*** Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $125,400.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) as in effect on August 14, 1990, with subsequent adjustments.

## SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| ES-1 | $116,500 |
| ES-2 | 122,000 |
| ES-3 | 127,500 |
| ES-4 | 133,800 |
| ES-5 | 134,000 |
| ES-6 | 134,000 |

## SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| level I | $171,900 |
| level II | 154,700 |
| level III | 142,500 |
| level IV | 134,000 |
| level V | 125,400 |

## SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| Vice President | $198,600 |
| Senators | 154,700 |
| Members of the House of Representatives | 154,700 |
| Delegates to the House of Representatives | 154,700 |
| Resident Commissioner from Puerto Rico | 154,700 |
| President pro tempore of the Senate | 171,900 |
| Majority leader and minority leader of the Senate | 171,900 |
| Majority leader and minority leader of the House of Representatives | 171,900 |
| Speaker of the House of Representatives | 198,600 |

## SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| Chief Justice of the United States | $192,600 |
| Associate Justices of the Supreme Court | 184,400 |
| Circuit Judges | 159,100 |
| District Judges | 150,000 |
| Judges of the Court of International Trade | 150,000 |

**SCHEDULE 8-PAY OF THE UNIFORMED SERVICES**
(Effective on January 1, 2003)

**Part I-MONTHLY BASIC PAY**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **COMMISSIONED OFFICERS** | | | | | | | | | | | | | | | |
| O-10 ** | - | - | - | - | - | - | - | - | - | - | - | $12,077.70* | $12,137.10* | $12,389.40* | $12,829.20* |
| O-9 | - | - | - | - | - | - | - | - | - | - | - | 10,563.60 | 10,715.70 | 10,935.60 | 11,319.60 |
| O-8 | $7,474.50 | $7,719.30 | $7,881.60 | $7,927.20 | $8,129.40 | $8,468.70 | $8,547.30 | $8,868.90 | $8,961.30 | $9,238.20 | $9,639.00 | 10,008.90 | 10,255.80 | 10,255.80 | 10,255.80 |
| O-7 | 6,210.90 | 6,499.20 | 6,633.00 | 6,739.20 | 6,930.90 | 7,120.80 | 7,340.40 | 7,559.40 | 7,779.00 | 8,468.70 | 9,051.30 | 9,051.30 | 9,051.30 | 9,051.30 | 9,096.90 |
| O-6 | 4,603.20 | 5,057.10 | 5,388.90 | 5,388.90 | 5,409.60 | 5,641.20 | 5,672.10 | 5,672.10 | 5,994.60 | 6,564.30 | 6,898.80 | 7,233.30 | 7,423.50 | 7,616.10 | 7,989.90 |
| O-5 | 3,837.60 | 4,323.00 | 4,622.40 | 4,678.50 | 4,864.80 | 4,977.00 | 5,222.70 | 5,403.00 | 5,635.50 | 5,991.90 | 6,161.70 | 6,329.10 | 6,519.60 | 6,519.60 | 6,519.60 |
| O-4 | 3,311.10 | 3,832.80 | 4,088.70 | 4,145.70 | 4,383.00 | 4,637.70 | 4,954.50 | 5,201.40 | 5,372.70 | 5,471.10 | 5,528.40 | 5,528.40 | 5,528.40 | 5,528.40 | 5,528.40 |
| O-3 *** | 2,911.20 | 3,300.30 | 3,562.20 | 3,883.50 | 4,069.50 | 4,273.50 | 4,405.80 | 4,623.30 | 4,736.10 | 4,736.10 | 4,736.10 | 4,736.10 | 4,736.10 | 4,736.10 | 4,736.10 |
| O-2 *** | 2,515.20 | 2,864.70 | 3,299.40 | 3,410.70 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 | 3,481.20 |
| O-1 *** | 2,183.70 | 2,272.50 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 | 2,746.80 |
| **COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER** | | | | | | | | | | | | | | | |
| O-3E | - | - | - | $3,883.50 | $4,069.50 | $4,273.50 | $4,405.80 | $4,623.30 | $4,806.30 | $4,911.00 | $5,054.40 | $5,054.40 | $5,054.40 | $5,054.40 | $5,054.40 |
| O-2E | - | - | - | 3,410.70 | 3,481.20 | 3,591.90 | 3,778.80 | 3,923.40 | 4,031.10 | 4,031.10 | 4,031.10 | 4,031.10 | 4,031.10 | 4,031.10 | 4,031.10 |
| O-1E | - | - | - | 2,746.80 | 2,933.70 | 3,042.00 | 3,152.70 | 3,261.60 | 3,410.70 | 3,410.70 | 3,410.70 | 3,410.70 | 3,410.70 | 3,410.70 | 3,410.70 |

* Basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,874.90 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $14,155.50 per month, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level III of the Executive Schedule, which is $11,874.90 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**SCHEDULE 8–PAY OF THE UNIFORMED SERVICES (PAGE 2)**

**YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)**

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **WARRANT OFFICERS** | | | | | | | | | | | | | | | |
| W-5 | - | - | - | - | - | - | - | - | - | - | - | $5,169.30 | $5,346.60 | $5,524.50 | $5,703.30 |
| W-4 | $3,008.10 | $3,236.10 | $3,329.10 | $3,420.60 | $3,578.10 | $3,733.50 | $3,891.00 | $4,044.60 | $4,203.60 | $4,356.00 | $4,512.00 | 4,664.40 | 4,822.50 | 4,978.20 | 5,137.50 |
| W-3 | 2,747.10 | 2,862.00 | 2,979.30 | 3,017.70 | 3,141.00 | 3,281.70 | 3,467.40 | 3,580.50 | 3,771.90 | 3,915.60 | 4,058.40 | 4,201.50 | 4,266.30 | 4,407.00 | 4,548.00 |
| W-2 | 2,416.50 | 2,554.50 | 2,675.10 | 2,763.00 | 2,838.30 | 2,993.10 | 3,148.50 | 3,264.00 | 3,376.50 | 3,453.90 | 3,579.90 | 3,705.90 | 3,831.00 | 3,957.30 | 3,957.30 |
| W-1 | 2,133.90 | 2,308.50 | 2,425.50 | 2,501.10 | 2,662.50 | 2,782.20 | 2,888.40 | 3,006.90 | 3,085.20 | 3,203.40 | 3,320.70 | 3,409.50 | 3,409.50 | 3,409.50 | 3,409.50 |
| **ENLISTED MEMBERS** | | | | | | | | | | | | | | | |
| E-9 * | - | - | - | - | - | - | $3,564.30 | $3,645.00 | $3,747.00 | $3,867.00 | $3,987.30 | $4,180.80 | $4,344.30 | $4,506.30 | $4,757.40 |
| E-8 | - | - | - | - | - | $2,975.40 | 3,061.20 | 3,141.30 | 3,237.60 | 3,342.00 | 3,530.10 | 3,625.50 | 3,787.50 | 3,877.50 | 4,099.20 |
| E-7 | $2,068.50 | $2,257.80 | $2,343.90 | $2,428.20 | $2,516.40 | 2,667.90 | 2,753.40 | 2,838.30 | 2,990.40 | 3,066.30 | 3,138.60 | 3,182.70 | 3,331.50 | 3,427.80 | 3,671.40 |
| E-6 | 1,770.60 | 1,947.60 | 2,033.70 | 2,117.10 | 2,204.10 | 2,400.90 | 2,477.40 | 2,562.30 | 2,636.70 | 2,663.10 | 2,709.60 | 2,709.60 | 2,709.60 | 2,709.60 | 2,709.60 |
| E-5 | 1,625.40 | 1,733.70 | 1,817.40 | 1,903.50 | 2,037.00 | 2,151.90 | 2,236.80 | 2,283.30 | 2,283.30 | 2,283.30 | 2,283.30 | 2,283.30 | 2,283.30 | 2,283.30 | 2,283.30 |
| E-4 | 1,502.70 | 1,579.80 | 1,665.30 | 1,749.30 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 | 1,824.00 |
| E-3 | 1,356.90 | 1,442.10 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 | 1,528.80 |
| E-2 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 | 1,290.00 |
| E-1 ** | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 | 1,150.80 |
| E-1 *** | 1,064.70 | - | - | - | - | - | - | - | - | - | - | - | - | - | - |

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $5,732.70 per month, regardless of cumulative years of service under section 205 of title 37, United States Code.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

## SCHEDULE 8-PAY OF THE UNIFORMED SERVICES (PAGE 3)

### Part II-RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c) of title 37, United States Code, is $764.40.

Note: As a result of the enactment of sections 602-694 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

**SCHEDULE 9--LOCALITY-BASED COMPARABILITY P**

(Effective on the first day of the first a cable pay period beginning on or after Janua , 2003)

| Locality Pay Area[1] | Rate |
|---|---|
| Atlanta, GA | 9.74% |
| Boston-Worcester-Lawrence, MA-NH-ME-CT-RI | 13.57% |
| Chicago-Gary-Kenosha, IL-IN-WI | 14.58% |
| Cincinnati-Hamilton, OH-KY-IN | 12.09% |
| Cleveland-Akron, OH | 10.33% |
| Columbus, OH | 10.70% |
| Dallas-Fort Worth, TX | 10.90% |
| Dayton-Springfield, OH | 9.62% |
| Denver-Boulder-Greeley, CO | 13.34% |
| Detroit-Ann Arbor-Flint, MI | 14.71% |
| Hartford, CT | 14.11% |
| Houston-Galveston-Brazoria, TX | 18.61% |
| Huntsville, AL | 9.08% |
| Indianapolis, IN | 8.85% |
| Kansas City, MO-KS | 9.28% |
| Los Angeles-Riverside-Orange County, CA | 16.05% |
| Miami-Fort Lauderdale, FL | 12.45% |
| Milwaukee-Racine, WI | 10.05% |
| Minneapolis-St. Paul, MN-WI | 11.56% |
| New York-Northern New Jersey-Long Island, NY-NJ-CT-PA | 15.23% |
| Orlando, FL | 8.67% |
| Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD | 12.11% |
| Pittsburgh, PA | 9.52% |
| Portland-Salem, OR-WA | 11.64% |
| Richmond-Petersburg, VA | 9.67% |
| Sacramento-Yolo, CA | 11.99% |
| St. Louis, MO-IL | 8.98% |
| San Diego, CA | 12.70% |
| San Francisco-Oakland-San Jose, CA | 19.04% |
| Seattle-Tacoma-Bremerton, WA | 11.77% |
| Washington-Baltimore, DC-MD-VA-WV | 11.48% |
| Rest of U.S. | 8.64% |

**SCHEDULE 10-ADMINISTRATIVE LAW JUDGES**

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2003)

| | |
|---|---|
| AL-3/A | $ 89,200 |
| AL-3/B | 96,000 |
| AL-3/C | 102,900 |
| AL-3/D | 109,800 |
| AL-3/E | 116,600 |
| AL-3/F | 123,400 |
| AL-2 | 130,400 |
| AL-1 | 134,000 |

[1]Locality Pay Areas are defined in 5 CFR 531.603.

[FR Doc. 03–464
Filed 1–7–03; 8:45 am]
Billing code 6125–01–C

Federal Register
Vol. 68, No. 5
Wednesday, January 8, 2003

# Presidential Documents

Title 3—

The President

**Proclamation 7636 of January 2, 2003**

## National Mentoring Month, 2003

**By the President of the United States of America**

**A Proclamation**

Across our great Nation, many Americans are responding to the call to service by mentoring a child in need. By offering love, guidance, and encouragement, mentors put hope in children's hearts, and help ensure that young people realize their full potential. During National Mentoring Month, we recognize the vital contributions of dedicated mentors, and we encourage more Americans to make a difference in the hearts and souls of our communities by volunteering their time to meet the needs of America's youth.

Volunteers provide friendship and support to young people who are facing challenging situations, serve as positive role models, and help to instill important values, goals, and skills. Mentors help young Americans build confidence, gain knowledge, and develop the character necessary to make the right choices and achieve their dreams. Statistics show that at-risk children with mentors demonstrate improved academic performance and are less likely to be involved in destructive activities such as drugs, alcohol, and violence.

During these extraordinary times, we are experiencing a growing culture of service, citizenship, and compassion in our country, with millions of Americans sacrificing for causes greater than self. Dedicated individuals are getting involved in mentoring through faith-based and community organizations, corporate initiatives, school-based programs, and many other outlets for kindness. By dedicating their time and their talents to offer a child a quality relationship with a caring adult, mentors strengthen our families and our communities and reflect the true spirit of America.

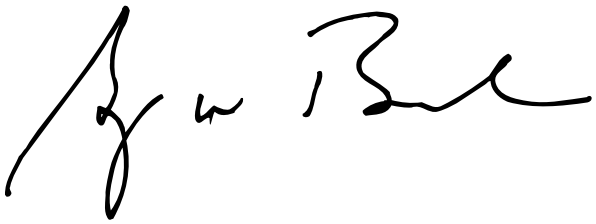
Many Americans can point to individuals who influenced their lives and helped to shape them into who they are today. Whether they were teachers, coaches, relatives, clergy, or other community leaders, these positive role models have been critical to our healthy development and helped to instill purpose in our lives. As we honor these everyday heroes, we also recognize that there is a great need for more mentors in America. Too many children in our Nation are growing up without enough support and guidance in their lives, and we must work to ensure that no child is left behind.

This month, I encourage all Americans to become a mentor and change the life of a child in need. In July, the National Mentoring Partnership helped establish the USA Freedom Corps Volunteer Network—the largest system in the Nation for matching individuals with volunteer opportunities. I am proud of this partnership and ask individuals to go online at www.usafreedomcorps.gov or call 1–877–USACORPS to find millions of ways to help children in their neighborhoods. Together, we can reaffirm the promise of America and point the way to a brighter future for all of our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2003 as National Mentoring Month. I call upon the people of the United States to recognize the importance of being role models for our youth, to look for mentoring

opportunities in their communities, and to celebrate this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of January, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–438
Filed 1–7–03; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register

Vol. 68, No. 5

Wednesday, January 8, 2003

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 TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–CE–07–AD; Amendment 39–13012; AD 2003–01–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 36, A36, A36TC, B36TC, 58, and 58A Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 2000–26–16, which applies to certain Raytheon Aircraft Company (Raytheon) Beech Models A36, B36TC, and 58 airplanes. AD 2000–26–16 requires you to inspect for missing rivets on the right hand side of the fuselage and, if necessary, install rivets. AD 2000–26–16 resulted from Raytheon identifying several instances of missing rivets on these airplanes. AD 2000–26–16 incorporated an incorrect listing of serial numbers for the affected model airplanes and omitted certain airplane models from the applicability section of AD 2000–26–16. This AD retains the actions required in AD 2000–26–16 and corrects the applicability section. The actions specified by this AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of airplane control.

**DATES:** This AD becomes effective on February 27, 2003.

The Director of the Federal Register previously approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised May, 2000, as of February 16, 2001 (66 FR 1253, January 8, 2001).

The Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised October, 2002, as of February 27, 2003.

**ADDRESSES:** You may get the service information referenced in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–07–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What Events Have Caused This AD?*

Raytheon production and inspection personnel identified several instances of missing rivets on Models A36, B36TC, and 58 airplanes. The missing rivets are the result of a quality control problem. This condition caused us to issue AD 2000–26–16, Amendment 39–12066 (66 FR 1253, January 8, 2001). AD 2000–26–16 requires you to inspect for missing rivets on the right hand fuselage and if necessary, install rivets.

*What Has Happened Since AD 2000–26–16 To Initiate This Action?*

Raytheon notified FAA that the airplane models and serial numbers listed in Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May, 2000, and the applicability section of AD 2000–26–16 are incorrect. The serial number designations did not correctly refer to the applicable airplane models. We are adding Beech Models 36, A36TC, and 58A airplanes to the applicability section of this AD to correct this in this document.

*What Is the Potential Impact If FAA Took No Action?*

This condition, if not corrected, could result in the airplane being unable to carry the ultimate load which could cause structural failure and loss of airplane control.

*Has FAA Taken Any Action to This Point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Models 36, A36, A36TC, B36TC, 58, and 58A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 14, 2002 (67 FR 52894). The NPRM proposed to supersede AD 2000–26–16, Amendment 39–12066, with a new AD that would retain the actions required in AD 2000–26–16 and add certain airplane models to the applicability section of this AD.

*Was the Public Invited To Comment?*

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

The manufacturer has issued Revision 2 to Raytheon Mandatory Service Bulletin SB 53–3341. This service information contains a corrected list of affected airplane models and serial numbers. We will incorporate this service bulletin into the procedures section of this AD.

### FAA's Determination

*What Is FAA's Final Determination on This Issue?*

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

**Cost Impact**

*How Many Airplanes Does This AD Impact?*

We estimate that this AD affects 3,632 airplanes in the U.S. registry.

*What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?*

We estimate the following costs to accomplish the inspection:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 workhour × $60 per hour = $60 | No parts required for the inspection | $60 per airplane | $60 × 3632 = $217,920 |

We estimate the following costs to accomplish the modification if necessary:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 4 workhours × $60 per hour = $240 | $100 per airplane | $340 per airplane |

*What Is the Difference Between the Cost Impact of This AD and the Cost Impact of AD 2000–26–16?*

The only difference between this AD and AD 2000–26–16 is the correction to the applicability. No additional actions are being added. The FAA has determined that this AD action does not increase the cost impact over that already required by AD 2000–26–16.

**Regulatory Impact**

*Does This AD Impact Various Entities?*

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.

*Does This AD Involve a Significant Rule or Regulatory Action?*

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new AD to read as follows:

**2003–01–01 Raytheon Aircraft Company:** Amendment 39–13012; Docket No. 2002–CE–07–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

| Model | Serial Nos. |
|---|---|
| (1) Group 1: | |
| A36 | E–185 through E–3231 and E–3233. |
| B36TC | EA–242 and EA–273 through EA–635. |
| 58 | TH–1 through TH–1811 and TH–1813 through TH–1897. |
| (2) Group 2: | |
| 36 | E–1 through E–184. |
| A36TC | EA–1 through EA–241 and EA–243 through EA–272. |
| 58A | TH–1 through TH–1811 and TH–1813 through TH–1897. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct missing rivets in the right hand fuselage panel assembly in the area above the right wing and below the cabin door threshold. These rivets must be present for the fuselage to carry the ultimate load and prevent critical structural failure with loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

| Actions | Compliance | Procedures |
|---|---|---|
| (1) For Group 1 airplanes: inspect for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3. | Within the next 100 hours time-in-service (TIS) after February 16, 2001 (the effective date of AD 2000–26–16), unless already accomplished. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual. |
| (2) For Group 2 airplanes: inspect for up to 9 missing rivets between fuselage station (F.S.) 83.00 and F.S. 91.00 at water line (W.L.) 90.3. | Within the next 100 hours time-in-service after February 27, 2003 (the effective date of this AD), unless already accomplished. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual. |
| (3) For all affected airplanes: if you find rivets are missing, install these rivets. | Before further flight after the inspection, unless already accomplished. | In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000; or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002; and the Bonanza Series Maintenance Manual or Baron Model 58 Series Maintenance Manual. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance approved in accordance with AD 2000–26–16, which is superseded by this AD, are approved as alternative methods of compliance with this AD.

**Note:** This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact T.N. Baktha, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4155; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised: May 2000, or Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002.

(i) The Director of the Federal Register approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 2, Revised: October, 2002, under 5 U.S.C. 552(a) and 1 CFR part 51.

(ii) The Director of the Federal Register previously approved the incorporation by reference of Raytheon Mandatory Service Bulletin SB 53–3341, Rev. 1, Revised May, 2000, as of February 16, 2001 (66 FR 1253, January 8, 2001).

(2) You may get copies from Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2000–26–16, Amendment 39–12066.

(j) *When does this amendment become effective?* This amendment becomes effective on February 27, 2003.

Issued in Kansas City, Missouri, on December 30, 2002.

**James E. Jackson,**

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

[FR Doc. 03–148 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–77–AD; Amendment 39–13010; AD 2002–26–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 and –300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 and –300 series airplanes, that requires inspecting the electrical wire harness next to the fuel line at the left electric fuel pump for signs of chafing; securing the electrical wire harness to the fuel line using ty-rap; and taking corrective actions, if necessary. This action is necessary to prevent damage to the electrical wire harness, which could

result in electrical arcing and an increased potential for fire or explosion. This action is intended to address the identified unsafe condition.

**DATES:** Effective February 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 2003.

**ADDRESSES:** The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 and –300 series airplanes was published in the **Federal Register** on September 13, 2002 (67 FR 57984). That action proposed to require inspecting the electrical wire harness next to the fuel line at the left electric fuel pump for signs of chafing; securing the electrical wire harness to the fuel line using ty-rap; and taking corrective actions, if necessary.

## Comments

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

## Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection and securing of the electrical wire harness, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,000, or $60 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2002–26–21 Dornier Luftfahrt GMBH:** Amendment 39–13010. Docket 2002–NM–77–AD.

*Applicability:* Model 328–100 series airplanes, as listed in Dornier Service Bulletin SB–328–24–391, dated September 11, 2001; and Model 328–300 series airplanes, as listed in Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001; certificated in any category.

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

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

To prevent damage to the electrical wire harness, made up of wiring and a protective sleeve, which could result in electrical arcing and an increased potential for fire or explosion, accomplish the following:

**Inspection**

(a) Within 400 flight hours after the effective date of this AD, do a one-time general visual inspection to detect chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, next to the fuel line at the left electric fuel pump; per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made 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.''

**No Chafing: Secure the Electrical Wire Harness**

(b) If no chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, is detected during the

inspection required by paragraph (a) of this AD, before further flight, secure the electrical wire harness to the fuel line using ty-rap, per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

**Chafing: Corrective Action(s) and Secure the Electrical Wire Harness**

(c) If any chafing damage to the electrical wire harness, made up of wiring and a protective sleeve, is detected during the inspection required byparagraph (a) of this AD, before further flight, do the action(s) specified in paragraphs (c)(1) and (c)(2) of this AD, as applicable, and paragraph (c)(3) of this AD, per Dornier Service Bulletin SB–328–24–391, dated September 11, 2001 (for Model 328–100 series airplanes); or Dornier Service Bulletin SB–328J–24–120, dated September 12, 2001 (for Model 328–300 series airplanes); as applicable.

(1) For any damaged protective sleeve: Repair or replace the protective sleeve, per the applicable service bulletin.

(2) For any damaged wiring: Replace the electrical wire harness, made up of wiring and a protective sleeve, with a new electrical wire harness, per the applicable service bulletin.

(3) Secure the electrical wire harness, made up of wiring and a protective sleeve, to the fuel line using ty-rap, per the applicable service bulletin.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(e) 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**

(f) The actions shall be done in accordance with Dornier Service Bulletin SB–328–24–391, dated September 11, 2001; or Dornier Service Bulletin SB–328J–24–120, dated September 12, 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 FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, PO Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in German airworthiness directives 2002–049 and 2002–050, both dated March 7, 2002.

**Effective Date**

(g) This amendment becomes effective on February 12, 2003.

Issued in Renton, Washington, on December 30, 2002.

**Kevin Mullin,**

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

[FR Doc. 03–151 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NE–25–AD; Amendment 39–13014; AD 2003–01–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Hartzell Propeller Inc. Model ( )HC–( )2Y( )–( ) propellers

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. model ( )HC–( )2Y( )–( ) propellers, with certain serial numbers (SN's) of two-bladed aluminum propeller hubs part numbers (P/N's) D–6522–1, D–6522–2, D–6529–1, and D–6559–3 installed. This action requires removal from service of those certain SN's of two-bladed aluminum propeller hubs and replacement with serviceable hubs. This amendment is prompted by a two-bladed aluminum propeller hub manufacturing quality control problem. The actions specified in this AD are intended to prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of the airplane.

**DATES:** Effective January 23, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 23, 2003.

Comments for inclusion in the Rules Docket must be received on or before March 10, 2003.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

**SUPPLEMENTARY INFORMATION:** On August 19, 2002, the FAA was notified by Hartzell Propeller Inc. that certain two-bladed aluminum propeller hub SN's installed in 2-bladed propellers were found to have subsurface discontinuities in the aluminum. Some of these hubs have been installed in propellers and some have been shipped as spares. The discontinuities were not removed during the propeller hub forging process, and could initiate fatigue cracking in the propeller hub arms. This final rule; request for comments, replaces affected hubs determined to be under higher stresses based on specific airplane installation, within 50 hours time-since-new (TSN) or 12 months from the effective date of the AD, whichever occurs first, and affected hubs determined to be under lower stresses based on specific airplane installation, within 100 hours TSN or 12 months from the effective date of this AD, whichever occurs first. This condition, if not corrected, could result in in-flight propeller blade separation, airframe and engine damage, and possible loss of the airplane.

**Manufacturer's Service Information**

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin

(ASB) HC–ASB–61–259, dated September 4, 2002, that provides a SN list of 123 affected propeller hubs and describes procedures for hub replacement. This AD action has denoted the remaining 52 serial numbered propeller hubs that need to be replaced.

**FAA's Determination of an Unsafe Condition and Required Actions**

Since an unsafe condition has been identified that is likely to exist or develop on other propeller hubs of the same type design, this AD is being issued to prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of airplane control. This AD requires removal from service of certain two-bladed aluminum propeller hubs identified by SN and replacement with serviceable two-bladed aluminum propeller hubs. This action lists the remaining 52 serial numbered propeller hubs that need to be replaced. The actions are required to be done in accordance with the alert service bulletin described previously.

**Immediate Adoption of This AD**

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

**Comments Invited**

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NE–25–AD.'' The postcard will be date stamped and returned to the commenter.

**Regulatory Analysis**

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2003–01–03 Hartzell Propeller Inc.:** Amendment 39–13014. Docket No. 2002–NE–25–AD.

**Applicability**

This airworthiness directive (AD) is applicable to Hartzell Propeller Inc. model ( )HC–( )2Y( )–( ) propellers, with propeller hub part numbers (P/N's) D–6522–1, D–6522–2, D–6529–1, and D–6559–3, with the serial numbers (SN's) listed in the following Table 1:

TABLE 1.—APPLICABLE PROPELLERS AND HUBS

| Propeller SN | Hub SN | Hub P/N |
|---|---|---|
| AU11115B | A61365B | D–6522–1 |
| AU11116B | A61366B | D–6522–1 |
| AU11117B | A61367B | D–6522–1 |
| AU11119B | A61369B | D–6522–1 |
| AU11125B | A61375B | D–6522–1 |
| AU11131B | A61381B | D–6522–1 |
| AU11134B | A61384B | D–6522–1 |
| AU11135B | A61385B | D–6522–1 |
| AY515B | A61397B | D–6522–2 |
| AY516B | A61398B | D–6522–2 |
| CH36140B | A61409B | D–6529–1 |
| CH36141B | A61410B | D–6529–1 |
| CH36151B | A61420B | D–6529–1 |
| CH36152B | A61421B | D–6529–1 |
| CH36153B | A61422B | D–6529–1 |
| CH36157B | A61427B | D–6529–1 |
| EU376B | A61443B | D–6559–3 |
| CH36172B | A61547B | D–6529–1 |
| CH36159B | A61553B | D–6529–1 |
| CH36160B | A61554B | D–6529–1 |
| CH36162B | A61556B | D–6529–1 |
| CH36163B | A61557B | D–6529–1 |
| CH36165B | A61560B | D–6529–1 |
| CH36188B | A61563B | D–6529–1 |
| CH36193B | A61568B | D–6529–1 |
| CH36194B | A61569B | D–6529–1 |

TABLE 1.—APPLICABLE PROPELLERS AND HUBS—Continued

| Propeller SN | Hub SN | Hub P/N |
|---|---|---|
| CH36195B | A61570B | D–6529–1 |
| CH36196B | A61571B | D–6529–1 |
| CH36178B | A61573B | D–6529–1 |
| CH36179B | A61574B | D–6529–1 |
| CH36181B | A61576B | D–6529–1 |
| CH36182B | A61577B | D–6529–1 |
| CH36183B | A61578B | D–6529–1 |
| CH36198B | A61583B | D–6529–1 |
| CH36199B | A61584B | D–6529–1 |
| CH36200B | A61585B | D–6529–1 |
| CH36201B | A61586B | D–6529–1 |
| CH36202B | A61587B | D–6529–1 |
| CH36203B | A61588B | D–6529–1 |
| CH36204B | A61589B | D–6529–1 |
| CH36205B | A61590B | D–6529–1 |
| CH36209B | A61594B | D–6529–1 |
| CH36211B | A61596B | D–6529–1 |
| CH36212B | A61597B | D–6529–1 |
| CH36213B | A61598B | D–6529–1 |
| CH36215B | A61601B | D–6529–1 |
| CH36216B | A61602B | D–6529–1 |
| AU11145B | A61603B | D–6522–1 |
| AU11147B | A61605B | D–6522–1 |
| AU11155B | A61613B | D–6522–1 |
| AY520B | A61743B | D–6522–2 |
| AU11175B | A61893B | D–6522–1 |

These propellers are installed on, but not limited to the following:

AMERICAN CHAMPION 8GCBC, 8KCAB
AERMACCHI S.p.A. S.208, S.208A
BEECH 95 series
BELLANCA 14–19–3, 14–19–3A
CESSNA 170 series, 172 series, 175 series, 177, A188A, A188B, T188C, 310 series
DIAMOND AIRCRAFT DA–40
LAKE (REVO) LA–4, LA–4–200
MAULE Aerospace Technology, Inc. M(T)–7–235( ), M–5–235C, M–6–235, M(X)–7–235
MOONEY M20 series
Pilatus BRITTEN–NORMAN LTD BN–2 series, MK III, MK III–2, MK III–3
PIPER PA–23, PA–23–160, PA–24, PA–24–260, PA–25–260,
PA–28–140, PA–32–300, PA–32S–300, PA–34–200, PA–44–180T
SOCATA—Groupe AEROSPATIALE MS–200, MS 894A, MS 894E, TB–20, TB–21
Sky International Inc (Husky) A–1, S–1T, S–2A, S–2S (previous owners were Christian Industries; Aviat, Inc.; White International, LTD.)
Univair Aircraft Corporation 108 series (previous owner was Stinson)
Vulcanair S.p.A. P68 series (previous owner was Partenavia Construzioni Aeronautiche S.p.A)

**Note 1:** The parentheses that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

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

**Compliance**

Compliance with this AD is required as indicated, unless already done.

To prevent in-flight propeller blade separation resulting in airframe and engine damage, and possible loss of the airplane, do the following:

(a) For Piper PA–32( ) series airplanes with Lycoming 540 series engines rated at 300 horse power or higher, Britten Norman BN–2 series airplanes with Lycoming 540 series engines, acrobatic airplanes including certificated acrobatic airplanes, military trainers, any airplanes routinely exposed to acrobatics usage, and airplanes used for agricultural purposes, remove affected hubs listed by SN in Table 1 of this AD within 50 hours time-since-new (TSN) or 12 months from the effective date of this AD, whichever occurs first, and replace with serviceable hubs, in accordance with paragraphs 3.A. through 3.B.(3) of ASB HC–ASB–61–259, dated September 4, 2002.

(b) For airplanes other than those listed in paragraph (a) of this AD, remove affected hubs listed by SN in Table 1 of this AD within 100 hours TSN or 12 months from the effective date of this AD, whichever occurs first, and replace with serviceable hubs, in accordance with paragraphs 3.A. through 3.B.(3) of ASB HC–ASB–61–259, dated September 4, 2002.

(c) After the effective date of this AD, do not install any propeller assembly that has a hub with a P/N D–6522–1, D–6522–2, D–6529–1, or D–6559–3, with a SN listed in Table 1 of this AD.

**Alternative Methods of Compliance**

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

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

**Special Flight Permits**

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

**Documents That Have Been Incorporated by Reference**

(f) The propeller hub replacements must be done in accordance with Alert Service Bulletin Hartzell Propeller Inc. HC-ASB–61–259, dated September 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(g) This amendment becomes effective on January 23, 2003.

Issued in Burlington, Massachusetts, on December 31, 2002.

**Robert J. Ganley,**

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

[FR Doc. 03–226 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 170

**RIN 1076–AE34**

## Partial Distribution of Fiscal Year 2003 Indian Reservation Roads Funds

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** We are issuing a rule requiring that we distribute $25 million of fiscal year 2003 Indian Reservation

Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. This partial distribution reflects the funds the Federal Highway Administration has allocated to the Department of the Interior and is based on funding appropriated by a continuing resolution for Department of the Interior funding in effect until September 20, 2003. We are using the Federal Highway Administration (FHWA) Price Trends report for the relative need formula distribution process, with appropriate modifications to address non-reporting States.

**EFFECTIVE DATE:** January 13, 2003 through September 30, 2003.

**FOR FURTHER INFORMATION CONTACT:** LeRoy Gishi, Chief, Division of Transportation, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW., MS–4058–MIB, Washington, DC 20240. Mr. Gishi may also be reached at (202) 208–4359 (phone) or (202) 208–4696 (fax).

**SUPPLEMENTARY INFORMATION:**

## Background

*Where Can I Find General Background Information on the Indian Reservation Roads (IRR) Program, the Relative Need Formula, the Federal Highway Administration (FHWA) Price Trends Report, and the Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Process?*

The background information on the IRR Program, the relative need formula, the FHWA Price Trends Report, and the TEA–21 Negotiated Rulemaking process is detailed in the **Federal Register** notice dated February 15, 2000 (65 FR 7431).

*Why Are You Publishing This Rule?*

We are publishing this rule for the distribution of $25 million of fiscal year 2003 IRR funds. This rule sets not precedent for the final rule to be published as required by section 1115 of TEA–21.

*Where Can I Find Information on the Distribution of Fiscal Year 2002 IRR Funds?*

You can find this information in the **Federal Register** notice dated January 10, 2002 (67 FR 1290).

*How Will the Secretary Distribute $25 Million of Fiscal Year 2003 IRR Program Funds?*

Upon publication of this rule, the Secretary will distribute $25 million of fiscal year 2003 IRR Program funds based on the current relative need formula used in fiscal years 2000, 2001 and in the first distribution in fiscal year 2003. We are using the latest indices from the FHWA Price Trends Report with appropriate modifications for non-reporting states in the relative need formula distribution process.

## Regulatory Planning and Review (Executive Order 12866)

Under the criteria in Executive Order 12866, this rule is not a significant regulatory action because it will not have an annual effect of more than $100 million on the economy. The total amount available for distribution of fiscal year 2003 IRR Program funds is approximately $200 million and we are distributing approximately $25 million under this rule. Congress has authorized these funds and FHA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which the tribal governments and tribal organizations and the BIA are already familiar, is negligible. The distribution of fiscal year 2003 IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds. This rule continues to adopt the relative need formula that we have used since 1993, adjusting the FHWA Price Trends Report indices for states that do not have current data reports. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency. The FHWA has transferred the IRR Program funds to us and fully expects the BIA to distribute the funds according to a funding formula approved by the Secretary. This rule does not alter the budgetary effects on any tribes from any previous or any future distribution of IRR Program funds and does not alter entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule does not raise novel legal or policy issues. It is based on the relative need formula in use since 1993. We are changing determination of relative need only by appropriately modifying the FHWA Price Trend Report indices for states that did not report data for the FHWA Price Trends Report, just as we did for the partial distributions for fiscal years 2000, 2001 and 2002 IRR Program funds.

Approximately 350 road and bridge construction projects are at various phases that depend on this fiscal year's IRR Program funds. Leaving these ongoing projects unfunded will create undue hardship on tribes and tribal members. Lack of funding would also pose safety threats by leaving partially constructed road and bridge projects to jeopardize the health and safety of the traveling public. Thus, the benefits of this rule far outweigh the costs. This rule is consistent with the policies and practices that currently guide our distribution of IRR Program funds.

## Regulatory Flexibility Act

A Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required for this rule because it applies only to tribal governments, not state and local governments.

## Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because it does not have an annual effect on the economy of $100 million or more. We are distributing approximately $25 million under this rule. Congress has authorized these funds and FHWA has already allocated them to BIA. The cost to the government of distributing the IRR Program funds, especially under the relative need formula with which tribal governments, tribal organizations, and the BIA are already familiar, is negligible. The distribution of the IRR Program funds does not require tribal governments and tribal organizations to expend any of their own funds. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this rule will distribute Federal funds to Indian tribal governments and tribal organizations for transportation planning, road and bridge construction, and road improvements. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises. In fact, actions under this rule will provide a beneficial effect on employment through funding for construction jobs.

## Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), this rule will not significantly or uniquely affect small governments, or the private sector. A Small Government Agency Plan is not required. This rule will not produce a federal mandate that may result in an expenditure by State, local, or tribal governments of $100 million or greater in any year. The effect of this rule is to immediately provide $25

million of fiscal year 2003 IRR Program funds to tribal governments for ongoing IRR activities and construction projects.

**Takings Implications (Executive Order 12630)**

With respect to Executive Order 12630, the rule does not have significant takings implications since it involves no transfer of title to any property. A takings implication assessment is not required.

**Federalism (Executive Order 13132)**

With respect to Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect the relationship between state governments and the Federal Government because this rule concerns administration of a fund dedicated to IRR projects on or near Indian reservations that has no effect on Federal funding of state roads. Therefore, the rule has no Federalism effects within the meaning of Executive Order 13132.

**Civil Justice Reform (Executive Order 12988)**

This rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 1988. This rule contains no drafting errors or ambiguity and is clearly written to minimize litigation, provide clear standards, simplify procedures, and reduce burden. This rule does not preempt any statute. Under the Transportation Equity Act for the 21st Century negotiated rulemaking, we have published a proposed rule and funding formula (67 FR 51328, August 7, 2002). A final funding formula for fiscal year 2004 will be published in 2003. The rule is not retroactive with respect to any funding from any previous fiscal year (or prospective to funding from any future fiscal year), but applies only to $25 million of fiscal year 2003 IRR Program funding.

**Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this rule does not impose record keeping or information collection requirements or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.* We already have all of the necessary information to implement this rule.

**National Environmental Policy Act**

This rule is categorically excluded from the preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.,* because its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and the road projects funded as a result of this rule will be subject later to the National Environmental Policy Act process, either collectively or case-by-case. Further, no extraordinary circumstances exist to require preparation of an environmental assessment or environmental impact statement.

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

Pursuant to the President's Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' we have consulted with tribal representatives throughout the negotiated rulemaking process and in developing this rule. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects and have determined that this rule preserves the integrity and consistency of the relative need formula process we have used since 1993 to distribute IRR Program funds. We are making a change from previous years (which we also made for fiscal years 2000, 2001, and 2002 IRR Program funds (*see* **Federal Register** notices at 65 FR 37697, 66 FR 17073, and 67 FR 44355) to modify the FHWA Price Trends Report indices for non-reporting states which do not have current price trends data reports. The yearly FHWA Report is used as part of the process to determine the cost-to-improve portion of the relative need formula. Consultation with tribal governments and tribal organizations is ongoing as part of the TEA–21 negotiated rulemaking process

**List of Subjects in 25 CFR Part 170**

Highways and Roads, Indians-lands.

For the reasons set out in the preamble, we are amending Part 170 in Chapter I of Title 25 of the Code of Federal Regulations as follows.

## PART 170—ROADS OF THE BUREAU OF INDIAN AFFAIRS

1. The authority citation for part 170 continues to read as follows:

**Authority:** 36 Stat. 861; 78 Stat. 241, 253, 257; 45 Stat. 750 (25 U.S.C. 47; 42 U.S.C. 2000e(b), 2000e–2(i); 23 U.S.C. 101(a), 202, 204), unless otherwise noted.

2. Add § 170.4b to read as follows:

**§ 170.4B What formula will BIA use to distribute $25 million of fiscal year 2003 Indian Reservation Roads Program funds?**

On January 13, 2003 we will distribute $25 million of fiscal year 2003 IRR Program funds authorized under Section 1115 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 154. We will distribute the funds to Indian Reservation Roads projects on or near Indian reservations using the relative need formula established and approved in January 1993. The formula has been modified to account for non-reporting States by inserting the latest data reported for those states for use in the relative need formula process.

Dated: December 16, 2002.

**Neal A. McCaleb,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 03–343 Filed 1–7–03; 8:45 am]

BILLING CODE 4310–LY–M

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[COTP San Diego 02–026]**

**RIN 2115–AA97**

## Security Zones; Port of San Diego, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones around and under all cruise ships that are located in and near the Port of San Diego. These security zones are needed for national security reasons to protect the public and ports from potential terrorist acts. Entry into these zones will be prohibited, unless specifically authorized by the Captain of the Port of San Diego.

**DATES:** This rule is effective on December 21, 2002 at 11:59 p.m. (PST).

**ADDRESSES:** Comments and material received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 02–026], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA, 92101, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Sorrell,

Chief of Port Operations, U.S. Coast Guard Marine Safety Office San Diego, at (619) 683–6495.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

On November 1, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zones, Port of San Diego, CA in the **Federal Register** (67 FR 212). We received 1 letter commenting on the proposed rule. No public hearing was requested, and none was held.

On November 5, 2001, we issued a temporary rule under docket COTP San Diego 01–020 which was published in the **Federal Register** (67 FR 6648, Feb. 13, 2002) under temporary section 165.T11–030 of Title 33 of the Code of Federal Regulations (CFR). In that rulemaking, the Coast Guard established a rule creating 100-yard security zones around cruise ships that enter, are moored in, or depart from the Port of San Diego.

On June 21, 2002, a change in effective period for the temporary rule was issued, under docket COTP SD 02–013, and was published in the **Federal Register** (67 FR 41845, June 20, 2002) under the same previous temporary section 165.T11–030, which is set to expire at 11:59 p.m. on December 21, 2002. The Captain of the Port has determined the need for continued security regulations exists. This final rule differs slightly from temporary section 165.T11–030 in one way. Although, while implicit in the temporary rule, the security zones proposed here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship.

Accordingly, this rulemaking makes permanent the temporary security zones established on November 5, 2001, under docket COTP San Diego 01–020, 33 CFR 165.T11–030 published in the **Federal Register** at 67 FR 6648 (February 13, 2002). That temporary rule's effective period was extended until December 21, 2002 by a notice in the **Federal Register** dated June 20, 2002 (67 FR 41845).

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the attack of a tanker vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215) that the security of the U.S. is endangered by the 9/11/01 attacks and that such disturbances continue to endanger the international relations of the U.S.

See also *Continuation of the National Emergency with Respect to Certain Terrorist Attacks*, 67 Fed. Reg. 58317 (September 13, 2002); *Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism*, 67 Fed. Reg. 59447 (September 20, 2002). Additionally a Maritime Advisory was issued to: *Operators of U.S. Flag and Effective U.S. Controlled Vessels and other Maritime Interests*, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). The current temporary rule is set to expire December 21, 2002, and any delay in the effective date of this final rule is impractical and contrary to the public interest.

## Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and growing tensions in Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 and section 104 of the Maritime Transportation Security Act of November 25, 2002 (50 U.S.C. 191 *et seq*) (Magnuson Act) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships entering, departing, or moored within the port of San Diego. These security zones will help the Coast Guard prevent vessels or persons from engaging in terrorist actions against cruise ships. The Coast Guard believes the establishment of security zones is prudent for cruise ships because they carry multiple passengers.

## Discussion of Comments and Changes

We received one letter from the local port authority commenting on the definition of a cruise ship used in the notice of proposed rulemaking. The definition in the notice of proposed rulemaking defined ''cruise ship'' as a ''passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked, or at a port of call in the San Diego port''.

The local port authority noted that this definition of ''cruise ship'' would include various commercial sport fishing vessels that homeport in San Diego. After consideration of the comment, the Coast Guard has changed the definition of a ''cruise ship'' from ''over 100 feet in length'' to ''100 gross tons or more''. This change will eliminate commercial sport fishing vessels from the definition of ''cruise ship''.

## Regulatory Evaluation

This rule 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, l979).

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

The effect of this regulation will not be significant due to the minimal time that vessels will be restricted from the area. Also, the zones will encompass only a small portion of the waterway. The Port of San Diego can accommodate only a few cruise ships moored at the same time. Most cruise ship calls at

each location occur on only one day each week, and are generally less than 18 hours in duration. Furthermore, vessels will be able to pass safely around the zones, and vessels and people may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

The sizes of the zones are the minimum necessary to provide adequate protection for the cruise ships, their crews and passengers, other vessels operating in the vicinity of the cruise ships and their crews, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the Port of San Diego and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking a cruise ship in the main ship channels, effectively limiting the use of the channel. However, the moving security zones will only be effective during cruise ship transits, which will last for approximately 60 minutes. In addition, vessels are able to safely transit around the zones while a vessel is moored or at anchor in the Port of San Diego.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have 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 proposed rule would not have a significant economic impact on a substantial number of small entities. We expect this proposed rule may affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in these small portions near the cruise ships covered by these security zones, of the port of San Diego. The impact to these entities would not be significant since these zones are proposed to encompass only small portions of the waterway for limited period of times (while the cruise ships are transiting, moored). Delays, if any, are expected to be less than sixty minutes in duration. Small vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. When a cruise ship is at anchor, vessel traffic will have ample room to maneuver around the security zone. The outbound or inbound transit of a cruise ship will last about 60 minutes. Although this regulation prohibits simultaneous use of portions of the channel, this prohibition is of short duration. While a cruise ship is moored, commercial traffic and small recreational traffic will have an opportunity to coordinate movement through the security zone with the patrol commander.

**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 process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Joseph Brown, Marine Safety Office San Diego, (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**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**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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 create an environmental risk to health or risk to safety that may disproportionately affect children.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**Indian Tribal Governments**

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

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**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.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

**Environment**

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because we are proposing to establish a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

We received no letters commenting on this section and have therefore made no changes to the regulatory text related to this subject.

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

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 and 160.5; 49 CFR 1.46.

2. Add § 165.1108 to read as follows:

**§ 165.1108 Security Zones; Cruise Ships, Port of San Diego, California.**

(a) *Definition.* ''Cruise ship'' as used in this section means a passenger vessel, except for a ferry, 100 gross tons or more, authorized to carry more than 12 passengers for hire; capable of making international voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked, disembarked or at a port of call in the San Diego port.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage within the San Diego port area inside the sea buoys bounding the port of San Diego.

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored at any berth within the San Diego port area inside the sea buoys bounding the Port of San Diego; and

(3) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is underway on the waters inside the sea buoys bounding the Port of San Diego.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.33 of the part, entry into or remaining in these zones is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego or his designated representative.

(2) Persons desiring to transit the area of the security zones may contact the Captain of the Port at telephone number (619) 683–6495 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zones by the San Diego Harbor Police.

Dated: December 13, 2002.

**S. P. Metruck,**

*Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.*

[FR Doc. 03–315 Filed 1–7–03; 8:45 am]

**BILLING CODE 4910–15–P**

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## DEPARTMENT OF EDUCATION

## 34 CFR Part 200

**RIN 1810–AA91**

## Title I—Improving the Academic Achievement of the Disadvantaged; Correction

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Final regulations; correction.

**SUMMARY:** The Department of Education published in the **Federal Register** of December 2, 2002, regulations governing the programs administered under Title I, parts A, C, and D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (hereinafter referred to as the Title I programs). The December 2, 2002, document contained minor errors. Additionally, some material was inadvertently left out of the Analysis of Comments and Changes appendix to the document. This document corrects the errors and adds the omitted material to the appendix.

**DATES:** These regulations are effective January 2, 2003.

**FOR FURTHER INFORMATION CONTACT:** For subparts A, D, and E of part 200, Jacquelyn C. Jackson, Ed. D. Acting Director, Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

For subparts B and C of part 200, Francisco Garcia, Director, Migrant Education Program, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E217, FB–6, Washington, DC 20202–6135. Telephone: (202) 260–0089.

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 persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** In the final regulations published on December 2, 2002 (67 FR 71710) make the following corrections:

1. On page 71716, in the second column, the introductory text of § 200.13(b) is corrected by adding the acronym ''AYP'' following the word ''define''.

2. On page 71720, in the first column § 200.29(a) is correctly designated as paragraph (a)(1).

3. On page 71741, in the appendix, in the second column, after the fourth line, add the following text to read:

* * * * *

*Comment:* Several commenters noted a ''catch-22'' in the requirement to demonstrate increasing proficiency by limited English proficient students, since lack of English proficiency is the defining characteristic of this group and successful students ''graduate'' from, and thus are no longer counted in, the subgroup. Two commenters recommended that the final regulations

permit the inclusion of ''formerly'' limited English proficient students in the limited English proficient (LEP) subgroup for the purpose of determining adequate yearly progress. The commenters feared that counting only ''current'' limited English proficient students would result in permanent identification for improvement of any school serving sufficient numbers of such students.

*Discussion:* The Secretary recognizes the concern raised by the commenter not to penalize schools and LEAs that succeed in developing the English proficiency of limited English proficient students. However, these provisions are statutory and may not be changed by the Secretary. Also, the definition of ''limited English proficient'' in section 9101 (25) of the ESEA includes three alternative definitions and may give States some flexibility to address this concern. The Secretary may further address this issue in Title I guidance.

*Changes:* None.

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**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.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: January 3, 2003.

**Susan B. Neuman,**

*Assistant Secretary, Office of Elementary and Secondary Education.*

[FR Doc. 03–351 Filed 1–7–03; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AK88**

### Health Care for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation. The amendments also reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity.

**DATES:** *Effective Date:* January 8, 2003.

*Applicability Dates:* This rule is applicable retroactively to December 1, 2001, for benefits added by Public Law 106–419. For more information concerning the dates of applicability, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Susan Schmetzer, Chief, Policy & Compliance Division, Health Administration Center, Department of Veterans Affairs, PO Box 65020, Denver, CO 80206, telephone (303) 331–7552.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on January 2, 2002 (67 FR 209), we proposed to amend VA health care regulations to provide benefits for women Vietnam veterans' children with covered birth defects, reduce the requirements for preauthorization, reflect changes in organizational and personnel titles, revise contact information for the VHA Health Administration Center, and make nonsubstantive changes for purposes of clarity. Prior to the enactment of Public Law 106–419 on November 1, 2000, the provisions of 38 U.S.C. chapter 18 only concerned benefits for children with spina bifida who were born to Vietnam veterans. Effective December 1, 2001, section 401 of Public Law 106–419 amended 38 U.S.C. chapter 18 to add benefits for women Vietnam veterans' children with certain birth defects (referred to as ''covered birth defects'').

Two companion proposed rule documents concerning the provision of benefits under that legislation were also set forth in the January 2, 2002, issue of the **Federal Register**. One concerned monetary allowances and the identification of covered birth defects (RIN: 2900–AK67) (67 FR 200). The other concerned the provision of vocational training benefits (RIN: 2900-AK90) (67 FR 215). With respect to the first document, we published a final rule entitled ''Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects'' in the July 31, 2002, issue of the **Federal Register** (67 FR 49585).

For the proposed rule on health care, we provided, except for the information collection provisions, a thirty-day period for public comments, which ended on February 1, 2002. Pursuant to the Paperwork Reduction Act, we provided for the information collections in the document a 60-day comment period, which ended on March 4, 2002. We received comments from one organization and two individuals. None of the comments concerned the information collections.

One commenter, an individual, felt that the U.S. government is displaying a bias in favor of women veterans in this regulation and that the hidden effect of Agent Orange may also have remained dormant in men's systems and produced chromosomal disorders in their children. No changes are made based on this comment. Public Law 106–419, which was based on a comprehensive health study conducted by VA of 8,280 women Vietnam-era veterans, provides benefits specifically for women Vietnam veterans' children with certain birth defects. We have no legal authority to award the new health care benefits to children of male Vietnam veterans.

Another individual commented about payment of transportation expenses for medical care and treatment, and suggested two changes to the regulations. First, he suggested a change that he said would clarify § 17.902(a), which in the first sentence requires preauthorization for certain travel and other benefits. In our view, his suggested change would not be merely a clarification but rather would be a substantive change to the benefits paid for travel of beneficiaries and any necessary attendants. The proposed rule contained the same language concerning travel as in the current regulations in 38 CFR part 17 for health care for Vietnam veterans' children with spina bifida. We believe that a substantive change to travel benefits is beyond the scope of this rulemaking.

Second, this commenter suggested that § 17.903, concerning payment, be amended to contain specific provisions about travel benefits. The commenter's suggested language would, in part, unnecessarily restate statutory provisions that are already reflected in the language in proposed § 17.900, which defines ''health care'' as including ''direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants).'' Also, his suggested language would add substantive

provisions on travel. As discussed above, a substantive change to travel benefits is beyond the scope of this rulemaking.

A comment was received from the Spina Bifida Association of America requesting that the regulations be changed to reflect VA as a primary payer rather than the exclusive payer for covered services. The commenter asserted that as an unintended consequence of the ''exclusive payer'' language (in the current 38 CFR 17.900 and in the proposed rule in § 17.901), health care providers are sometimes unwilling to provide care covered by the regulations because coordination of benefits with other health insurers (and resulting additional payments to the providers for their services) is not allowed. Because the requested change is significant and substantive in nature, it is beyond the scope of this rulemaking. However, the Department is considering the need for such a change.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except that we are making nonsubstantive changes for purposes of clarity and we are adding a statement following each of the sections in the rule with information collection requirements to reflect the approval by the Office of Management and Budget (OMB) of the information collection requirements contained in those sections.

**Administrative Procedure Act**

This rule provides for new benefits and otherwise merely removes restrictions on benefits and makes nonsubstantive changes. To avoid delay in furnishing the new benefits, we find that there is good cause to make this final rule effective without a 30-day delay of its effective date. Accordingly, under 5 U.S.C. 553, there is no need for delay in this rule's effective date.

**Applicability Dates**

This rule is applicable retroactively to the statutory effective date of December 1, 2001, for benefits added by section 401 of Public Law 106–419. This rule is otherwise applicable on the rule's effective date, January 8, 2003, for the already existing program of health care furnished for Vietnam veterans' children determined under 38 CFR 3.814 to suffer from spina bifida.

**Paperwork Reduction Act**

Information collection requirements associated with this final rule (in 38 CFR 17.902 through 17.904) have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521) and have been assigned OMB control number 2900–0578. The information collection requirements of § 17.902 concern requests for preauthorization for certain health care services or benefits. The information collection requirements of § 17.903 concern the submission of claims from approved health care providers for health care provided under §§ 17.900 through 17.905. The information collection requirements of § 17.904 concern the review and appeal process regarding provision of health care, or payment relating to provision of health care, under §§ 17.900 through 17.905.

OMB assigns a control number for each collection of information it approves. VA 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.

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that the adoption of the rule will not have a significant impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It is estimated that there are only a total of 1200 Vietnam veterans' children who suffer from spina bifida and women Vietnam veterans' children who suffer from covered birth defects. They are widely geographically diverse and the health care provided to them would not have a significant impact on any small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this document is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments.

**Catalog of Federal Domestic Assistance**

There are no Catalog of Federal Domestic Assistance program numbers for the programs affected by this document.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: September 25, 2002.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 38 CFR part 17 is amended as follows:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 1721, unless otherwise noted.

2. In part 17, the undesignated center heading immediately preceding § 17.900 and §§ 17.900 through 17.905 are revised to read as follows:

**Health Care Benefits for Certain Children of Vietnam Veterans—Spina Bifida and Covered Birth Defects**

**§ 17.900 Definitions.**

For purposes of §§ 17.900 through 17.905—

*Approved health care provider* means a health care provider currently approved by the Center for Medicare and Medicaid Services (CMS), Department of Defense TRICARE Program, Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), Joint Commission on Accreditation of Health Care Organizations (JCAHO), or currently approved for providing health care under a license or certificate issued by a governmental entity with jurisdiction. An entity or individual will be deemed to be an approved health care provider only when acting within the scope of the approval, license, or certificate.

*Child* for purposes of spina bifida means the same as *individual* as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as *individual* as defined at § 3.815(c)(2) of this title.

*Covered birth defect* means the same as defined at § 3.815(c)(3) of this title and also includes complications or

medical conditions that are associated with the covered birth defect(s) according to the scientific literature.

*Habilitative and rehabilitative care* means such professional, counseling, and guidance services and such treatment programs (other than vocational training under 38 U.S.C. 1804 or 1814) as are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of a disabled person.

*Health care* means home care, hospital care, nursing home care, outpatient care, preventive care, habilitative and rehabilitative care, case management, and respite care; and includes the training of appropriate members of a child's family or household in the care of the child; and the provision of such pharmaceuticals, supplies (including continence-related supplies such as catheters, pads, and diapers), equipment (including durable medical equipment), devices, appliances, assistive technology, direct transportation costs to and from approved health care providers (including any necessary costs for meals and lodging en route, and accompaniment by an attendant or attendants), and other materials as the Secretary determines necessary.

*Health care provider* means any entity or individual that furnishes health care, including specialized clinics, health care plans, insurers, organizations, and institutions.

*Home care* means medical care, habilitative and rehabilitative care, preventive health services, and health-related services furnished to a child in the child's home or other place of residence.

*Hospital care* means care and treatment furnished to a child who has been admitted to a hospital as a patient.

*Nursing home care* means care and treatment furnished to a child who has been admitted to a nursing home as a resident.

*Outpatient care* means care and treatment, including preventive health services, furnished to a child other than hospital care or nursing home care.

*Preventive care* means care and treatment furnished to prevent disability or illness, including periodic examinations, immunizations, patient health education, and such other services as the Secretary determines necessary to provide effective and economical preventive health care.

*Respite care* means care furnished by an approved health care provider on an intermittent basis for a limited period to an individual who resides primarily in a private residence when such care will help the individual continue residing in such private residence.

*Spina bifida* means all forms and manifestations of spina bifida except spina bifida occulta (this includes complications or medical conditions that are associated with spina bifida according to the scientific literature).

*Vietnam veteran* for purposes of spina bifida means the same as defined at § 3.814(c)(1) or § 3.815(c)(1) of this title and for purposes of covered birth defects means the same as defined at § 3.815(c)(1) of this title.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

### § 17.901 Provision of health care.

(a) *Spina bifida*. VA will provide a Vietnam veteran's child who has been determined under § 3.814 or § 3.815 of this title to suffer from spina bifida with such health care as the Secretary determines is needed by the child for spina bifida. VA may inform spina bifida patients, parents, or guardians that health care may be available at not-for-profit charitable entities.

(b) *Covered birth defects*. VA will provide a woman Vietnam veteran's child who has been determined under § 3.815 of this title to suffer from spina bifida or other covered birth defects with such health care as the Secretary determines is needed by the child for the covered birth defects. However, if VA has determined for a particular covered birth defect that § 3.815(a)(2) of this title applies (concerning affirmative evidence of cause other than the mother's service during the Vietnam era), no benefits or assistance will be provided under this section with respect to that particular birth defect.

(c) *Providers of care*. Health care provided under this section will be provided directly by VA, by contract with an approved health care provider, or by other arrangement with an approved health care provider.

(d) *Submission of information*. For purposes of §§ 17.900 through 17.905:

(1) The telephone number of the Health Administration Center is (888) 820–1756;

(2) The facsimile number of the Health Administration Center is (303) 331–7807;

(3) The hand-delivery address of the Health Administration Center is 300 S. Jackson Street, Denver, CO 80209; and

(4) The mailing address of the Health Administration Center—

(i) For spina bifida is P.O. Box 65025, Denver, CO 80206–9025; and

(ii) For covered birth defects is P.O. Box 469027, Denver, CO 80246–0027.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

**Note to § 17.901:** This is not intended to be a comprehensive insurance plan and does not cover health care unrelated to spina bifida or unrelated to covered birth defects. VA is the exclusive payer for services paid under §§ 17.900 through 17.905 regardless of any third party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage. Any third-party insurer, Medicare, Medicaid, health plan, or any other plan or program providing health care coverage would be responsible according to its provisions for payment for health care not relating to spina bifida or covered birth defects.

### § 17.902 Preauthorization.

(a) Preauthorization from a benefits advisor of the Health Administration Center is required for the following services or benefits under §§ 17.900 through 17.905: rental or purchase of durable medical equipment with a total rental or purchase price in excess of $300, respectively; transplantation services; mental health services; training; substance abuse treatment; dental services; and travel (other than mileage at the General Services Administration rate for privately owned automobiles). Authorization will only be given in those cases where there is a demonstrated medical need related to the spina bifida or covered birth defects. Requests for provision of health care requiring preauthorization shall be made to the Health Administration Center and may be made by telephone, facsimile, mail, or hand delivery. The application must contain the following:

(1) Name of child,

(2) Child's Social Security number,

(3) Name of veteran,

(4) Veteran's Social Security number,

(5) Type of service requested,

(6) Medical justification,

(7) Estimated cost, and

(8) Name, address, and telephone number of provider.

(b) Notwithstanding the provisions of paragraph (a) of this section, preauthorization is not required for a condition for which failure to receive immediate treatment poses a serious threat to life or health. Such emergency care should be reported by telephone to the Health Administration Center within 72 hours of the emergency.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

### § 17.903 Payment.

(a)(1) Payment for services or benefits under §§ 17.900 through 17.905 will be determined utilizing the same payment methodologies as provided for under the

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) (see § 17.270).

(2) As a condition of payment, the services must have occurred:

(i) For spina bifida, on or after October 1, 1997, and must have occurred on or after the date the child was determined eligible for benefits under § 3.814 of this title.

(ii) For covered birth defects, on or after December 1, 2001, and must have occurred on or after the date the child was determined eligible for benefits under § 3.815 of this title.

(3) Claims from approved health care providers must be filed with the Health Administration Center in writing (facsimile, mail, hand delivery, or electronically) no later than:

(i) One year after the date of service; or

(ii) In the case of inpatient care, one year after the date of discharge; or

(iii) In the case of retroactive approval for health care, 180 days following beneficiary notification of eligibility.

(4) Claims for health care provided under the provisions of §§ 17.900 through 17.905 must contain, as appropriate, the information set forth in paragraphs (a)(4)(i) through (a)(4)(v) of this section.

(i) Patient identification information:

(A) Full name,

(B) Address,

(C) Date of birth, and

(D) Social Security number.

(ii) Provider identification information (inpatient and outpatient services):

(A) Full name and address (such as hospital or physician),

(B) Remittance address,

(C) Address where services were rendered,

(D) Individual provider's professional status (M.D., Ph.D., R.N., etc.), and

(E) Provider tax identification number (TIN) or Social Security number.

(iii) Patient treatment information (long-term care or institutional services):

(A) Dates of service (specific and inclusive),

(B) Summary level itemization (by revenue code),

(C) Dates of service for all absences from a hospital or other approved institution during a period for which inpatient benefits are being claimed,

(D) Principal diagnosis established, after study, to be chiefly responsible for causing the patient's hospitalization,

(E) All secondary diagnoses,

(F) All procedures performed,

(G) Discharge status of the patient, and

(H) Institution's Medicare provider number.

(iv) Patient treatment information for all other health care providers and ancillary outpatient services such as durable medical equipment, medical requisites, and independent laboratories:

(A) Diagnosis,

(B) Procedure code for each procedure, service, or supply for each date of service, and

(C) Individual billed charge for each procedure, service, or supply for each date of service.

(v) Prescription drugs and medicines and pharmacy supplies:

(A) Name and address of pharmacy where drug was dispensed,

(B) Name of drug,

(C) National Drug Code (NDC) for drug provided,

(D) Strength,

(E) Quantity,

(F) Date dispensed,

(G) Pharmacy receipt for each drug dispensed (including billed charge), and

(H) Diagnosis for which each drug is prescribed.

(b) Health care payment will be provided in accordance with the provisions of §§ 17.900 through 17.905. However, the following are specifically excluded from payment:

(1) Care as part of a grant study or research program,

(2) Care considered experimental or investigational,

(3) Drugs not approved by the U.S. Food and Drug Administration for commercial marketing,

(4) Services, procedures, or supplies for which the beneficiary has no legal obligation to pay, such as services obtained at a health fair,

(5) Services provided outside the scope of the provider's license or certification, and

(6) Services rendered by providers suspended or sanctioned by a Federal agency.

(c) Payments made in accordance with the provisions of §§ 17.900 through 17.905 shall constitute payment in full. Accordingly, the health care provider or agent for the health care provider may not impose any additional charge for any services for which payment is made by VA.

(d) *Explanation of benefits (EOB).*—(1) When a claim under the provisions of §§ 17.900 through 17.905 is adjudicated, an EOB will be sent to the beneficiary or guardian and the provider. The EOB provides, at a minimum, the following information:

(i) Name and address of recipient,

(ii) Description of services and/or supplies provided,

(iii) Dates of services or supplies provided,

(iv) Amount billed,

(v) Determined allowable amount,

(vi) To whom payment, if any, was made, and

(vii) Reasons for denial (if applicable).

(2) [Reserved]

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

**§ 17.904 Review and appeal process.**

For purposes of §§ 17.900 through 17.905, if a health care provider, child, or representative disagrees with a determination concerning provision of health care or with a determination concerning payment, the person or entity may request reconsideration. Such request must be submitted in writing (by facsimile, mail, or hand delivery) within one year of the date of the initial determination to the Health Administration Center (Attention: Chief, Benefit and Provider Services). The request must state why it is believed that the decision is in error and must include any new and relevant information not previously considered. Any request for reconsideration that does not identify the reason for dispute will be returned to the sender without further consideration. After reviewing the matter, including any relevant supporting documentation, a benefits advisor will issue a written determination (with a statement of findings and reasons) to the person or entity seeking reconsideration that affirms, reverses, or modifies the previous decision. If the person or entity seeking reconsideration is still dissatisfied, within 90 days of the date of the decision he or she may submit in writing (by facsimile, mail, or hand delivery) to the Health Administration Center (Attention: Director) a request for review by the Director, Health Administration Center. The Director will review the claim and any relevant supporting documentation and issue a decision in writing (with a statement of findings and reasons) that affirms, reverses, or modifies the previous decision. An appeal under this section would be considered as filed at the time it was delivered to the VA or at the time it was released for submission to the VA (for example, this could be evidenced by the postmark, if mailed).

**Note to § 17.904:** The final decision of the Director will inform the claimant of further appellate rights for an appeal to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0578.)

**§ 17.905 Medical records.**

Copies of medical records generated outside VA that relate to activities for which VA is asked to provide payment or that VA determines are necessary to adjudicate claims under §§ 17.900 through 17.905 must be provided to VA at no cost.

(Authority: 38 U.S.C. 101(2), 1802–1803, 1811–1813, 1821)

[FR Doc. 03–101 Filed 1–7–03; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 171

**[RSPA Docket No. 02–13658 (HM–215E)]**

**RIN 2137–AD41**

## Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Incorporation by Reference

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Hazardous Materials Regulations (HMR) by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions) and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations). This action is necessary to facilitate the continued transport of hazardous materials in international commerce by aircraft and vessel after these international standards become effective. The other changes proposed in the notice of proposed rulemaking (NPRM) under this docket will be addressed in a separate rule.

**DATES:** *Effective date:* The effective date of these amendments is January 8, 2003.

*Voluntary compliance date:* Compliance with the regulations, as amended herein, is authorized as of January 1, 2003.

*Incorporation by reference.* The incorporation by reference of certain publications listed in these amendments has been approved by the Director of the Federal Register as of January 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 3, 2002, RSPA published a notice of proposed rulemaking (NPRM) under Docket Number RSPA–2002–13658 (HM–215E), 67 FR 72034, that proposed changes to more fully align the HMR with international standards. Proposed changes were to update the incorporations by reference of three international standards and to solicit comments by January 2, 2003. The standards are Amendment 31 to the IMDG Code, the 2003–2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations. We received no comments opposing the incorporation of these updated standards. We are issuing this final rule adopting only the incorporation by reference materials to allow their use beginning January 1, 2003, the effective date of the international standards. Our intent is to prevent disruption for persons transporting hazardous materials in international commerce.

### Discussion of Standards and Amendments

Amendment 31 to the IMDG Code, which was recently published by the International Maritime Organization (IMO), contains miscellaneous changes to the IMDG Code concerning classification, labeling, packaging, and documentation. The IMO has established January 1, 2003, as the implementation date for these amendments and is authorizing a one-year transition period, until January 1, 2004, for compliance with the new requirement. Amendments 30 and 31 are authorized for use until January 1, 2004, at which time all shipments must conform to Amendment 31. With certain exceptions, we authorize in § 171.12 of the HMR, shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. At least 150 countries, with combined merchant fleets accounting for more than 98% of the world's gross tonnage, use the IMDG Code as a basis for regulating vessel transport of hazardous materials.

The 2003–2004 edition of the ICAO Technical Instructions is effective January 1, 2003. The revised edition incorporates numerous miscellaneous changes concerning classification, labeling, packaging and documentation. In § 171.11 of the HMR, we authorize the offering, accepting and transporting of hazardous materials by air when prepared in conformance with the ICAO Technical Instructions and by motor vehicle both before and after air transportation, with certain exceptions. Virtually all shipments of hazardous materials transported internationally by aircraft are transported in accordance with the ICAO Technical Instructions, as well as the majority of the domestic shipments. The ICAO Technical Instructions are updated every two years.

The twelfth revised edition of the UN Recommendations is also effective January 1, 2003. The UN Recommendations are not regulations but are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for the IMDG Code and the ICAO Technical Instructions.

Uniform national and international hazardous materials transportation regulations enhance transportation safety and facilitate trade of hazardous materials. International carriers engaged in the transportation of hazardous materials by air generally elect to comply with the ICAO Technical Instructions, while vessel operators generally elect to comply with the IMDG Code. In so doing, these carriers are able to train their hazmat employees in a single set of hazardous materials transportation requirements, thereby minimizing the possibility of improperly transporting a shipment of hazardous materials because of differences in domestic regulations. Authorizing the use of the updated editions of international standards will facilitate the international transportation of hazardous materials by aircraft and vessel by ensuring a basic consistency between the HMR and the international regulations.

Based on the above discussion, we are revising § 171.7, to incorporate by reference Amendment 31 to the IMDG Code, the 2003–2004 edition of the ICAO Technical Instructions, and the twelfth revised edition of the UN Recommendations.

**Sequence of Optional Shipping Paper Description in the NPRM**

The December 3, 2002 NPRM contains an error in § 172.203(b), pertaining to the proposed optional sequence of information for the basic description on shipping papers. We intended that the proposed description be identical to that specified in the UN Recommendations, *ie.,* identification (ID) number, proper shipping name, hazard class, subsidiary hazard, and packing group. A correct example would be ''UN2744, Cyclobutyl chloroformate, 6.1, (8.3), PG II.'' The proposed rule incorrectly specified the order of sequence as ID number, hazard class, subsidiary hazard, proper shipping name, and packing group.

**Rulemaking Analyses and Notices**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by domestic shippers of hazardous materials. This final rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors and training companies.

Adoption of the amendments in this final rule should result in minimal cost savings by easing the regulatory compliance burden for shippers engaged in domestic and international commerce by aircraft and vessel. Although preparation of a regulatory impact analysis or regulatory evaluation is not warranted because these amendments do not impose mandatory additional requirements, a preliminary regulatory evaluation addressing the December 3, 2002 NPRM is available for review in Docket Number RSPA–2002–13658.

*B. Executive Order 13132*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5), above, and would preempt State, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. Without adoption of the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this rulemaking are intended to avoid this result.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption will be April 8, 2003.

*C. Executive Order 13175*

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with, and authorizing the use of, international standards contained in the 2003–2004 ICAO Technical Instructions and Amendment 31 to the IMDG Code. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities such as chemical users and suppliers. The total net increase in costs to small businesses in implementing this rulemaking is minimal. We believe that any costs associated with adoption of these amendments will be outweighed by the benefits. This final rule will facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. By adopting the amendments in this final rule, U.S. companies, including numerous small entities competing in foreign markets, will have continued access to foreign markets and will not be at an economic disadvantage by being forced to comply with a dual system of regulations. Consistency with international requirements also will result in enhanced safety. Therefore, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

*E. Paperwork Reduction Act*

There are no information collection requirements in this final rule.

*F. Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

*G. Unfunded Mandates Reform Act*

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

*H. Environmental Assessment*

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We analyzed the effects of these amendments, as well as other proposals, on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with the amendments being adopted in this final rule. For interested parties, an environmental assessment is available in the public docket.

*I. Privacy Act*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**List of Subjects in 49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under the entry ''International Civil Aviation Organization (ICAO)'', the existing entry is revised;

b. Under the entry ''International Maritime Organization (IMO)'', the entry ''International Maritime Dangerous Goods (IMDG) Code, 1994 Consolidated Edition, as amended by Amendment 29 (1998) (English edition)'' is removed and one entry is added in its place; and

c. Under the entry ''United Nations'', the entry ''UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999)'' is revised.

The revisions and addition read as follows:

**§ 171.7 Reference material.**

(a) * * *

(3) *Table of material incorporated by reference.* * * *

| Source and name of material | 49 CFR reference |
|---|---|
| * * * * * * * | |
| International Civil Aviation Organization (ICAO): | |
| * * * * * * * | |
| Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), DOC 9284–AN/905, 2003–2004 Edition, including Erratum. | 171.11; 172.202; 172.401; 172.512; 172.602 |
| * * * * * * * | |
| International Maritime Organization (IMO): | |
| * * * * * * * | |
| International Maritime Dangerous Goods (IMDG Code), 2002 Edition, including Amendment 31–02 (English Edition). | 171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30 |
| * * * * * * * | |
| *United Nations:* | |
| * * * * * * * | |
| UN Recommendations on the Transport of Dangerous Goods, Twelfth Revised Edition (2001). | 172.202; 172.401; 172.502; 173.24 |
| * * * * * * * | |

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Issued in Washington, DC on January 3, 2003 under authority delegated in 49 CFR part 1.

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*Administrator, Research and Special Programs Administration.*

[FR Doc. 03–325 Filed 1–7–03; 8:45 am]

BILLING CODE 4910–60–P

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Vol. 68, No. 5

Wednesday, January 8, 2003

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