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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

[Docket No. FV01-920-1 FR]

#### Kiwifruit Grown in California; Removal of Certain Inspection and Pack Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This rule removes certain inspection and pack requirements prescribed under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule removes the requirement that fruit must be reinspected if it has not been shipped by specified dates, and also removes the minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

**EFFECTIVE DATE:** This final rule becomes effective July 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938. Small businesses may request information on complying with this regulation by contacting Jay

Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

This final rule removes certain inspection and pack requirements prescribed under the order. The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule removes the requirement that fruit must be reinspected if it has not been shipped by specified dates, and also removes the

minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace.

#### Removal of Reinspection Requirement

Section 920.55 of the order requires that prior to handling any variety of California kiwifruit, such kiwifruit shall be inspected by the Federal or Federal-State Inspection Service (inspection service) and certified as meeting the applicable grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53.

Section 920.55(b) provides authority for the establishment, through the order's rules and regulations, of a period prior to shipment during which inspections must be performed.

Prior to its suspension for 1998-1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998-1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provided. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998-1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998-1999 season without the necessity for reinspection and recertification and the costs associated

with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers, less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in limited quantities of fruit remaining in cold storage for repacking and evaluation. The Committee wanted to fully evaluate the suspension of the reinspection requirement during a normal season. Therefore the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for another season, the 2000–2001 season. Section 920.155 was suspended for the 2000–2001 season by a final rule published on June 14, 2000 (65 FR 37265).

The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have indeed helped handlers reduce packing costs and to compete more effectively in the marketplace. Therefore, at its February 28, 2001, meeting the Committee recommended removing this inspection requirement for the 2001–2002 and future seasons. As previously experienced, this change is expected to result in reduced handler packing costs, increased growers returns, and enable handlers to compete more effectively in the marketplace.

**Removal of Minimum Net Weight Requirements for Trays**

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of minimum size, pack, and container requirements.

Section 920.302(a)(4) of the order's rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) specifies minimum net weight requirements for fruit of various sizes packed in

containers with cell compartments, cardboard fillers, or molded trays.

Prior to the 1989–1990 season, there were no minimum tray weight requirements, although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was tray packed and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.5

The Committee met on July 8, 1998, and unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule which was published September 3, 1998 (63 FR 14861) and finalized July 29, 1999 (64 FR 41019).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the market. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry was that the absence of tray weights had no impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season to evaluate the suspended requirements during a season when the

fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010).

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season, the Committee recommended suspending the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee once again unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. The suspension was implemented by a final rule issued June 14, 2000 (65 FR 37265). The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. Therefore, at its February 28, 2001, meeting, the Committee recommended removing this pack requirement for the 2001–2002 and future seasons. As previously experienced, this change is expected to result in reduced handler packing costs, increased grower returns, and enable handlers to compete more effectively in the marketplace.

**Final Regulatory Flexibility Analysis**

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

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

There are approximately 50 handlers of California kiwifruit subject to regulation under the marketing order and approximately 350 producers in the production area. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$500,000, and small agricultural service firms are defined as

those whose annual receipts are less than \$5,000,000. All of the handlers have annual receipts of less than \$5,000,000, excluding receipts from other sources. Three hundred forty-five producers have annual sales of less than \$500,000, excluding receipts from any other sources. Therefore, a majority of the kiwifruit handlers and producers may be classified as small entities.

This rule removes § 920.155 which requires that fruit be reinspected if it has not been shipped by specified dates, and removes paragraph (a)(4)(iii) of § 920.302 which specifies minimum net weight requirements for kiwifruit tray packs. These changes are expected to reduce handler-packing costs, increase grower returns, and enable handlers to compete more effectively in the marketplace. Authority for this action is provided in §§ 920.52 and 920.55 of the order.

#### Removal of Reinspection Requirement

Removing the requirement that kiwifruit must be reinspected if has not been shipped by a certain date will have a minimal impact on the quality of fruit shipped. Prior to its suspension for the 1998–1999 season, § 920.155 of the order's rules and regulations specified that the certification of grade, size, quality, and maturity of kiwifruit pursuant to § 920.52 or § 920.53 during each fiscal year was valid until December 31 of such year or 21 days from the date of inspection, whichever is later. Any inspected kiwifruit shipped after the certification period lapsed was required to be reinspected and recertified before shipment.

Section 920.155 was suspended for the 1998–1999 season by a final rule published August 4, 1998 (63 FR 41390). The Committee recommended this suspension to lessen the expenses upon the many kiwifruit growers who had either lost money or merely recovered their production costs in recent years. It concluded that the cost of reinspecting kiwifruit was too high to justify requiring it in view of the limited benefit reinspection provided. Total average costs for reinspection were estimated to be \$50,000 a year. The Committee also believed it was no longer necessary to have fruit reinspected to provide consumers with a high quality product because storage and handling operations had improved in the industry.

During the 1998–1999 season, handlers voluntarily checked stored fruit prior to shipment to ensure that the condition of the fruit had not deteriorated. Quality control efforts in place within the industry combined with improved storage due to research

and technological advances has ensured that quality fruit reaches the market.

Suspension of the reinspection requirement enabled handlers to ship quality kiwifruit during the 1998–1999 season without the necessity for reinspection and recertification and the costs associated with such requirements. However, because the harvest started later than normal and more fruit was in-line inspected and shipped directly to buyers, less fruit was repacked and available for evaluation than anticipated.

Therefore, at its February 25, 1999, meeting, the Committee unanimously recommended suspending § 920.155 of the order for one more season. Section 920.155 was suspended for the 1999–2000 season by a final rule published on July 29, 1999 (64 FR 41010).

During the 1999–2000 season a severe frost reduced the crop size from the estimated 9 million tray equivalents to 6 million tray equivalents. A tray equivalent is equal to approximately 7 pounds of fruit. This significant crop reduction and the excellent quality of the fruit resulted in less fruit remaining in cold storage for repacking and evaluation.

The Committee believed the industry realized benefits from the suspension of the reinspection requirement, and recommended evaluating the results of the suspended reinspection requirements during a normal season. Thus the Committee, at its February 24, 2000, meeting, unanimously recommended suspending § 920.155 for the 2000–2001 season. This suspension was implemented by a final rule published on June 14, 2000 (65 FR 37265). The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. The kiwifruit industry estimated that removal of the reinspection requirement has resulted in cost savings to the industry of approximately \$50,000 a year.

Therefore, the Committee at its February 28, 2001 meeting unanimously recommended removing § 920.155 for the 2001–2002 and future seasons.

#### Removal of Minimum Net Weight Requirements for Trays

Removing the minimum tray weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays will have a minimal impact on the appearance of tray packs. Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected

and meet grade, size, maturity, pack, and container requirements.

Prior to the 1989–1990 season, there were no minimum tray weight requirements although 73.5 percent of the crop was packed in trays. During the 1989–1990 season, minimum tray weights were mandated, as there were many new packers involved in the kiwifruit packing process and stricter regulations were viewed as necessary to provide uniform container weights for each size. However, since that season the proportion of the crop packed in trays has steadily declined.

During the 1997–1998 season, only 15.5 percent of the crop was packed into molded trays and less than 1 percent of this fruit was rejected for failure to meet minimum tray weights. As a consequence, the Committee believed that minimum tray weight requirements might no longer be necessary to maintain uniformity in the marketplace.

Prior to the 1998–1999 season handlers were required to meet the minimum net weight requirements as shown in the following chart:

Count designation of fruit	Minimum net weight of fruit (pounds)
34 or larger .....	7.5
35 to 37 .....	7.25
38 to 40 .....	6.875
41 to 43 .....	6.75
44 and smaller .....	6.5

Therefore, at its meeting on July 8, 1998, the Committee unanimously recommended suspension of the minimum net weight requirements for kiwifruit packed in cell compartments, cardboard fillers, or molded trays for the 1998–1999 season. Section 920.302(a)(4)(iii) was suspended for the 1998–1999 season by an interim final rule published September 3, 1998 (63 FR 14861).

Even though the fruit was shorter, more full-bodied, and heavier during the 1998–1999 season, handlers were able to reduce packing costs and to compete more effectively in the market. The industry continued to pack well-filled trays without having to spend the extra time weighing them. There was no reduction in the uniform appearance of fruit packed into trays. The consensus of the industry that season was that the absence of tray weights had no negative impact during the 1998–1999 season due to the exceptionally heavy weight of the fruit.

The Committee, at its February 25, 1999, meeting, unanimously recommended suspending the minimum net weight requirements for the 1999–2000 season in order to evaluate the

suspended requirements during a season when the fruit shape and density were normal. This suspension was implemented by a final rule published on July 29, 1999 (64 FR 41010).

As previously mentioned, the 1999–2000 crop was approximately three million tray-equivalents shorter than estimated due to a severe frost during the spring of 1999. This shortage of fruit resulted in limited quantities of fruit available for evaluation. Because of the uncharacteristic fruit in the 1998–1999 season and the short crop in the 1999–2000 season, the Committee voted to suspend the minimum net weight requirement for another year of evaluation. Therefore, at its February 24, 2000, meeting, the Committee once again unanimously recommended continuing the suspension of § 920.302(a)(4)(iii) for another season, the 2000–2001 season. This suspension was implemented by a final rule issued June 14, 2000 (65 FR 37265) and is in effect until July 31, 2001.

The 2000–2001 season was normal and enabled the industry to conclude that the suspensions have helped handlers reduce packing costs and to compete more effectively in the marketplace. The Committee and the Federal-State Inspection Service also have concluded that removing the minimum tray weight requirements will not result in a reduction in inspection costs, as the inspection process is essentially the same. The Committee, at its February 28, 2001, meeting, unanimously recommended removing paragraph (a)(4)(iii) of § 920.302 for the 2001–2002 and all future seasons. The Committee also noted that the minimum size requirement should be maintained on all kiwifruit regardless of pack style.

These changes address the marketing and shipping needs of the kiwifruit industry and are in the interest of handlers, growers, buyers, and consumers. The impact of these changes is expected to be beneficial to all handlers and growers regardless of size.

The Committee discussed alternatives to this change, including continuing the temporary suspensions for another year. The industry believes that it has had adequate time to evaluate these changes. The suspensions helped handlers reduce packing costs and compete more effectively in the marketplace without an adverse affect on quality or appearance of the fruit. Therefore, the Committee recommended removal of §§ 920.155 and 920.302(a)(4)(iii) for the 2001–2002 and future seasons.

This rule relaxes inspection and pack requirements under the kiwifruit marketing order. Accordingly, this action will not impose any additional

reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 28, 2001, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 15, 2001 (66 FR 26810). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending June 14, 2001, was provided to allow interested persons to respond to the proposal. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) This rule removes the pack and inspection requirements which were suspended from August 1, 2000 to July 31, 2001; (2) the 2001–2002 harvest is expected to begin early September, and this rule should be in effect before that time so producers and handlers can make plans to operate under the relaxed requirements; and (3) the Committee unanimously recommended these changes at a public meeting and

interested parties had an opportunity to provide input.

#### List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

#### PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part § 920 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### § 920.155 [Removed]

2. In part 920, § 920.155 is removed in its entirety.

#### § 920.302 [Amended]

3. In Section 920.302, paragraph (a)(4)(iii) is removed and paragraphs (a)(4)(iv), (v), and (vi) are redesignated as paragraphs (a)(4)(iii), (iv), and (v), respectively.

Dated: July 25, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–18947 Filed 7–26–01; 11:10 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 981

[Docket No. FV01–981–1 FR]

#### Almonds Grown in California; Revision of Requirements Regarding Quality Control Program

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises the administrative rules and regulations of the California almond marketing order (order) pertaining to the quality control program. The order regulates the handling of almonds grown in California, and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. They must satisfy this obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule

will require at least 25 percent of each handler's disposition obligation to be satisfied by disposing of inedible almonds. Handlers with total annual inedible obligations of less than 1,000 pounds will be exempt from the 25 percent requirement. This rule will also implement a change requiring inedible obligation reports prepared by the Federal-State Inspection Service (inspection agency) to cover weekly rather than monthly periods, consistent with current practice. These changes will help remove more inedible product from human consumption channels, and improve program administration.

**EFFECTIVE DATE:** This final rule becomes effective on August 1, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the

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

This final rule revises the administrative rules and regulations pertaining to the quality control program under the California almond marketing order. The rule will require that at least 25 percent of handlers' inedible disposition obligations be satisfied by disposing of inedible almonds to accepted users of such product. Handlers with total annual inedible obligations of less than 1,000 pounds will be exempt from this requirement. The rule will also require inedible obligation reports prepared by the inspection agency to cover weekly rather than monthly periods. The Board initially recommended adding the 25 percent disposition requirement at a July 12, 2000, meeting. The Department subsequently requested additional information regarding reporting requirements and additional inspection costs. At a meeting on December 6, 2000, the Board provided the requested information and added a recommendation to change the reporting requirement to require inedible obligation reports prepared by the inspection agency to cover weekly rather than monthly periods. Both proposals were unanimously recommended by the Board.

Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. This information is then reported to the Board. Section 981.42(a) further requires handlers to dispose of a quantity of almonds or almond product to satisfy an inedible disposition obligation as determined by the incoming inspection. This section also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the

administration of the order's quality control provisions.

**Twenty-Five Percent Requirement**

Section 981.442 of the order's administrative rules and regulations specifies that the weight of inedible kernels in each lot of any variety of almonds in excess of 1 percent of the kernel weight received by a handler shall constitute that handler's disposition obligation. Handlers are required to satisfy the disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users of such product. Accepted users dispose of this material to non-human consumption outlets. Currently, any of the aforementioned almond material can be used by handlers to satisfy any or all of their inedible disposition obligation. This rule requires that at least 25 percent of handlers' disposition obligations be satisfied with inedible kernels as defined under § 981.408 of the rules and regulations. Handlers with total annual inedible obligations of less than 1,000 pounds will be exempt from the 25 percent requirement.

The overall intent of the quality control program is to remove inedible almonds from product shipped to consumers. Inedible almonds are poor quality kernels or pieces of defective almonds that in some instances may contain aflatoxin. Removing inedible almonds from human consumption channels provides a better quality product to consumers.

When the quality control program was initially implemented, it was recognized that it was not commercially feasible for handlers to remove all inedible almonds during the course of processing. Thus, handlers were allowed to use other almond material besides inedible almonds to satisfy their inedible disposition obligation.

Over the years, changes have occurred in the industry. There has been a marked increase in the amount of almonds used in the manufacture of almond products. This has led to an increase in the amount of almond by-product material generated by handlers. Handlers can use this product to satisfy their disposition obligation. Because of the increased availability of this almond by-product material for use in satisfying the disposition obligation, handlers may be less diligent than in the past in removing inedible almonds from their finished product.

Changes in the marketplace have also created conditions allowing handlers to deliver product containing a higher level of inedible almonds to their customers. Buyers, especially those who process almonds into other products, accept almonds with a higher inedible content than in the past. They can purchase this type of product at reduced price levels and still meet their needs. Although there is a market for this product, handlers shipping product with a higher inedible content is not consistent with the intent of the quality control program, which is to remove inedible almonds from human consumption channels.

Finally, improvements in technology have enabled the delivery of a relatively clean product from shellers to handlers. Almonds are typically shelled, then delivered to handlers. In some instances, this product can meet a customer's specifications without further handler processing to remove inedible almonds.

The intent of the quality control program is to remove inedible almonds from product prior to shipment. Because of the aforementioned factors, the Board believes the intent of the quality control program is not sufficiently achieved. Therefore, the Board recommended requiring that at least 25 percent of handlers' disposition obligations be satisfied with inedible almonds. This change is designed to ensure that handlers remove more inedible almonds from their product prior to shipment. It is expected that this change will result in a higher quality product shipped to consumers and more inedible almonds being removed from human consumption channels, thereby better effectuating the intent of the Board's quality control program.

#### **Reporting Period Change**

Section 981.442(a)(3) of the regulations requires the Federal-State Inspection Service (inspection agency) to prepare a report for each handler showing the weight of almonds received and the inedible content, and provide copies of the report to the Board and handler. Section 981.442(a)(3) currently requires this report from the inspection agency to cover a period of one day or a period not exceeding one month.

In carrying out the quality control program under the order, the almond industry utilizes the inspection agency to perform the required inspections. Prior to the 2000–2001 crop year, the inspection agency issued a report covering a monthly period. At the beginning of the 2000–2001 crop year, the inspection agency began issuing a report covering weekly periods. This

period has made it easier for the Board to collect and disseminate statistical information to handlers in a more timely manner. To specify in the rules and regulations the current practice, the Board recommended revising § 981.442(a)(3) to require the inspection agency's report to the Board and handlers to cover weekly periods.

#### **Additional Change**

Finally, this rule adds clarifying language to the regulations regarding the mechanics of crediting the disposition obligation. The language clarifies that the handlers' disposition obligations are credited upon satisfactory completion of ABC Form 8, and states who the responsible parties are for completing ABC Form 8.

#### **Final Regulatory Flexibility Analysis**

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

Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 106 handlers of California almonds who are subject to regulation under the order and approximately 7,000 almond producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

Data for the most recently completed season indicate that about 63 percent of the handlers ship under \$5,000,000 worth of almonds and 37 percent ship over \$5,000,000 worth on an annual basis. In addition, based on production and grower price data reported by the National Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue was approximately \$98,000. In view of the foregoing, it can be concluded that the majority of producers of California almonds may be classified as small entities, excluding receipts from other sources.

This final rule revises the administrative rules and regulations pertaining to the quality control program under the California almond marketing order. Section 981.42 of the order provides authority for a quality control program. Section 981.42(a) requires almond handlers to obtain incoming inspection on almonds received from growers to determine the percent of inedible kernels in each lot of any variety. This information is reported to the Board by the inspection agency. Based on this incoming inspection, handlers incur an inedible disposition obligation. Handlers are then required to dispose of a quantity of almonds or almond material to accepted users of such product (basically, non-human consumption outlets) to satisfy their inedible disposition obligation. Section 981.42 also provides authority for the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of the order's quality control provisions. Section 981.442 contains the rules and regulations used in administering the quality control program.

This rule will require that at least 25 percent of a handler's inedible disposition obligation be satisfied by disposing of inedible almonds to the appropriate outlets. Currently, handlers can dispose of various types of almonds and almond products to satisfy the obligation. The purpose of this 25 percent requirement is to help ensure that the intent of the program is being met, which is to remove inedible almonds from human consumption channels. The rule also modifies language to specify a reporting period for the inspection agency to not exceed one week rather than one day or a period exceeding one month. This change brings the language of the rules and regulations into conformity with reporting procedures currently being followed.

There will be no additional cost to the industry regarding this change. However, there will be additional costs associated with implementing the requirement that at least 25 percent of each handler's total inedible dispositions be satisfied with inedible almonds. Inspection costs will increase slightly. Section 981.442(a)(5) provides that the inspection agency must determine the almond content of each inedible disposition for each handler. That information is provided to the Board, and is credited against the appropriate handler's inedible disposition obligation after the disposition takes place. In order to implement the 25 percent requirement,

it will be necessary for the inspection agency to determine not only the almond content of the dispositions, but also the amount of inedible product in the almond material. This will require additional analysis of samples by the inspection agency. The inspection agency charges a per-ton fee and an hourly fee for inedible almond inspections. The per ton fee will not change. However, the number of hours required to implement the additional analysis is expected to increase. It is estimated that the average total number of hours spent on inedible almond inspections could increase up to 20 percent; that is, from 1,116 hours to 1,339 hours. At the rate of \$14 per hour, this would represent an estimated increase to the industry of approximately \$3,122.

While additional costs are expected due to this rule, there are also benefits. The intent of the quality control program under the order is to remove inedible almonds from human consumption channels and provide an improved quality product to consumers. It is difficult to estimate the potential benefits of this action in dollar terms. However, ensuring a good quality product to consumers leads to consumer satisfaction and repeat purchases, and contributes to orderly marketing.

Based on the foregoing, the Board believes that the costs of this rule will be outweighed by the benefits. This rule is expected to be beneficial to both the almond industry and consumers.

Handlers incurring total annual inedible obligations of less than 1,000 pounds will not be required to meet the 25 percent requirement. The approximately 30 handlers with such small obligations were allowed under previous regulations to deliver their inedible material to Board staff in lieu of an accepted user. Almond Board staff is not trained to perform inedible analysis on almond product, and it is thought that handlers with a 1,000 pound inedible obligation or less should not incur additional costs for analyzing such small amounts of product. This exemption is also consistent with the RFA goal of ensuring that regulatory actions do not disproportionately impact smaller businesses. Thus, the exemption is in order.

One alternative to the proposals is to leave the regulations unchanged. With regard to the inspection reporting period changes, that was not considered appropriate because current practice needs only to be specified in the language of the rules and regulations. Regarding the 25 percent inedible disposition requirement, leaving the program unchanged will not help

ensure inedibles are removed from human consumption channels. Because of the significant amount of almond by-product material available to satisfy disposition obligations, it is believed that some handlers can satisfy their entire inedible obligation with this material. This rule will help ensure inedibles are removed.

Another alternative is to require 100 percent of handlers' disposition obligations to be satisfied with inedible almonds. However, such a requirement would not be commercially feasible for handlers. The Board believes that setting a 25 percent requirement is a reasonable change to better reflect the intent of the program.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large almond handlers. The current information collection requirements referenced in this final rule have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581-0071. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, the Board's meetings were widely publicized throughout the almond industry and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the July 12, 2000, and December 6, 2000, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of ten members, of whom five are producers and five are handlers.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Board's Quality Control Committee met on July 11, 2000, and on September 13, 2000, and discussed these issues. Those meetings were also public meetings and both large and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on May 2, 2001 (66 FR 21888). Copies of the rule were mailed or sent via facsimile to all Board members and almond handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending June 1, 2001, was provided to allow interested

parties to respond to the proposal. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this regulation needs to be in effect for the 2001-2002 crop year which begins August 1, 2001, in order to be equitable to all handlers. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

#### PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. In § 981.442, the last sentence in paragraph (a)(3) and paragraph (a)(5) are revised to read as follows:

#### § 981.442 Quality control.

(a) \* \* \*

(3) \* \* \* The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one week, and shall be submitted by the inspection agency to the Board and the handler.

\* \* \* \* \*

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall

notify the Board at least 72 hours prior to delivery: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The edible and inedible almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler. The handler's disposition obligation will be credited upon satisfactory completion of ABC Form 8. ABC Form 8, Part A, is filled out by the handler, and Part B by the accepted user. Deliveries containing less than 50 percent almond meat content shall not be credited against the disposition obligation. At least 25 percent of a handler's total crop year inedible disposition obligation shall be satisfied with dispositions consisting of inedible kernels as defined in § 981.408: *Provided*, That this 25 percent requirement shall not apply to handlers with total annual obligations of less than 1,000 pounds. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

\* \* \* \* \*

Dated: July 25, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-18946 Filed 7-26-01; 11:22 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. FV01-989-2 FR]

#### Raisins Produced From Grapes Grown in California; Reporting on Organic Raisins

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

**ACTION:** Final rule.

**SUMMARY:** This rule adds additional reporting requirements for handlers covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This rule requires handlers to report to the RAC information on acquisitions, shipments, and inventories of organic raisins. This rule will provide the RAC with accurate data on organic raisins. The RAC will evaluate this data to determine whether organic raisins should be subject to the order's volume regulation requirements.

**EFFECTIVE DATE:** July 31, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

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

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

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

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

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

This final rule adds additional reporting requirements for handlers covered under the order. This rule requires handlers to report to the RAC information on acquisitions, shipments, and inventories of organic raisins. This rule will provide the RAC with accurate data on organic raisins. The RAC will evaluate this data to determine whether organic raisins should be subject to the order's volume regulation requirements. This action was unanimously recommended by the RAC at a meeting on November 29, 2000.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers. Paragraph (d) of that section provides that, upon request of the RAC, with approval by the Secretary, handlers shall furnish to the RAC other information as may be necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as volume regulation and quality control. The RAC utilizes information collected under the order in its decision-making. Section 989.173 of the order's administrative rules and regulations specifies certain reports that

handlers are currently required to submit to the RAC.

The RAC would like to collect information on organic raisins. Some organic raisin growers have expressed concern to the RAC and the Department with the application of the order's volume regulation provisions to organic raisins. In response, the RAC formed a working-group to review this issue and possible avenues of relief for such organic growers. One option considered by the RAC was to establish separate varietal types for organic raisins covered under the order. This would permit the RAC to consider the application of volume regulation for organic raisins separate from traditionally grown raisins. However, during this process, it was determined that reliable data on the production, shipment, and marketing of organic raisins does not exist. Thus, the RAC does not have sufficient information at this time to make an informed decision.

Therefore, the RAC recommended requiring handlers to report information to the RAC on organic raisins. Such information would include reports on acquisitions, shipments (dispositions), and inventories of organic raisins. Information regarding transfers between handlers of organic raisins would also be needed to provide the RAC with accurate shipment data. The RAC recommended that this final rule become effective on July 31, 2001, the last day of the 2000–01 crop year, so that the RAC could collect year-end inventory information on 2000–01 crop organic raisins. During the following weeks, handlers would begin reporting weekly acquisitions and monthly shipments of 2001–02 crop organic raisins.

Finally, for purposes of this final rule, organically produced raisins would mean California raisins that have been certified as organic by an organic certification organization currently registered with the California Department of Food and Agriculture (CDFA), or such certifying organization accredited under the National Organic Program (NOP). Section 989.173 of the order's administrative rules and regulation is revised accordingly. Paragraph (d) of that section regarding an interhandler transfer report is revised, and a new paragraph (g) is added to require handlers of organic raisins to report information regarding inventories, acquisitions, and dispositions of organic raisins. This information will enable the RAC to make an informed decision on whether organic raisins should be subject to the order's volume regulation requirements.

### Final Regulatory Flexibility Analysis

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

Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least \$5,000,000, and the remaining 7 handlers have sales less than \$5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from other sources.

This final rule revises paragraph (d) in § 989.173 and adds a new paragraph (g) to that section to require handlers of organic raisins to submit reports to the RAC regarding acquisitions, shipments, and inventories of such raisins. This rule is needed so that the RAC can collect accurate data on organic raisins and evaluate this information to determine whether organic raisins should be categorized as separate varietal types under the order. This will permit the RAC to consider application of the order's volume regulation provisions to organic raisins separate from traditionally grown raisins. Authority for this action is provided in § 989.73 of the order.

Regarding the impact of this rule on affected entities, this rule will impose some additional burden on handlers who handle organic raisins. Such handlers will be required to submit a weekly acquisition report for organic raisins, a monthly shipment (disposition) report, a monthly report of exports by country of destination, and

an annual inventory report. Handlers will also be required to report transfers of organic raisins between handlers; however, those transfers would be captured on the same interhandler transfer report as handlers are currently using.

It is estimated that it will take each handler of organic raisins about 5 minutes to complete each weekly acquisition report (4 hours and 20 minutes annually per handler), 5 minutes to complete each monthly shipment report (1 hour annually per handler), 5 minutes to complete each report of exports by country of destination (1 hour annually per handler), and 5 minutes to complete an annual inventory report (5 minutes annually per handler). If all handlers handle organic raisins, it is estimated that the total additional annual burden would be 6 hours and 25 minutes for each handler, or a total of 128 hours for the industry. In addition, handlers will be required to provide copies of organic certificates at the request of the RAC. The reporting burden for this activity is accounted for in the new weekly organic acquisition report. The four new reports, the organic inspection certificate requests, and underlying recordkeeping burden for organic acquisitions, shipments, and inventories have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0196. At a later time, the new collection will be added to the currently approved collection for use under OMB No. 0581–0178. The burden for the interhandler transfer report (RAC–6) has already been approved by the OMB.

The Department has identified four comparable reports required to be submitted by handlers to the RAC under § 989.173. That section requires handlers to report to the RAC for all California raisins weekly acquisitions, monthly dispositions, monthly exports by country of destination, and annual inventories. This final rule requires handlers continue to report such information for all California raisins, but that similar information regarding organically produced raisins be captured separately. Although this will be an additional reporting burden on handlers, the RAC determined that this action is necessary to collect accurate information on organic raisins. In addition, several handlers are represented on the RAC and voted for this action.

Several alternatives were considered by RAC's work-group to address concerns of organic raisin growers. The group considered recommending informal rulemaking to establish separate varietal types for organic

raisins. However, as discussed in this rule, the RAC determined that sufficient data does not exist on production and shipments of organic raisins to warrant such action at this time.

Another option considered was to recommend informal rulemaking under authority provided in § 989.60(c). Under that authority, the RAC may designate such raisins as it deems appropriate for production, processing, and marketing and development projects. For each project, the volume of tonnage that can be acquired by all handlers cannot exceed 500 tons annually. Such raisins can be exempt from certain order regulations such as volume control. The 500-ton limit can be increased through informal rulemaking. The working-group considered increasing the 500-ton limit and recommending a marketing develop project for all organic Natural (sun-dried) Seedless raisins. Such raisins would be exempt from volume regulation.

Also, there was some discussion about exempting organic raisins from the order's volume control requirements through a formal rulemaking proceeding. However, the working-group and ultimately the RAC decided that, at this time, the most appropriate action would be to collect the necessary production and shipment data on organic raisins. The RAC would evaluate this information and determine whether additional action on organic raisins would be warranted, including establishing separate varietal types for organic raisins.

Further, the RAC's meetings of its organic working-group on August 29 and October 17, 2000, and Administrative Issues Subcommittee and RAC meetings held on November 29, 2000, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on March 27, 2001 (66 FR 16621). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the order. Copies of the rule were mailed by the RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending May 29, 2001, was provided to allow interested

persons to respond to the proposal. Three comments were received.

The first commenter requested that organic raisins not be subject to the Federal marketing order. The commenter stated that there is a shortage of organic raisins, and that withholding them from the market creates a hardship for organic growers.

By definition, the current Federal raisin marketing order covers all raisins produced from grapes grown in California. This includes organic and traditionally grown raisins. Exempting organic raisins from the marketing order would require an amendment to the order, which is outside the scope of this rule.

Prior to taking other action on this issue, the RAC wants to appropriately assess the applicability of the order's volume regulation provisions to organic raisins. The RAC determined that accurate data regarding acquisitions, shipments, and inventories of organic raisins is needed to make this assessment. This rule allows the RAC to collect this information. The RAC will then evaluate this data and determine whether further action on organic raisins is warranted.

A second commenter requested that organic certifying agencies, rather than handlers, be required to submit copies of organic certificates directly to the RAC at its request. However, certifying agencies are not subject to marketing order requirements. Accordingly, no changes will be made to the rule as proposed, based on the two comments discussed above.

A third commenter indicated strong support for the RAC to collect data on organic raisins, but also suggested a change to the proposed rule. Specifically, the commenter suggested that the proposed definition of organically produced raisins be modified to include not only raisins certified by organic certification organizations currently registered with CDFA, but also raisins certified by certifying organizations that will be accredited under the NOP on or about April 22, 2002.

The commenter raises a valid point. The Organic Foods Production Act (OFPA) of 1990 required the Department to develop national standards for organically produced agricultural products. The NOP was established under the OFPA. NOP requires that agricultural products labeled as organic originate from farms or handling operations certified by a state or private agency that has been accredited by the Department. The Department issued national organic standards in December 2000, and expects to announce the first

round of USDA-accredited certification agents on or about April 21, 2002.

Accordingly, the final rule has been changed based on this comment. Thus, for purposes of this rule, organically produced raisins shall mean raisins that have been certified by an organic certification organization currently registered with CDFA, or such certifying organization accredited under the NOP.

This same commenter went on to question whether a further policy change would be useful which would allow organic commodities to be recognized by their production standard, rather than relying on the flexibility in existing language. While this suggestion is beyond the scope of this rulemaking, AMS does review its programs to improve their organization and application, as appropriate.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule needs to be in effect by July 31, 2001, the last day of the 2000–01 crop year, so that the RAC can collect year-end inventory data on 2000–01 organic raisins. Further, handlers are aware of this action which was unanimously recommended by the RAC at a public meeting. Finally, a 60-day comment period was provided for in the proposed rule.

#### **List of Subjects in 7 CFR Part 989**

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

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

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

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

**Authority:** 7 U.S.C. 601–674.

2. In § 989.173, paragraph (d)(1)(iii) is revised, paragraphs (g), (h), and (i) are redesignated as paragraphs (h), (i), and (j), and a new paragraph (g) is added to read as follows:

**§ 989.173 Reports.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) The varietal type of raisin, with organically produced raisins as specified in paragraph (g) of this section separated out, net weight, and condition of the raisins transferred; and

\* \* \* \* \*

(g) *Organically produced raisins.* For purposes of this section, organically produced raisins means raisins that have been certified by an organic certification organization currently registered with the California Department of Food and Agriculture, or such certifying organization accredited under the National Organic Program. Handlers of such raisins shall submit the following reports to the Committee.

(1) *Inventory report of organically produced raisins.* Each handler shall submit to the Committee by the close of business on July 31 of each crop year, and not later than the following August 6, on an appropriate form provided by the Committee, a report showing, with respect to the organically produced raisins held by such handler:

(i) The quantity of free tonnage raisins, segregated as to locations where they are stored and whether they are natural condition or packed;

(ii) The quantity of reserve tonnage raisins held for the account of the Committee;

(iii) The quantity of off-grade raisins segregated as to those for reconditioning and those for disposition as such.

(2) *Acquisition report of organically produced standard raisins.* Each handler shall submit to the Committee for each week (Sunday through Saturday or such other 7-day period for which the handler has submitted a proposal to and received approval from the Committee) and not later than the following Wednesday, on an appropriate form provided by the Committee, a report showing the following:

(i) The total net weight of the standard raisins acquired during the reporting period, segregated when appropriate, as to free tonnage and reserve tonnage;

(ii) The location of the reserve tonnage; and

(iii) The cumulative totals of such acquisitions (as so segregated) from the beginning of the current crop year.

(iv) Upon request of the Committee, each handler shall provide copies of the

organic certificate(s) applicable to the quantity of raisins reported as acquired.

(3) *Disposition report of organically produced raisins.* No later than the seventh day of each month, handlers who are not processors shall submit to the Committee, on an appropriate form provided by the Committee, a report showing the aggregate quantity of free tonnage packed raisins and standard natural condition raisins which were shipped or otherwise disposed of by such handler during the preceding month (exclusive of transfer within the State of California between the plants of any such handler and from such handler to other handlers). Such information shall include:

(i) Domestic outlets (exclusive of Federal government purchases) according to the quantity shipped in consumer cartons, the quantity of bags having a net weight content of 4 pounds or less, and the quantity shipped in bulk packs (including, but not limited to those in bags having a net weight content of more than 4 pounds);

(ii) Federal government purchases;

(iii) Export outlets according to quantity shipped in consumer cartons, the quantity shipped in bags having a net weight of 4 pounds or less, and the quantity shipped in bulk packs (including, but not limited to, those in bags having a net weight content of more than 4 pounds);

(iv) Export outlets, by countries of destination; and

(v) Each of any other outlets in which the handler disposed of such raisins other than by any transfer which is excluded by the preceding sentence.

\* \* \* \* \*

Dated: July 25, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-18945 Filed 7-26-01; 11:11 am]

**BILLING CODE 3410-02-P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 51**

**RIN 3150-AD63**

### **Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Correction**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule: Correcting amendment.

**SUMMARY:** This document contains a correction to the final regulations that

were published in the **Federal Register** on June 5, 1996 (61 FR 28467), subsequently amended on December 18, 1996 (61 FR 66537), and reflected in the January 1, 2001, revision of the Code of Federal Regulations. This action corrects the regulations by adding an inadvertently omitted word. This correction is necessary to provide clarity and consistency in the regulations.

**DATES:** Effective July 30, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Barry Zalzman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2419 (e-mail: [BXZ@nrc.gov](mailto:BXZ@nrc.gov)).

**SUPPLEMENTARY INFORMATION:**

### **Background**

On June 5, 1996 (61 FR 28467), a final rule "Environmental Review for Renewal of Nuclear Power Plant Operating Licenses" was published in the **Federal Register**. The purpose of the rule was to amend the regulations regarding environmental protection for domestic licensing and related regulatory functions in 10 CFR part 51 to establish new requirements for the environmental review of applications to renew the operating licenses of nuclear power reactors. The rule was based on the analyses conducted and conclusions reported in NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS). The GEIS examines the environmental impacts that could occur as a result of renewing licenses of individual nuclear power plants under 10 CFR part 54, assessing a total of 92 issues. The findings regarding each of the 92 issues are summarized in 10 CFR part 51, Appendix B to Subpart A, Table B-1 "Summary Of Findings on NEPA Issues For License Renewal Of Nuclear Power Plants."

After the final rule was published, an error was discovered in Table B-1 in the findings for the issue entitled "Offsite radiological impacts (collective effects)" under the heading of "Uranium Fuel Cycle and Waste Management." The findings for "Offsite radiological impacts (collective effects)" correctly state that the 100 year environmental dose commitment to the U.S. population from the fuel cycle is calculated to be 14,800 person rem for each additional 20-year power reactor operating term. The findings, however, appear to include high level waste and spent fuel disposal in the calculation. It was the intent of the NRC to specify that high level waste and spent fuel disposal were excluded from this calculation, but the word "excepted" was inadvertently

omitted. This intent is evident in Table B-1 as there is a separate finding for the issue of "Offsite radiological impacts (spent fuel and high level waste disposal)," which is the issue immediately following the issue under discussion, that of "Offsite radiological impacts (collective effects)." Moreover, the correct wording was included in the text in the Supplementary Information section of the June 5, 1996 final rule (61FR 28478), but was inadvertently omitted from the findings when placed into the Table format, (61 FR 28494).

**Need for Correction**

As published, the Code of Federal Regulations contain an error which is misleading and needs to be corrected.

**List of Subjects in 10 CFR Part 51**

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is making the following correcting amendment to 10 CFR part 51.

**PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS**

1. The authority citation for Part 51 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853-854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95-604, Title II, 92 Stat. 3033-3041; and sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Sections

51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330-223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036-3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In appendix B to subpart A to 10 CFR part 51, Table B-1, the first sentence of findings section for the Offsite radiological impacts (collective effects) issue under the Uranium Fuel Cycle and Waste Management section is corrected to read as follows:

**Appendix B To Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant**

\* \* \* \* \*

TABLE B-1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS

Issue	Category	Findings
* * * * *		
<b>Uranium Fuel Cycle and Waste Management</b>		
* * * * *		
Offsite radiological impacts (collective effects).	1	The 100 year environmental dose commitment to the U.S. population from the fuel cycle, high level waste and spent fuel disposal excepted, is calculated to be about 14,800 person rem, or 12 cancer fatalities, for each additional 20-year power reactor operating term. * * *

\* \* \* \* \*  
Dated at Rockville, Maryland, this 25th day of July 2001.  
For the Nuclear Regulatory Commission.  
**Michael T. Lesar,**  
*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*  
[FR Doc. 01-18857 Filed 7-27-01; 8:45 am]  
**BILLING CODE 7590-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

[CGD01-01-121]

**Drawbridge Operation Regulations: Piscataqua River, ME**

**AGENCY:** Coast Guard, DOT.

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

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Memorial (US 1) Bridge, mile 3.5, across the Piscataqua River between Kittery, Maine and Portsmouth, New Hampshire. This deviation from the regulations, effective on July 26, 30 and 31, 2001, allows the bridge to need not open for vessel traffic between 5 a.m. and 5 p.m. This temporary deviation is necessary to facilitate necessary repairs at the bridge.

**DATES:** This deviation is effective from July 26 through July 31, 2001.

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

**SUPPLEMENTARY INFORMATION:** The Memorial (US 1) Bridge, at mile 3.5, across the Piscataqua River has a vertical clearance in the closed position

of 11 feet at mean high water and 19 feet at mean low water. The existing drawbridge operating regulations are at 33 CFR 117.531.

The bridge owner, New Hampshire Department of Transportation (NH DOT), requested a temporary deviation from the drawbridge operating regulations to facilitate replacement of the bridge lift cables for the bridge.

This deviation to the operating regulations, effective from July 26 through July 31, 2001, allows the Memorial (US 1) Bridge to need not open for vessel traffic between 5 a.m. and 5 p.m. on July 26, 30, and 31.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this temporary deviation; however, this deviation was approved because the repairs are considered to be vital unscheduled repairs that must be performed without delay to insure bridge operating safely and to prevent

an unscheduled closure due to component failure.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 20, 2001.

**G.N. Naccara,**

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

[FR Doc. 01-18922 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-15-U**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

RIN 2900-AK06

#### Montgomery GI Bill—Active Duty

**AGENCIES:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the educational assistance regulations of the Department of Veterans Affairs (VA). The amendments reflect statutory changes contained in the Veterans Millennium Health Care and Benefits Act of 1999 and statutory interpretations. This document also makes changes for the purpose of clarification.

**DATES:** *Effective Date:* July 30, 2001.

*Applicability Date:* The changes are applied retroactively to November 30, 1999, to conform to statutory requirements. For more information concerning the date of applicability, see the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:**

William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 202-273-7187.

**SUPPLEMENTARY INFORMATION:** This document amends the educational assistance regulations found in 38 CFR part 21, subpart K, regarding the Montgomery GI Bill—Active Duty (ch. 30, title 38, United States Code) (MGIB).

The regulations are amended by expanding the definition of a “program of education” to include a preparatory course for a test that is required or used for admission to an institution of higher education or to a graduate school. This would allow individuals who are eligible for the MGIB to receive benefits

for taking a residence course designed to prepare the individual for such tests as the ACT Admissions test (ACT) and the Law School Admissions Test (LSAT). The regulations are also amended to provide that when an enlisted service member or warrant officer attends officer training school, and then is discharged to accept a commission as an officer, the enlisted period of active duty and first period of active duty as a commissioned officer may be combined for determining eligibility for the MGIB. These changes are made to reflect statutory changes made by the Veterans Millennium Health Care and Benefits Act of 1999 (Pub. L. 106-117). Also, as indicated in the text portion of this document, we are amending 38 CFR 21.7020 to include definitions of the terms “institution of higher education” and “graduate school”. We believe these definitions reflect the statutory intent. The changes made by this final rule are effective from the date of publication but the changes are applied retroactively to November 30, 1999, the date of enactment of the applicable statutory provisions discussed above.

#### Administrative Procedure Act

Under 5 U.S.C. 553, there is a basis for dispensing with a 30-day delay of the effective date since the changes made by this final rule are restatements of statute, interpretive rules, and nonsubstantive changes for the purpose of clarity.

#### Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3520).

#### 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 would have no consequential effect on State, local, or tribal governments.

#### Executive Order 12866

This document has been review by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory

Flexibility Act, 5 U.S.C. 601-612. This final rule will not cause educational institutions to make changes in their activities and has minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

(The Catalog of Federal Domestic Assistance number for program that this final rule affects is 64.124.)

#### List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 31, 2001.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth above, 38 CFR part 21 (subpart K) is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. Section 21.7020 is amended by:
  - a. Redesignating paragraphs (b)(6)(v) and (b)(6)(vi) as paragraphs (b)(6)(vi) and (b)(6)(vii), respectively;
  - b. In paragraph (b)(6)(iv), removing “(b)(6)(v)” and adding, in its place “(b)(6)(vi)”;
  - c. Adding a new paragraph (b)(6)(v);
  - d. In newly redesignated paragraph (b)(6)(vi), removing “(b)(6)(iv)” and adding, in its place, “(b)(6)(iv) or (b)(6)(v)”;
  - e. In paragraph (b)(23)(ii), removing “field; and” and adding, in its place, “field;”;
  - f. In paragraph (b)(23)(iii), removing “training.” and adding, in its place, “training; and”;
  - g. Adding paragraph (b)(23)(iv);
  - h. Revising the authority citation for paragraph (b)(23); and
  - i. Adding paragraphs (b)(45) and (b)(46).

The revision and additions read as follows:

§ 21.7020 Definitions.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(v) VA will not consider an individual to have an interruption of service when he or she:

(A) Serves a period of active duty without interruption (without a complete separation from active duty), as an enlisted member or warrant officer;

(B) While serving on such active duty is assigned to officer training school; and

(C) Following successful completion of the officer training school is discharged to accept, without a break in service, a commission as an officer in the Armed Forces for a period of active duty.

\* \* \* \* \*

(23) \* \* \*

(iv) Effective November 30, 1999, includes a preparatory course for a test that is required or used for admission to—

(A) An institution of higher education; or

(B) A graduate school.

(Authority: 38 U.S.C. 3002(3), 3452(b)).

\* \* \* \* \*

(45) *Institution of higher education.* The term *institution of higher education* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a high school diploma, or its recognized equivalent, or persons who are beyond the age of compulsory school attendance in the State in which the educational institution is located;

(B) Offers postsecondary level academic instruction that leads to an associate or baccalaureate degree; and

(C) Is empowered by the appropriate State education authority under State law to grant an associate or baccalaureate degree, or where there is no State law to authorize the granting of a degree, is accredited for associate or baccalaureate degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to an undergraduate standard college degree or the equivalent; and

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3)).

(46) *Graduate school.* The term *graduate school* means either:

(i) An educational institution, located in a State, that—

(A) Admits as regular students only persons who have a baccalaureate degree or the equivalent in work experience;

(B) Offers postsecondary level academic instruction that leads to a master's degree, doctorate, or professional degree; and

(C) Is empowered by the appropriate State education authority under State law to grant a master's degree, doctorate, or professional degree, or, where there is no State law to authorize the granting of a degree, is accredited for master's degree, doctorate, or professional degree programs by a recognized accrediting agency; or

(ii) An educational institution, not located in a State, that—

(A) Offers a course leading to a master's degree, doctorate, or professional degree; and

(B) Is recognized as an institution of higher education by the secretary of education (or comparable official) of the country or other jurisdiction in which the educational institution is located.

(Authority: 38 U.S.C. 3002(3)).

3. Section 21.7050 is amended by:

a. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively;

b. In paragraph (a)(1), removing "(b)" and (c) and adding, in its place, "(c) or (d)"; and

c. Adding a new paragraph (d).

The addition reads as follows:

§ 21.7050 Ending dates of eligibility.

\* \* \* \* \*

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active duty as a commissioned officer.* If a veteran would not be eligible but for the provisions of § 21.7020(b)(6)(v), VA will not pay basic educational assistance or supplemental educational assistance to that veteran beyond 10 years after the veteran's last discharge or release from a period of active duty of 90 days or more of continuous service, or November 30, 2009, whichever is later.

(Authority: 38 U.S.C. 3011(f), 3031(a)).

\* \* \* \* \*

4. In § 21.7131, paragraph (d) is added to read as follows:

§ 21.7131 Commencing dates.

\* \* \* \* \*

(d) *Individual is eligible due to combining active duty as an enlisted member or warrant officer with active*

*duty as a commissioned officer.* If a veteran served in the Armed Forces both as an enlisted member or warrant officer and as a commissioned officer, and that service was such that he or she is eligible only through application of § 21.7020(b)(6)(v), the commencing date of the award of educational assistance will be no earlier than November 30, 1999.

(Authority: Sec. 702(c), Pub. L. 106-117, 113 Stat. 1583).

\* \* \* \* \*

[FR Doc. 01-18852 Filed 7-27-01; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7019-8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Sussex County Landfill No. 5 Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Sussex County Landfill No. 5, Superfund Site (Site), located in Laurel, Delaware from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Delaware, through the Department of Natural Resources and Environmental Control, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective September 28, 2001 unless EPA receives adverse comments by August 29, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the Federal Register informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Richard Kuhn, Community Involvement Coordinator (3HS43), E-mail: kuhn.richard@epa.gov, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3063 or 1-800-352-1973, ext. 4-3063.

**Information Repositories:**  
Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday 8 a.m. to 5 p.m.; Laurel Public Library, 6 East Fourth Street, Laurel, DE 19956, (302) 875-3184, Monday through Thursday 10 a.m. to 8 p.m., Friday 10 a.m. to 5 p.m., Saturday 10 a.m. to 2 p.m.; and the Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 391 Lukens Drive, Riveredge Industrial Park, New Castle, DE 19720, (302) 395-2600, Monday through Friday 8:00 a.m. to 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Humberto J. Monsalvo, Jr., Remedial Project Manager (RPM) (3HS23), E-mail: monsalvo.humberto@epa.gov, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2163 or 1-800-352-1973 ext. 4-2163, FAX (215) 814-3002.

#### **SUPPLEMENTARY INFORMATION:**

##### **Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Site Deletion
- V. Deletion Action

#### **I. Introduction**

EPA Region III is publishing this direct final notice of deletion of the Sussex County Landfill No. 5 Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

EPA considers this action to be noncontroversial and routine; as such, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2001 unless EPA receives adverse comments by August 29, 2001 on this notice. If adverse comments are received within the 30-day public

comment period on this action to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will not be any additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Sussex County Landfill No. 5 Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

#### **II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

#### **III. Deletion Procedures**

The following procedures apply to deletion of the Site:

(1) The EPA consulted with Delaware on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) Delaware concurred with deletion of the Site from the NPL

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

#### **IV. Basis for Site Deletion**

The following information provides EPA's rationale for deleting the Site from the NPL:

##### *A. Site Location*

The Site, also known as the Laurel Landfill, is a 38-acre landfill located off Route 494 and approximately 1 mile west of the Laurel Airport in Laurel, Delaware. The surrounding area is agricultural and residential.

### B. Site History

The landfill was in operation between May 1970 and August 1979 and during that time accepted municipal and industrial waste. Waste was disposed in trenches which were excavated into the native soil. Waste placed in the landfill was covered by approximately two feet of soil obtained from soil stockpiles generated during the excavation of the trenches. After the landfill closed in 1979, a transfer station for municipal waste was operated on the northwest corner of the property under permit from the Delaware Department of Natural Resources and Environmental Control (DNREC) until 1993. During the 1980s, several investigations of the landfill were conducted by DNREC and Sussex County. As a result of these investigations, DNREC determined that ground water in the vicinity of the landfill had been impacted by contaminants coming from the landfill. On August 8, 1988, DNREC and Sussex County signed a Memorandum of Understanding to support the development and implementation of the Ground Water Management Zones (GMZs). GMZs were subsequently developed for the landfill and approved by DNREC. Three GMZs were established in the area surrounding the landfill; one of these restricted the installation of new ground water pumping wells (No Well Zone) and two of these restricted pumping rates of any new and existing wells (GMZ A-Wells less than 10 g.p.m. and GMZ B-Wells less than 100 g.p.m.).

In 1986, EPA completed a Site Inspection which indicated that ground water in the area of the landfill had become contaminated with volatile organic compounds (VOCs) and metals coming from the landfill. The Site was proposed for the National Priorities List (NPL) in June 1988 and was added to the list on October 4, 1989. On April 4, 1991 EPA and Sussex County entered into an Administrative Order on Consent which required Sussex County to conduct a Remedial Investigation (RI) and Feasibility Study (FS) for the Site.

#### Remedial Investigation and Feasibility Study (RI/FS)

Ground water samples obtained from onsite and offsite monitoring wells and two irrigation wells during the RI indicated ground water was mainly contaminated with low levels [in the low micrograms per liter (ug/L) range] of VOCs. Benzene and vinyl chloride were the only VOCs which were detected at concentrations above the Safe Drinking Water Act's Maximum Contaminant Levels (MCLs). VOC ground water

contamination extended 1,000 feet down gradient of the northwest corner of the landfill.

The analytical data generated from the RI showed no apparent adverse impacts on sediment, soil, and surface water quality at the landfill.

During the RI, one offsite residential well was found to be contaminated with vinyl chloride just above the Safe Drinking Water Act MCL. As a result, Sussex County provided this resident with bottled water and later in February 1993 Sussex County installed a carbon filter water treatment system on this well to remove VOCs and an ultraviolet light to reduce bacteria levels.

In October 1993, Sussex County completed the RI which included EPA-prepared Baseline Human Health Risk Assessment and Ecological Risk Assessment. The Risk Assessment indicated that very low levels of contaminants of concern existed in the ground water which translated into correspondingly low risk levels at the Site. Based on the results of the RI and the Risk Assessments, EPA determined that a feasibility study was not necessary to evaluate remedial alternatives.

#### Record of Decision Findings

Based on the results of the RI and Risk Assessment and in light of the activities being taken by DNREC and Sussex County under a Notice of Conciliation (NOC) signed by both parties in August 1994, EPA did not require any clean-up action to be taken at the Site under CERCLA. On December 29, 1994, EPA issued a No Action Record of Decision (ROD) which stated Five-Year Reviews would be conducted in order to determine if conditions at the Site remain protective of human health and the environment.

According to the NOC, Sussex County was to perform the following activities:

- Provide Public Water Supply to Residents Down Gradient of the Landfill
- Establish a Ground Water Monitoring Program
- Maintenance of the Vegetated Soil Cover
- Restrict Well Installation and/or Operation in the GMZs
- Institutional Controls

#### Characterization of Risk

The baseline risk assessment performed by EPA in 1994 determined through screening and evaluation of the Site media data that the only route of exposure of toxicological significance was through ground water. EPA assessed carcinogenic and non-carcinogenic risks from current and potential future exposure to

contaminated ground water in residential well RW-02. In addition, EPA assessed carcinogenic and non-carcinogenic risks due to potential migration of the organic contaminant plume offsite. EPA used data from monitoring wells LD-1, LS-7R, and LS-16 to represent the center of the organic contaminant plume that was considered to be the source of exposure to receptors if the contaminant plume were to migrate to some offsite point where this water may be used for future residential purposes.

The risk assessment concluded that very low levels of contaminants of concern existed in the ground water corresponding to low risk levels at the Site. The increased carcinogenic risk for the residential exposure pathway was just slightly above the generally acceptable risk level of 1.0 E-04. The noncarcinogenic risk, or Hazard Index, calculated for the residential exposure pathway was 1.23 and the hazard was mainly attributable to inhalation of volatile organic compounds during showering. This Hazard Index value was marginally above EPA's generally acceptable level of 1.0. For the exposure pathway calculated using monitoring well data, the Hazard Index was 2.68 indicating that noncarcinogenic effects may be expected to occur if exposure to this ground water were to occur in the future.

In 1999, EPA conducted a five-year review for the Site. During the preparation of the Five-Year Review Report, EPA reviewed the ground water data collected since the ROD date to determine if the risks associated with the Site had increased, or if assumptions or input values used in the baseline risk assessments had changed significantly enough to require a new risk assessment for the Site. The review of the ground water sampling data for the contaminants of concern revealed that overall the concentration levels had not increased since the baseline risk assessment was performed. The assumptions and input values for the Site contaminants of concern used in the baseline risk assessment had not changed since the issuance of the ROD with the exception of the oral exposure reference dose (RfD) for 1,4-dichlorobenzene, a volatile organic compound. The oral RfD had been revised to a more stringent value than the RfD used in the baseline risk assessment. EPA conducted a qualitative assessment and determined that the Hazard Index calculated for the Site would not significantly change due to the revised RfD for 1,4-dichlorobenzene. EPA also conducted an Ecological Risk Assessment to

evaluate any actual or potential ecological risk as a result of exposure to Site-related contaminants of concern. This assessment concluded that a negligible potential exists for negative impact to habitats onsite and in the surrounding area. The human health and ecological risk posed by the Site is negligible.

#### Response Actions

On December 29, 1994 EPA issued a No Action Record of Decision; therefore, no CERCLA remedial action was conducted at the site. However, Sussex County performed the following work in accordance with the requirements of the Notice of Conciliation entered into with DNREC:

(1) *Provide Public Water Supply to Residents Down Gradient of the Landfill.* A public water supply well, approximately 300 feet deep, was installed by Sussex County west of the landfill. The construction of the public water supply pipeline was completed in 1995 and residential connections to the system also began. As of December 1995, nineteen residences were connected to the public water supply system and by March 1996, one additional connection was completed. Sussex County had provided a carbon treatment unit for one residential well (RW-02) in which vinyl chloride had been detected at concentrations above the MCL. The treatment system was removed and this residential well was renamed monitoring well LS-20 after the residence was connected to the public water supply system. The public water supply system is currently owned and operated by Tidewater Utilities Company. The public supply well is tested by Sussex County approximately once annually. The Delaware Department of Public Health currently oversees the Tidewater Utilities Company monitoring program for the public supply well.

(2) *Establish a Ground Water Monitoring Program.* A ground water monitoring program was established by Sussex County and approved by EPA and DNREC which included quarterly sampling for one year (November 1994-October 1995) and then semi-annual sampling thereafter. The monitoring program currently consists of monitoring wells within, down gradient and west of the landfill; residential wells down gradient of the landfill which have not connected to the public water supply; an irrigation well; an up gradient residential well and an up gradient monitoring well. As of 2000, the wells are sampled annually.

The samples are analyzed for volatile organic compounds and ammonia as

nitrogen (N), chloride, soluble iron, soluble manganese, nitrate-nitrite measured as nitrogen (mg-N/L), total dissolved solids, pH, and specific conductance.

(3) *Maintenance of the Vegetated Soil Cover.* The NOC required Sussex County to maintain the integrity and effectiveness of the vegetated soil cover to correct any effects of settling, subsidence, and erosion and to prevent precipitation from eroding or otherwise damaging the cover which prevents direct contact with the waste material. In July 1995, DNREC approved the Site Care Work Plan submitted by Sussex County. The work consisted of clearing and grubbing areas to be backfilled, backfilling and compacting areas to grade in order to alleviate standing water and to produce an even fill surface throughout areas of the landfill designated by DNREC; constructing four swales in order to encourage drainage of water from the landfill surface; and grading and seeding the backfilled areas. Sussex County did not disturb any existing vegetation or trees in the areas of the landfill that DNREC did not require backfilling and grading. By March 1998, Sussex County had completed all Site care work had been completed by Sussex County. Sussex County inspects the landfill cover at least once a year to determine if wastes are exposed, or excessive erosion or surface water ponding is occurring.

(4) *Restrict Well Installation and/or Operation in the GMZs.* The NOC required Sussex County to continue implementing the GMZs as described in the August 1988 Memorandum of Understanding between the DNREC and Sussex County. Installation of drinking water wells are carefully controlled or restricted in the GMZs. There are three areas within the GMZ:

- No well installation area
- GMZ-A: limited to wells with a pumping rate of less than 10 gallons per minute (g.p.m.)
- GMZ-B: limited to wells with a pumping rate of less than 100 g.p.m.

To date, the GMZs have been maintained and controlled through the oversight efforts of DNREC and Sussex County.

(5) *Institutional Controls.* The NOC required Sussex County to record with the recorder of deeds a notation that will in perpetuity notify any potential purchaser that the property was used as a solid waste disposal Site and that land use restrictions under *DNREC Regulations Governing Solid Waste* apply. On March 26, 1996, Sussex County Council recorded a "Declaration of Restriction" with the Sussex County Recorder of Deeds addressing the

requirements of the NOC. In addition, a statement restricting the landfill property from commercial or residential use and restricting any person from inhabiting or occupying the land at any future time was included in this "Declaration of Restriction."

#### Cleanup Standards

EPA issued a No Action Record of Decision in 1994; therefore, no cleanup standards were established because the low contaminant and human health and environmental risk levels associated with the Site did not warrant cleanup activities. Sussex County and DNREC operating under the requirements of the Notice of Conciliation which both parties signed in 1994 continue to maintain the Ground Water Management Zones and the soil surface landfill cover; restrict commercial or residential use of the landfill, and monitor ground water in and surrounding the landfill to reduce the potential for exposure of human and environmental receptors to landfill wastes.

#### Five-Year Review

In 1999, EPA conducted the first CERCLA Five-Year Review of the Site to determine if the chosen No Action remedy was still protective of human health and the environment. In order to evaluate the protectiveness of the remedy, EPA performed a Site visit, reviewed data, conducted interviews, and evaluated the work performed at the landfill since the Record of Decision was signed in 1994. Ground water data from the Site reviewed during this Five-Year review period indicated that there are no human exposures to VOCs in ground water at or surrounding the landfill. The data revealed that the nitrate-nitrite level in the ground water is elevated above the Safe Drinking Water Act's Maximum Contaminant Level (MCL). The presence of nitrate or nitrite in drinking water sources is mainly a concern for infants under six months due to the possibility of "Blue Baby Syndrome" in which an infant experiences shortness of breath and therefore may look blue. Elevated levels of nitrate-nitrite above the 10 ug/L MCL were detected in ground water samples from monitoring and private wells, both up gradient and down gradient of the landfill indicating that the source of this nitrate-nitrite is not likely the landfill. EPA discussed the elevated nitrate-nitrite levels with DNREC and the Delaware Department of Public Health and learned that it is typical to find nitrate-nitrite levels in the 10-15 ug/L range in ambient ground water in Sussex County, Delaware. Since the

nitrate-nitrite levels in ground water drinking wells in the area of the landfill are within the ambient (10–15 ug/L) range typically found in Sussex County and the nitrate-nitrite levels were elevated in monitoring wells located up gradient of the landfill, the landfill did not appear to be the source of nitrate-nitrite in ground water. Private residential wells serving less than 25 people are not regulated by the Safe Drinking Water Act; therefore, EPA, DNREC and Sussex County decided to send public information fact sheets to the residents to inform them of the potential adverse health effects due to elevated levels of nitrate-nitrite in drinking water and precautions the public can take to reduce exposure to nitrate-nitrite. In summary, EPA concluded that conditions at the Site had not worsened and no additional risks are presented to human health and the environment at the Site since the signing of the No Action ROD in 1994; therefore, EPA concluded that the No Action remedy was still protective of human health and the environment.

In the 1999 Five-Year Review Report, EPA recommended the following activities be performed by Sussex County so that it can continue to monitor the conditions at the landfill and surrounding area in order to ensure continued protectiveness of human health and the environment. These recommended actions are the following: continue the ground water monitoring program, modifying it as necessary, and maintain the Ground Water Management Zones; continue maintenance of the vegetative soil landfill cover; and notify the residents nearby the landfill who have not been connected to the public water supply system of the elevated levels of nitrate-nitrite in the ground water and that the source of this nitrate-nitrite does not appear to be the landfill.

Sussex County in cooperation with DNREC followed up on these recommendations by issuing public information Fact Sheets to the nearby residents who still use ground water from private wells. The facts sheets informed the residents of the presence of elevated levels of nitrates-nitrites in the water and discussed precautions they could follow to reduce the impact of these nitrate-nitrites on their health. In addition, Sussex County is, with oversight by DNREC, continuing to maintain the integrity and effectiveness of the landfill vegetative soil cover as required in the NOC, and maintain the Ground Water Management Zones. In addition, Sussex County has modified the Ground Water Monitoring Program in accordance with the NOC and MOU

and continues to conduct the Ground Water Monitoring Program at the Site according to DNREC's requirements and as outlined in a revised Memorandum of Understanding (MOU-2) signed between DNREC and Sussex County on March 14, 2000.

Since waste is being left in place at the landfill, EPA will continue to conduct Five-Year Reviews at the Site. The date for the next EPA five-year review is December 2004.

#### Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

#### V. Deletion Action

The EPA, with concurrence of the State of Delaware, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than Five-Year Reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

EPA considers this action to be noncontroversial and routine; as such, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2001 unless EPA receives adverse comments by August 29, 2001 on a parallel notice of intent to delete published in the Proposed Rule section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on the proposal, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect, EPA will then prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will not be any additional opportunity to comment.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 23, 2001.

**Thomas C. Voltaggio,**  
*Acting Regional Administrator, EPA Region III.*

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

#### Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Delaware (“DE”) by removing the site name, Sussex County Landfill No. 5, and the city, Laurel, DE.

[FR Doc. 01–18816 Filed 7–27–01; 8:45 am]

BILLING CODE 6560–50–P

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL–7020–1]

#### National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final notice of deletion of the Dixie Caverns County Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Dixie Caverns County Landfill Superfund Site (Site), located in Roanoke County, near Salem, Virginia, from the National Priorities List (NPL).

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the Commonwealth of Virginia, through the Virginia Department of Environmental Quality, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

**DATES:** This direct final deletion will be effective September 28, 2001 unless

EPA receives adverse comments by August 29, 2001. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Comments may be mailed to: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3168.

*Information Repositories:*

Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday, 8 a.m. to 5 p.m.; and the Glenvar Branch of the Roanoke County Public Library, 3917 Daugherty Road, Salem, VA 24153, (540) 387-6163, Monday through Thursday, 9 a.m. to 9 p.m. and Friday through Saturday, 9 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3168 or 1-800-553-2509.

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**I. Introduction**

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The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in the Section 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 28, 2001 unless EPA receives adverse comments by August 29, 2001 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the

deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Dixie Caverns County Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

**II. NPL Deletion Criteria**

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

- i. responsible parties or other persons have implemented all appropriate response actions required;
- ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted access, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

**III. Deletion Procedures**

The following procedures apply to deletion of the Site:

- (1) The EPA consulted with the Commonwealth of Virginia on the

deletion of the Site from the NPL prior to developing this direct final notice of deletion.

- (2) The Commonwealth of Virginia concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

- (4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

**IV. Basis for Site Deletion**

The following information provides EPA's rationale for deleting the Site from the NPL:

*Executive Summary of the Basis for Site Deletion*

The Dixie Caverns County Landfill was operated from 1965 to 1976. The Site was the focus of two Removal Actions and two Records of Decision (RODs). Through these actions, a fly ash pile was removed for High Temperature Metals Recovery (HTMR); sediment from two streams that had been contaminated by this ash were excavated, stabilized, and landfilled on Site; numerous drums were removed from the Site; and sludge and associated

soils and sediment were excavated and disposed of off-site.

The only waste remaining at the Site is contained in a landfill area (specifically constructed for it) as "concrete-like" stabilized blocks and in a small (5 cubic yards) pocket of fly ash-contaminated sediments, securely entombed deep in an inaccessible stream bank. To date, there has been no leachate collected from the NPL landfill, although the leachate collection system is indeed functioning properly. Since there has been no leachate produced, no analyses have been necessary. The condition of the landfill and cap are good, and there are no significant erosional problems at the Site.

Consequently, the remedy implemented at the Site for the stabilization and containment of the sediments contaminated with arc-furnace fly ash (listed as K061 waste under the Resource Conservation and Recovery Act (RCRA)) has been, and remains, protective. The streams flowing through the Site have recovered well from the impact of the removal actions, and appear to be ecologically quite healthy.

#### *Summary of Contaminated Areas Addressed at Dixie Caverns County Landfill Superfund Site:*

- Drum Disposal Area—August 1988 through May 1989: Drums stabilized and overpacked for transport off-site to a hazardous waste disposal facility.
- Sludge Pit—August 1988 through May 1989: Removal, stabilization and off-site disposal of approximately 500 cubic yards of sludge and contaminated soil.
- Fly Ash Pile—August 1994 through January 1996: Excavation and transport of approximately 9,000 cubic yards of fly-ash material to off-site High Temperature Metals Recovery (HTMR) facility.
- Stream Sediments and Soil—1993 through 1997: Excavation, stabilization and containment of contaminated soils and stream sediments related to the fly ash pile; and placing the "concrete-like" blocks into an on-site landfill.

#### *Site History and Characteristics*

The Dixie Caverns Landfill Site ("Site") is located in Roanoke County, near Salem, Virginia, along State Route 778, approximately one mile west of Exit 132 ("Dixie Caverns") on Interstate 81 (heading south from Roanoke). The landfill is currently owned by the County of Roanoke, and was operated by the County from 1965 until 1976. During its operation, the landfill received unknown quantities of industrial refuse, scrap metal, fly ash,

sludge, and other industrial wastes. When the landfill was closed in July 1976, it contained an estimated 440,000 cubic yards of waste covering approximately 39 acres.

The Site is located in a rural area with the nearest residence located approximately one-half mile southeast along Twine Hollow road. A total of 235 residents live within a one-mile radius of the Site, and an estimated 2,110 residents live within three miles. Within one mile of the Site, private wells are used as the source of potable water.

Municipal and industrial wastes were first disposed of at the Site in 1965. In 1972, the County of Roanoke was notified by the Commonwealth of Virginia that its operation had to be phased out by July 1, 1973, which was the deadline for jurisdictions to obtain a solid waste disposal permit. After several unsuccessful attempts to obtain a permit, the landfill ceased operation in July 1976.

In June 1983, EPA completed a Preliminary Assessment of the Site and identified several disposal areas including a large fly ash pile of undetermined constituents. As a result of these initial investigations, the County of Roanoke signed a Consent Order with EPA in September 1987 to conduct a Removal Action at three disposal areas—a discarded drum area, a sludge pit, and the fly ash pile. The County completed removal activities in the drum area and sludge pit. EPA approved the County plan to treat the fly ash using a proprietary stabilization process. The treated waste was to be placed on Site. Prior to initiation of full-scale treatment, the Commonwealth of Virginia identified inconsistencies between the county plan and state regulations. EPA consequently recommended that the County suspend the Removal Action for stabilization of the fly ash pile.

For the Drum Disposal Area, removal activities consisted of the removal of construction debris, tires, and approximately 300 drums, along with identification (if possible) of the drum's origin. Prior to removal, each drum was visually inspected, field-tested, pumped, overpacked, and/or moved directly to a drum staging area. Drums were inspected for identifying labels or other information pertaining to their possible contents, drum integrity, and volume of material. Drums containing liquids were pumped and/or overpacked prior to removal to the designated staging/sampling area. Compatible liquids were consolidated into a bulk storage/transportation tanker, and incompatible liquids and non-pumpable sludges were pumped,

overpacked or stabilized in drums for off-site disposal in an approved hazardous waste disposal facility.

Drums containing solid material were overpacked, and/or removed and placed in the designated sampling/staging area. All solids requiring disposal were either blended with other solids for bulk disposal or disposed of as drummed waste in an approved hazardous waste facility. Sampling from the drum disposal area indicated high levels of volatile and semi-volatile organic compounds.

Removal activities for the sludge pit consisted of the removal of approximately 500 cubic yards of sludge and contaminated soil, followed by disposal off-site in an approved hazardous waste disposal facility, post excavation sampling to ensure all hazardous materials had been removed, backfill and grading with clean fill, and revegetating the area for erosion control. This area contained high levels of various organic compounds.

The Dixie Caverns Landfill Site was proposed for listing on the Superfund National Priorities List (NPL) on January 22, 1987. The Site was formally listed on the NPL on October 4, 1989.

On January 2, 1988 and April 26, 1989, EPA sent special notice letters pursuant to Section 122(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9622(e), to identified Potentially Responsible Parties (PRPs) and to offer them the opportunity to perform a Remedial Investigation and Feasibility Study (RI/FS) of the Site. When the PRPs declined to perform the work in July 1989, EPA initiated an RI/FS to determine the full nature and extent of contamination at the Site.

Although the Remedial Investigation had not yet been completed, EPA had sufficient information in September 1991, to determine the appropriate remedy for the fly ash, identified under the Resource Conservation and Recovery Act (RCRA) as K061. This waste is a listed hazardous waste under the regulations promulgated at 40 CFR 261.32 pursuant to RCRA, 42 U.S.C. Sections 6901 *et seq.* The K061 waste pile contained several metals, including lead, cadmium and zinc, at levels that presented an imminent and substantial threat to human health and the environment. On September 30, 1991, EPA issued a Record of Decision (ROD) to address the approximately 9,000 cubic yards of K061 waste (fly ash) present at the Site. As described in the 1991 ROD, the selected remedy for the fly ash pile was removal of the fly ash from the Site and treatment of the fly

ash at a High Temperature Metals Recovery (HTMR) facility. The fly ash pile was addressed separately from the rest of the Site as Operable Unit 1 (OU1). The PRPs entered into a consent decree with EPA in June of 1993 agreeing to implement the remedy selected in the OU1 ROD.

The Remedial Action (construction) was formally initiated on August 15, 1994. The contractor conducted remedial activities as planned, and no additional areas of contamination were identified. EPA Concurrence Notices dated November 15, 1995 and January 30, 1996 were issued to the PRP pursuant to the OU1 Consent Decree to document that the "Remedial Action" and the "Work" had been completed and the Performance Standards of the OU1 ROD had been achieved.

At the time that the 1991 ROD was issued, EPA designated all other areas of the Site (except the K061 waste pile) as Operable Unit 2 (OU2). These areas were addressed in a Remedial Investigation Report dated January 1992. As part of the Remedial Investigation for OU2, surface water and sediment samples were obtained from the small streams adjacent to the northern portion of the Site. The analytical results of these samples were evaluated and three contaminants of potential concern (lead, cadmium and zinc) were identified.

Because of the high levels of inorganic contaminants found in the stream sediments, the EPA evaluated the need for an expedited response. EPA subsequently determined that an imminent threat to public health, welfare and/or the environment existed due to the actual release of hazardous substances from the Site. As a result, on August 28, 1992, EPA and the PRPs entered into an Administrative Order by Consent for Removal Action (Removal Order) pursuant to Sections 106(a) and 122(a) of CERCLA, 42 U.S.C. Sections 9606(a) and 9622(a). The Removal Order required that the PRPs:

- Identify the extent of contamination exceeding ecological risk-based levels in two streams at the Site and in soils in the vicinity of and directly beneath the K061 waste pile,
- Eliminate the effect of contamination on aquatic and vegetative species located in and around the two streams and,
- Remove, treat, and/or dispose of contaminated soils in the vicinity of and directly beneath the K061 waste pile.

The Removal Order required that the PRPs develop and implement a Response Action Plan (RAP) to meet the requirements of the Removal Order. The RAP included sampling the streams to determine the extent of contamination,

and then excavating the sediment contaminated by the fly ash and the contaminated soils underlying the fly ash pile. The contaminated sediment and soil would then be stabilized using a proprietary process developed by Roanoke Electric Steel and approved by EPA and Virginia regulatory agencies. The process would involve stabilizing the waste to form concrete-like blocks, and then landfilling the blocks on-site in a properly designed landfill. After cleanup, sampling and analysis would confirm the success of the plan.

Implementation of the RAP took place over a five-year period from 1993 to 1997. The work took place in five stages. The first step included sampling and analysis of stream sediment. Erosion and sediment control measures were designed and implemented, access to adjoining properties was obtained, and plans were made to manage contaminated water.

The second and third steps involved excavation and stabilization of contaminated soil and sediment.

The fourth step involved landfill construction and final disposal. A geological and hydrogeological investigation confirmed the suitability of the Site for a landfill. The RCRA subtitle "C" landfill was designed in compliance with all applicable regulations. The landfill was filled, capped, and certified closed.

The fifth step was site cleanup. Access, roadway, and production areas were cleaned, equipment was decontaminated, and mixing equipment was disposed of.

A report certifying the successful cleanup of soils in the vicinity of and directly beneath the K061 waste pile was submitted by the PRPs on September 26, 1995. Work on sediment removal and stabilization continued through the early summer of 1997. A final inspection was conducted by EPA on July 31, 1997. A Report entitled "Implementation of a Response Action Plan to Remove, Stabilize, and Dispose of Soils and Sediment at Dixie Caverns Landfill" dated September 4, 1997 was submitted by the PRPs documenting that all requirements of the Removal Order had been met. EPA accepted this report on September 18, 1997.

EPA selected "no further action" as the remedy for OU2. The OU2 ROD covered those areas of the Site which were not addressed by OU1 (the K061 waste pile) or the Removal Order (sediments in the adjacent stream and soils in the vicinity of and beneath the K061 waste pile). EPA's rationale for the "no further action" decision was that previous remedial and removal actions addressed all risks posed by the Site and

no further action was necessary. The OU2 ROD was signed on September 28, 1992.

There are no long-term requirements associated with the work of the OU1 ROD and the OU1 Consent Decree. A Post-Closure Care Plan for the on-Site landfill containing the stabilized soils and sediments has been developed to provide methods and schedules for operation and maintenance of the landfill components, including vegetative cover, erosion and sediment control, and the landfill leachate collection and disposal system.

A small pocket of sediment in the south bank of the large sediment pond was unable to be excavated due to its inaccessible location. The pocket consists of about 5 cubic yards of contaminated sediment. The pocket is buried under 7 feet of clay and is protected from erosion by the stream by a large culvert directing flow around it. Abandonment of this sediment pocket was approved by EPA after demonstrations showed that long-term entombment was practical. A yearly walk-by of this location for 5 years after closure was required to ensure that erosion did not begin to threaten the pocket. If future inspections indicate that the integrity of the pocket is threatened, repairs shall be made to ensure the entombment. The adjacent sediment control structures, including the piping and drop inlet are inspected regularly to verify that they are free of debris.

The cap enclosing the landfill has been very effective, and so impermeable that there has been no leachate collected for analysis or disposal to date. Consequently, the objective of on-site containment has been completely obtained, and the Site is in compliance with the goals of the Response Action Plan (for the second Removal).

The only remaining activity to be performed at the Dixie Caverns County Landfill Superfund Site is ongoing Operations and Maintenance (O&M) of the landfill containing the stabilized sediment and soils. Also, since waste remains on the Site such that there is not unlimited use and unrestricted access, EPA will continue to perform five year reviews at the Site.

On October 28, 1999, EPA inspected the Site. Upon arriving at the Site, the fence and gates were found to be intact, and adequately secured. Just inside the entrance to the Site, the lower leachate collection and pre-treatment systems (which operate for the entirety of the landfill, not just the NPL Site) appeared to be in good working order. The surface of the landfill containing the stabilized sediment and soil was in good

condition, although vegetation exhibited occasional sparse patches. The landfill cap, however, had only minor evidence of erosion, which the County stated would be addressed in routine maintenance, along with some re-seeding.

EPA conducted a second site visit on June 20, 2001. The fence was again found to be in good condition, and the gate appeared to be in working order. The leachate collection system is still working properly, and the small amount of leachate collected from the municipal landfill no longer requires pre-treatment (though it is periodically sampled and analyzed to confirm that status).

There continues to be no leachate generated from the NPL portion of the landfill, and thus nothing to collect for analysis. Vegetation on the landfill was lush. Throughout the entirety of the Site (both the NPL and the municipal landfill), new roadbeds and new riprap drainage systems have been installed (completed in May 2001). These improvements were made when the County of Roanoke constructed a new training facility with classrooms and an outdoor shooting range uphill from the upper leachate collection tanks. New fencing and security cameras were also installed.

There is almost no visible evidence of the Removal Action taken in the streams at the Site. Vegetation has taken hold, and the stream appears quite healthy. Fish were observed feeding in a small pond where the fly ash pile was formerly located. The abandoned pocket of fly ash-contaminated sediment remains securely entombed. No erosional problems were observed in any part of the Site.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and CERCLA Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

#### **V. Deletion Action**

The EPA, with concurrence of the Commonwealth of Virginia, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is

taking it without prior publication. This action will be effective September 28, 2001 unless EPA receives adverse comments by August 29, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and, EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 23, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, U.S. EPA Region III.*

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

#### **Appendix B—[Amended]**

2. Table 1 of appendix B to part 300 is amended under Virginia (“VA”) by removing the site name “Dixie Caverns County Landfill” and the city “Salem.”

[FR Doc. 01–18818 Filed 7–27–01; 8:45 am]

**BILLING CODE 6560–50–P**

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 010511122–1179–02; I.D. 031901C]

RIN 0648–AN70

#### **Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 2001 Fisheries**

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

**ACTION:** Final rule; technical correction.

**SUMMARY:** NMFS issues this final rule to implement recreational measures for the 2001 summer flounder, scup, and black sea bass fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Effective July 30, 2001.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office at the following address: National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Rick Pearson, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@noaa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and its implementing regulations (50 CFR part 648, subparts G, H, and I) describe the process for specifying annual recreational measures. Final specifications for the 2001 scup and black sea bass fisheries were published at 66 FR 12902, March 1, 2001, and final

specifications for the 2001 summer flounder fishery were published at 66 FR 16151, March 23, 2001. These specifications included a coastwide recreational harvest limit of 7.16 million lb (3.25 million kg) for summer flounder, 1.77 million lb (0.803 million kg) for scup, and 3.148 million lb (1.43 million kg) for black sea bass. A

proposed rule to implement annual Federal recreational measures for the 2001 summer flounder, scup, and black sea bass fisheries was published at 66 FR 28879, May 25, 2001, and contained management measures (i.e., minimum fish size, possession limit, and season) intended to keep annual recreational harvest from exceeding the specified

harvest limits. The recreational measures contained in this final rule are unchanged from those published in the proposed rule, and are listed below. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

#### RECREATIONAL MEASURES

	Minimum Size (total length)	Possession Limit	Open Season
Summer Flounder	15.5 inches (39.27 cm)	3 fish	May 25 – Sep. 4
Scup	9 inches (22.86 cm)	50 fish	Aug. 15 – Oct. 31
Black Sea Bass	11 inches (27.94 cm)	25 fish	Jan. 1 – Feb. 28 and May 10 – Dec. 31

#### Comments and Responses

Four comments were received on the proposed recreational measures for summer flounder, scup, and black sea bass. Three were from fishing industry participants, and one was from a Congressional representative. All comments received prior to the close of the comment period that were relevant to the measures in the proposed rule were considered in development of this final rule.

#### Classification

*Comment 1:* One commenter concerned with the economic impact of a May and June recreational scup closure on charter vessels operating out of Cape Cod, stated that the closed season would be devastating to this industry, since charter vessel operators have established a large clientele that comes to Cape Cod to catch the scup that traditionally appear off the Cape every spring. The commenter also stated that August is their season for striped bass, bluefish, summer flounder and tuna fishing. Therefore, an August opening to the scup season would not be especially beneficial to their fishing community.

*Response:* The recreational measures being implemented in this final rule are established to ensure that the coastwide harvest limit, established in the 2001 specifications for summer flounder, scup, and black sea bass, is not exceeded. Although the economic impact of these measures may vary among the states based on the seasonal availability of scup, these measures cannot be tailored to meet the economic needs of each individual state. The economic impact of the scup season was evaluated as part of the IRFA/FRFA in relation to the entire coast. The effect of the scup measures on angler effort (1.44-percent reduction) is not substantially greater than the effect

projected under the other alternative that satisfied the FMP objective (1.40 percent reduction), which had an open season of July 1 through September 29, but a possession limit of only 15 fish. The measures being implemented through this final rule were selected because they included a season that met the coastwide requirements, and are consistent with the goals and objectives of the FMP. In addition, these measures maintained a higher possession limit, which industry members testified was critical to charter vessel operations.

*Comment 2:* Two commenters concerned with the black sea bass season and possession limit, stated that a 25-fish possession limit is not sufficient for charter vessels that make full-day trips. They stated that they often sail on full-day trips (8 hr) or on extended-hours trips (14 to 18 hr), with the expectation of catching more than 25 sea bass per passenger. These commenters also stated that this possession limit and the proposed closed season would provide little benefit to the black sea bass stocks. They felt that an increase in the minimum size to 11 inches would have more benefit to the stock.

*Response:* The measures being implemented in this final rule were selected because they met the coastwide requirements, and are consistent with the goals and objectives of the FMP. Furthermore, the negative economic impacts associated with these measures are minimal. These measures are estimated to impact only 0.09 percent of angler trips, with an estimated maximum gross annual revenue loss of only \$219 per party/charter vessel. The negative economic impacts associated with the preferred black sea bass alternative are minimal. These measures are estimated to impact only 0.09 percent of angler trips, with an estimated maximum gross annual

revenue loss of only \$219 per party/charter vessel.

*Comment 3:* One commenter opposed the black sea bass closed season (March 1 through May 9), suggesting instead a closure during August or September when alternative species are available to be caught by charter vessel operations.

*Response:* As stated in the response to Comment 2 above, the negative economic impacts associated with the preferred alternative are minimal. The analysis of the black sea bass measures in the EA/RIR shows that the season only contributes 4 percent to the total 26-percent reduction in recreational landings associated with these measures. To delay the closure to late August would result in less than a 3-percent reduction in recreational black sea bass landings, therefore not achieving the reduction necessary. While an early September closure would result in approximately an 11-percent reduction in landings, it would likely result in a greater economic loss. Therefore, the season established under the preferred alternative achieves the necessary reduction in recreational landings while keeping economic impacts to a minimum.

#### Changes from the Proposed Rule; Technical Correction

Changes to §§ 648.102, 648.103, and 648.105 were made to incorporate regulatory language added as a result of the publication of the final rule implementing Framework 2 to the Summer Flounder, Scup, and Black Sea Bass FMP.

This final rule makes a technical correction to 50 CFR 648.120 (a), which specifies the annual exploitation targets for scup. In Amendment 8 to the FMP, the exploitation target specified for 2002 and thereafter was  $F_{max}$ . The value of  $F_{max}$  estimated in Amendment 8 corresponded to an exploitation rate of

19 percent, and thus §648.120(a) included that value. However, the  $F_{\max}$  estimate has changed. Therefore, the 19-percent figure currently contained in the regulatory text is incorrect. The regulatory text is corrected to reflect the fact that the target exploitation rate is associated with  $F_{\max}$ , rather than a fixed percentage. This correction will allow annual measures to be set consistent with the most recent estimate of  $F_{\max}$ . There are no other changes made to the proposed rule.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual recreational management measures for the summer flounder, scup, and black sea bass fisheries. Action to restrict recreational landings must be taken immediately to conserve and manage these fishery resources; the fisheries are in progress. Failure to implement these provisions immediately could result in overfishing and prevent NMFS from carrying out its mandate to prevent overfishing of the resource. Therefore, because it would be impracticable and contrary to the public interest to delay implementation of these provisions, the Assistant Administrator for Fisheries, NOAA, for good cause under 5 U.S.C. 553 (d)(3) waives the 30-day delay in effectiveness of the 2001 summer flounder, scup, and black sea bass recreational measures.

NMFS determined that this final rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible state agencies on January 17, 2001, under section 307 of the Coastal Zone Management Act. The following states concurred with NMFS' determination: Rhode Island, Pennsylvania, New Jersey, Delaware, Virginia and North Carolina. The State of Connecticut agreed with the consistency determination regarding the black sea bass specifications, but disagreed with the determination regarding the summer flounder and scup specifications. The State of Connecticut objected to NMFS' determination for these two fisheries because the State believed NMFS set harvest levels that were unjustifiably low, and therefore detrimental to Connecticut fishermen. However, recreational harvest limits are not being

established by this action; those measures were established as part of the 2001 summer flounder, scup, and black sea bass specifications, which were the subject of a separate rulemaking. NMFS responded to the concerns of the State of Connecticut by means of a letter sent on March 23, 2001. The remaining states (Maine, New Hampshire, Massachusetts, New York, and Maryland) did not respond; therefore, consistency is inferred.

The Council and NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule contained a detailed summary of the analyses contained in the initial regulatory flexibility analysis (IRFA), and that discussion is not repeated in its entirety here. A summary of the FRFA follows.

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

#### Public Comments

Four comments were received on the recreational measures contained in the proposed rule. Comments were not specifically on the IRFA, but were related to the economic impacts on small entities (see response to comments 1, 2, and 3 in the preamble of this final rule).

#### Number of Small Entities

The measures established by this action potentially affect a total of 694 party/charter vessels that held Federal party/charter permits for the summer flounder, scup, and/or black sea bass fisheries in 1999.

#### Minimizing Significant Economic Impact on Small Entities

The FRFA contains an analysis of the measures being implemented in comparison to other alternatives that were considered. The measures being implemented in this final rule consist of the measures recommended by the Council for these fisheries. The other alternative that satisfied the FMP objective (other alternative) consisted of measures recommended by the Monitoring Committees for summer flounder and scup, and of a restrictive set of alternative black sea bass measures. The final alternative

maintained existing measures for all three fisheries (status quo alternative).

The category of small entities likely to be affected by this action are party/charter vessels harvesting summer flounder, scup, and/or black sea bass. This action could affect any party/charter vessel holding a Federal permit for summer flounder, scup, and/or black sea bass, regardless of whether it is fishing in Federal or in state waters. The measures implemented through this final rule could affect 694 vessels with a Federal charter/party permit for summer flounder, scup and/or black sea bass, but only 364 of these actively participated in the recreational summer flounder, scup, and/or black sea bass fisheries in 1999.

The Council's analysis assessed various management measures and their impacts on revenues of party/charter vessels. Projected Marine Recreational Fisheries Statistics Survey (MRFSS) data indicate that 1.626 million trips were taken by anglers aboard party/charter vessels in 2000 in the Northeast Region. The final 2001 summer flounder recreational measures are expected to affect about 2.64 percent of party/charter trips. Total potential revenue loss could be up to \$1,677,586 (42,916 × \$39.09), with an average potential revenue loss of up to \$5,275 per vessel.

Under the other summer flounder alternative (16-inch (40.64-cm) TL minimum fish size, three-fish possession limit, and an open season), about 2.72 percent of trips aboard party/charter vessels would be affected, assuming angler effort and catch rates in 2001 are similar to 2000. Under this alternative, the average potential revenue loss per vessel would have been up to \$5,435. This alternative was not selected because it has a greater negative economic impact than the selected alternative, and therefore does not minimize the economic impacts on small entities.

Losses of these magnitudes are unlikely to occur, however, given that anglers will continue to have the ability to engage in catch-and-release fishing for summer flounder and that other target species are available. Little information is available to estimate how sensitive the affected party/charter boat anglers might be to the proposed regulations. In addition, only 7.3 percent of recreational summer flounder landings come from the Exclusive Economic Zone (EEZ). Federal measures apply to federally permitted vessels wherever they fish. The states, through the Atlantic States Marine Fisheries Commission (Commission), have implemented different measures for summer flounder because the

Commission has adopted a reduction strategy (34-percent reduction in landings) different than that adopted by the Council (54-percent reduction in landings). Therefore, the demand for recreational party/charter trips targeting summer flounder should not be significantly affected by these final measures, or the measures under the rejected alternative, and the economic impacts per vessel should be considerably less than estimated above.

The status quo summer flounder alternative would have maintained a 15.5-inch (39.37-cm) TL minimum fish size, an eight-fish possession limit, and an open season from May 10 to October 2. Although NMFS did not publish a final rule implementing these measures in the EEZ, most of the coastal states from Maine to North Carolina adopted these measures in 2000. Assuming that angler effort in 2001 is similar to that in 2000 and that catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for summer flounder in 2001. This alternative was not selected because it does not achieve the recreational harvest limit that was consistent with the total allowable landings (TAL) established to comply with a Court Order.

For scup, the final 2001 recreational measures will affect approximately 1.44 percent of the total angler trips taken aboard party/charter vessels in 2001, assuming catch rates and angler effort in 2001 are similar to those in 2000. Party/charter vessels could lose total revenues up to \$915,058 as a result of these final measures, with an average potential revenue loss per vessel of up to \$7,262.

Measures proposed under the other scup alternative (a nine-inch (22.86-cm) TL minimum fish size, a 15-fish possession limit, and an open season from July 1 through September 29) would affect approximately 1.4 percent of the total angler trips taken aboard party/charter boats in 2001. Under this alternative, the average potential revenue loss per vessel could be up to \$7,104. This alternative was not selected because it did not maintain a higher possession limit, which industry testified was critical to charter vessel operations.

Losses of these magnitudes are unlikely to occur, however, for the same reasons noted above for summer flounder. Furthermore, the states, through the Commission, have implemented alternative measures for scup. The Commission has required the states to reduce scup landings by only 33 percent. While a larger portion of the recreational scup fishery occurs in the EEZ than in the case of summer

flounder, only about 13.4 percent of recreational scup landings come from the EEZ. Therefore, the demand for recreational party/charter trips targeting scup should not be significantly affected by these final measures, or the measures under the rejected alternative. Furthermore, the economic impacts per vessel should be considerably less than estimated above.

The status quo alternative for scup would have maintained a 50-fish possession limit, a 7-inch (17.78-cm) TL minimum fish size, and no closed season. Although NMFS did not publish a final rule implementing these measures in the EEZ, most of the coastal states from Maine to North Carolina adopted these measures in 2000. Assuming that angler effort in 2001 is similar to that in 2000 and that catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for scup in 2001. This alternative was not selected because it does not meet the goals and objectives of the FMP.

For black sea bass, about 0.09 percent of the trips aboard party/charter vessels in 2000 (1.626 million trips) will be affected by the final 2001 recreational measures, assuming catch rates and angler effort in 2001 are similar to those in 2000. These final measures could reduce total party/charter vessel revenues by up to \$57,189, with an average potential revenue loss per vessel of up to \$219.

Under the other black sea bass alternative (a 10-inch (25.40-cm) TL, a 15-fish possession limit, and an open season from June 1 through November 25) about 0.83 percent of the trips aboard party/charter vessels would have been affected. Under this alternative, the average potential revenue loss per vessel could be up to \$2,021. However, losses of these magnitudes are unlikely to occur for the same reasons noted earlier for summer flounder and scup. This alternative was not selected because it has a greater negative economic impact than the selected alternative, and therefore does not minimize the economic impacts on small entities.

The status quo alternative for black sea bass would have maintained a 10-inch (25.4-cm) TL minimum fish size with no size or possession limits. Although NMFS did not publish a final rule implementing these measures in the EEZ, most coastal states from Maine to North Carolina adopted these measures in 2000. Assuming angler effort in 2001 is similar to that in 2000 and catch rates remain constant, the status quo alternative would not affect any additional recreational fishing trips for black sea bass in 2001. This

alternative was not selected because it did not meet the goals and objectives of the FMP.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 24, 2001.

**William T. Hogarth,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (a)(80) and (u)(2) are revised to read as follows:

##### § 648.14 Prohibitions.

(a) \* \* \*

(80) Possess scup in or harvested from the EEZ north of 35°15.3' N. lat. in an area closed, or before or after a season established pursuant to § 648.122, or in excess of the possession limit established pursuant to § 648.125.

\* \* \* \* \*

(u) \* \* \*

(2) Possess black sea bass in other than a box specified in § 648.145(d) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.144 (a).

\* \* \* \* \*

3. Section 648.102 is revised to read as follows:

##### § 648.102 Time restrictions.

Unless otherwise specified in § 648.107, vessels that are not eligible for a moratorium permit under § 648.4 (a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 25 through September 4. This time period may be adjusted pursuant to the procedures in § 648.100.

4. In § 648.103, paragraph (b) is revised to read as follows:

##### § 648.103 Minimum fish sizes.

\* \* \* \* \*

(b) Unless otherwise specified in § 648.107, the minimum size for summer flounder is 15.5 inches (39.37 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with

passengers for hire or carrying more than five crew members.

\* \* \* \* \*

5. In § 648.105, paragraph (a) is revised to read as follows:

**§ 648.105 Possession restrictions.**

(a) Unless otherwise specified in § 648.107, no person shall possess more than three summer flounder in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.100.

\* \* \* \* \*

6. In § 648.120, paragraph (a) is revised to read as follows:

**§ 648.120 Catch quotas and other restrictions.**

(a) *Annual review.* The Scup Monitoring Committee shall review the following data, subject to availability, on or before August 15 of each year: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; impact of gear on the mortality of scup; and any other relevant information. This review will be conducted to determine the allowable levels of fishing and other restrictions necessary to achieve the F that produces the maximum yield per recruit ( $F_{max}$ ).

\* \* \* \* \*

7. In § 648.122, the section heading is revised and paragraph (g) is added to read as follows:

**§ 648.122 Time and area restrictions.**

\* \* \* \* \*

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4 (a)(6) and fishermen subject to the possession limit may fish for scup from August 15 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

8. In § 648.124, paragraph (b) is revised to read as follows:

**§ 648.124 Minimum fish sizes.**

\* \* \* \* \*

(b) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

\* \* \* \* \*

9. In § 648.125, paragraph (a) is revised to read as follows:

**§ 648.125 Possession limit.**

(a) No person shall possess more than 50 scup in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.120.

\* \* \* \* \*

10. Section 648.142 is revised to read as follows:

**§ 648.142 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4 (a)(7) and fishermen subject to the possession limit may not fish for black sea bass from March 1 through May 9. This time period may be adjusted pursuant to the procedures in § 648.140.

11. In § 648.143, the first sentence of paragraph (b) is revised to read as follows:

**§ 648.143 Minimum sizes.**

\* \* \* \* \*

(b) The minimum size for black sea bass is 11 inches (27.94 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members. \* \* \*

\* \* \* \* \*

12. In § 648.145, the introductory paragraph is removed; existing paragraphs (a), (b) and (c) are redesignated as paragraphs (b),(c), and (d), respectively; and a new paragraph (a) is added to read as follows:

**§ 648.145 Possession limit.**

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.140.

\* \* \* \* \*

[FR Doc. 01-18919 Filed 7-27-01; 8:45 am]

BILLING CODE 3510-22-S

# Proposed Rules

Federal Register

Vol. 66, No. 146

Monday, July 30, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 177

RIN 1515-AC56

#### Administrative Rulings; Correction

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

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects three errors in the document published in the *Federal Register* on July 17, 2001, which set forth proposed amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws.

**FOR FURTHER INFORMATION CONTACT:** John Elkins, Textiles Branch, Office of Regulations and Rulings (202-927-2380).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 17, 2001, Customs published a notice in the *Federal Register* (66 FR 37370) setting forth proposed amendments to part 177 of the Customs Regulations (19 CFR part 177). Part 177 concerns the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws.

This document corrects three errors in that published document. One error appeared in the Background portion of the preamble of the document and involves replacement of the words "as described above" by the citation "(19 U.S.C. 1625)" in order to remove a contextual ambiguity in the discussion in question. The other two errors involve the following provisions in the proposed regulatory texts:

1. In proposed § 177.11, in the third sentence of paragraph (b)(3)(vi)(B), the words "would includes" should be corrected to read "would include" for grammatical purposes; and

2. In proposed § 177.41, paragraph (c)(2)(i)(A) refers to a request filed under "paragraph (d) of this section" but no paragraph (d) is included in § 177.41—this reference should be corrected to read "§ 177.44."

#### Corrections of Publication

Accordingly, the document published in the *Federal Register* on July 17, 2001 (66 FR 37370), is corrected as set forth below.

#### Correction to the Preamble

1. On page 37370, in the second column, fourth paragraph, the third line is corrected by removing the words "as described above" and adding, in their place, the reference "(19 U.S.C. 1625)".

#### Corrections to the Proposed Regulations

2. On page 37383, in the third column, in § 177.11(b)(3)(vi)(B), in the last line, the words "would includes" are corrected to read "would include".

3. On page 37394, in the second column, in § 177.41, the second sentence of paragraph (c)(2)(i)(A) is corrected by removing the words "paragraph (d) of this section" and adding, in their place, the reference "§ 177.44".

Dated: July 24, 2001.

**Harold M. Singer,**

*Chief, Regulations Branch.*

[FR Doc. 01-18858 Filed 7-27-01; 8:45 am]

**BILLING CODE 4820-02-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 70

[IN003; FRL-7020-7]

#### Clean Air Act Proposed Full Approval of 40 CFR Part 70 Operating Permits Program; Indiana

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes full approval of the operating permits program submitted by Indiana for the purpose of complying with standards

under which States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**DATES:** Comments on this proposed action must be received on or before August 29, 2001.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing the proposed approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR-18J, Chicago, Illinois, 60604. Please contact Nancy Mugavero at (312) 353-4890 to arrange a time if inspection of the submittal is desired.

#### FOR FURTHER INFORMATION CONTACT:

Nancy Mugavero, AR-18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, Telephone Number: (312) 353-4890, E-Mail Address: mugavero.nancy@epa.gov.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is being addressed in this document?

What are the program changes that EPA proposes to approve?

What is involved in this proposed action?

#### What Is Being Addressed in This Document?

As required under subchapter V of the Clean Air Act ("the Act") as amended (1990), EPA has promulgated regulations which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These regulations are codified at 40 Code of Federal Regulations (CFR) part 70. Pursuant to subchapter V, generally known as Title V, States develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The EPA's program review occurs under section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not

fully approved a program by 2 years after the November 15, 1993 date, or by the expiration of an interim program, it must establish and implement a Federal program.

The Indiana Department of Environmental Management (IDEM) submitted its Title V operating permits program (Title V program) for approval on August 10, 1994. EPA promulgated interim approval of the Indiana Title V program on November 14, 1995 (60 FR 57188), and the program became effective on December 14, 1995. Subsequently, EPA extended Indiana's Title V interim approval period on several occasions, most recently to December 1, 2001 (65 FR 32036).

IDEM submitted amendments to its Title V program for our approval on May 22, 1996. These amendments were intended to correct interim approval issues identified in the November 14, 1995, action.

### What Are the Program Changes That EPA Proposes To Approve?

#### A. Title V Interim Approval Corrections

On November 14, 1995, EPA promulgated interim approval for the Indiana Title V program, stating the State must amend the insignificant activity threshold for SO<sub>2</sub> and hazardous air pollutants (HAPs) to receive full approval. The SO<sub>2</sub> threshold was 10 pounds per hour (lb/hr) or 50 pounds per day (lb/day), which is equivalent to 9.13 tons per year (tpy). The HAPs threshold was 4 tpy for one HAP or 10 tpy for any combination of HAPs. EPA believed that these thresholds were too high and noted that they were significantly above what EPA had accepted in other State programs.

On May 22, 1996, IDEM submitted revised program regulations, including 326 IAC 2-7-1(20)(A)(iii) which defines the insignificant activity threshold for SO<sub>2</sub> emissions as 5 lb/hr or 25 lb/day. A source must meet both the lb/hr and the lb/day levels to qualify as an insignificant activity. These levels equal a maximum potential of 4.56 tpy of SO<sub>2</sub>. Indiana's lb/day thresholds are more stringent than a simple tpy threshold. A source limited to 25 lb/day would have to operate at its maximum potential for every day of a calendar year to achieve emissions of 4.56 tpy. In reality, such sources would have lower annual emissions. The 4.56 tpy SO<sub>2</sub> threshold is equivalent to Indiana's thresholds for nitrogen oxides and particulate matter approved by EPA in the November 14, 1995, rulemaking. EPA believes that this SO<sub>2</sub> insignificant activity threshold is reasonable and resolves the interim approval issue.

In addition, IDEM has amended 326 2-7-1(20)(C)(i) and (ii) to define the insignificant activity threshold for HAP emissions as 5 lb/day or 1 tpy for a single HAP and 12.5 lb/day or 2.5 tpy for any combination of HAPs. A source must meet both the lb/day and the tpy levels to qualify as an insignificant activity. Indiana's lb/day thresholds are more stringent than a simple tpy threshold. A source limited to 5 lb/day per HAP would have to operate at its maximum potential for every day of a calendar year to achieve emissions of 0.91 tpy and a source limited to 12.5 lb/day for a combination of HAPs would have to operate at its maximum potential for every day of a calendar year to achieve emissions of 2.28 tpy. In reality, such sources would have lower annual emissions. EPA believes that IDEM's new HAP insignificant activity levels are reasonable and resolve the interim approval issue.

#### B. Other Title V Program Revisions

In addition to revising the SO<sub>2</sub> and HAPs insignificant activity thresholds, the May 22, 1996, submittal also contained other amendments to the State Title V regulations. We have identified inconsistencies between some of these revisions and the requirements of 40 CFR part 70. Indiana is currently in the process of revising these regulations to address the inconsistencies with part 70. Therefore, we are not taking action on these other revisions in today's document. As mentioned in more detail below, any uncorrected deficiencies will be addressed in a notice of deficiency to be published by EPA by December 1, 2001.

#### C. Implementation of Section 112(g)

As a condition of approval of the Title V program, States are required to implement section 112(g) of the Act. The EPA promulgated rulemaking on December 27, 1996 (61 FR 68384) requiring States to certify that their program meets all section 112(g) requirements. Indiana submitted a letter to EPA on May 1, 1998, certifying that the State regulations in 326 IAC 2-1-3.4 meet the section 112(g) requirements. The EPA sent a letter to Indiana on June 18, 1998, acknowledging the certification of Indiana's 112(g) program. This program became federally enforceable on June 29, 1998.

### What Is Involved in This Proposed Action?

#### A. Proposed Action

The EPA proposes full approval of the operating permits program submitted by IDEM based on the revisions submitted

on May 22, 1996, which satisfactorily address the program deficiencies identified in EPA's November 14, 1995 interim approval rulemaking.

#### B. Citizen Comment Letters on Indiana Title V Program

On May 22, 2000, EPA promulgated a rulemaking that extended the interim approval period of 86 operating permits programs until December 1, 2001. (65 FR 32035) The action was subsequently challenged by the Sierra Club and the New York Public Interest Research Group (NYPIRG). In settling the litigation, EPA agreed to publish a document in the **Federal Register** that would alert the public that they may identify and bring to EPA's attention alleged programmatic and/or implementation deficiencies in Title V programs and that EPA would respond to their allegations within specified time periods if the comments were made within 90 days of publication of the **Federal Register** notice.

Several citizens commented on what they believe to be deficiencies with respect to the Indiana Title V program. EPA takes no action on those comments in today's action and will respond to them by December 1, 2001. As stated in the **Federal Register** document published on December 11, 2000, (65 FR 77376) EPA will respond by December 1, 2001 to timely public comments on programs that have obtained interim approval; and EPA will respond by April 1, 2002 to timely comments on fully approved programs. We will publish a notice of deficiency (NOD) when we determine that a deficiency exists, or we will notify the commenter in writing to explain our reasons for not making a finding of deficiency.

#### Administrative Requirements

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it proposes to approve pre-

existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

**List of Subjects in Part 70**

Environmental protection, Administrative practice and procedure,

Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: July 13, 2001.

**Gary Gulezian,**

*Acting Regional Administrator, Region 9.*

[FR Doc. 01-18884 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

**[FRL-OW-7020-4]**

**Water Quality Standards; Withdrawal of Federal Nutrient Standards for the State of Arizona**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** In 1976, EPA promulgated Federal criteria for nutrients in Arizona. The Federal criteria consisted of numeric ambient water quality criteria for nutrients for eleven river segments and narrative water quality criteria for nutrients applicable to all surface waters in Arizona. Arizona has now adopted its own numeric and narrative water quality criteria for nutrients, which EPA has approved. Arizona has also established and EPA has approved implementation procedures for its narrative nutrient water quality criteria. Therefore, EPA is proposing to withdraw the Federal criteria for nutrients applicable in Arizona. EPA is providing an opportunity for public comment on the withdrawal of the Federal nutrient criteria because the State's water quality criteria for nutrients, while protective of designated uses, in some cases may be less stringent than the corresponding federally promulgated nutrient criteria. **DATES:** EPA will accept public comments on this proposed rulemaking until September 28, 2001. Comments postmarked after this date may not be considered.

**ADDRESSES:** Send written comments to Gary Sheth, EPA, Region 9 (WTR-5), Water Division, 75 Hawthorne Street, San Francisco, CA 94105. Written comments should include an original plus three copies. Electronic comments are encouraged and should be submitted to sheth.gary@epa.gov. Electronic comments must be submitted as an ASCII file or a WordPerfect file. The supporting record for this rulemaking may be inspected (Monday through Friday, 8:00 a.m. to 4:30 p.m. excluding

legal holidays) at EPA, Region 9, Water Management Division, 75 Hawthorne Street, San Francisco, CA 94105. For access to docket materials, please call 415-744-2125. A reasonable fee will be charged for photocopies.

**FOR FURTHER INFORMATION CONTACT:** Gary Sheth (415-744-2008, sheth.gary@epa.gov) EPA, Region 9 (WTR-5), Water Division, 75 Hawthorne Street, San Francisco, CA 94105, or Jennifer Wigal (202-260-5177, wigal.jennifer@epa.gov) EPA Headquarters, Office of Water (4305), 1200 Pennsylvania Ave NW, Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

- I. Potentially Affected Entities
- II. Background
  - A. What Are the Statutory and Regulatory Requirements Relevant to this Action?
  - B. What Actions Have EPA and Arizona Taken in the Past Relating to Water Quality Standards for Nutrients in the State?
  - C. What Water Quality Standards for Nutrients Currently Apply in Arizona?
  - D. What Water Quality Standards Will Apply if EPA Withdraws the Federal Nutrient Criteria in Arizona?
- III. Administrative Requirements

**I. Potentially Affected Entities**

Citizens concerned with water quality in Arizona may be interested in this proposed rulemaking. Entities discharging nitrogen or phosphorous to waters of the United States in Arizona could be affected by this proposed rulemaking because water quality criteria are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially affected entities include:

Category	Examples of potentially affected entities
Industry .....	Industries discharging nutrients to surface waters in Arizona.
Municipalities .....	Publicly-owned treatment works discharging nutrients to surface waters in Arizona.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities that could potentially be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

### A. What Are the Statutory and Regulatory Requirements Relevant to This Action?

Section 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act (CWA or Act) directs States, with oversight from EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the Act. States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that a water quality standard shall include the designated use or uses to be made of the water and the water quality criteria necessary to protect those uses. States may also include in their water quality standards policies generally affecting the standards' application and implementation. 40 CFR 131.6(f); 40 CFR 131.13. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standard. 33 U.S.C. 1313(c)(2). States are required to submit the results of their reviews to EPA. EPA then reviews the State's standards for consistency with the CWA and EPA's implementing regulations at 40 CFR Part 131 and approves or disapproves any new or revised standards. 33 U.S.C. 1313(c)(3). Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards when necessary to supersede disapproved State water quality standards, or in any case where the Administrator determines that new or revised standards are necessary to meet the requirements of the CWA.

EPA will issue a rule to withdraw Federal water quality standards promulgated for a State when the State adopts, and EPA approves, State water quality standards that meet the requirements of the CWA and the implementing Federal regulations. Because the State's water quality criteria for nutrients, while protective of designated uses, may in some cases be less stringent than the federally promulgated standards, EPA is providing an opportunity for the public to comment on the proposed withdrawal of the Federal nutrient criteria for Arizona. EPA requests comment on whether there are any waterbodies in Arizona where the Federal nutrient criteria should not be removed. For such waterbodies, EPA solicits data documenting existing conditions which indicate that designated uses would not be protected by Arizona's numeric or narrative nutrient water quality criteria.

### B. What Actions Have EPA and Arizona Taken in the Past Relating to Water Quality Standards for Nutrients in the State?

In 1976, EPA determined that water quality standards for nutrients submitted by Arizona as of that time did not meet the CWA's requirements. EPA promulgated Federal numeric nutrient criteria for total phosphates applicable to eleven river segments in Arizona, Federal numeric nutrient criteria for total nitrates applicable to four waterbodies, and Federal narrative nutrient criteria applicable to all surface waters of Arizona. See 40 CFR 131.31(a); 41 FR 25000 (June 22, 1976). Although EPA used the phrase *nutrient standards* to describe the water quality criteria for nutrients codified at 40 CFR 131.31(a), in today's proposal, EPA is using the more precise term *criteria* to refer to Federal water quality criteria for nutrients for Arizona that EPA is proposing to withdraw.

Since EPA's promulgation of nutrient criteria for Arizona, the Arizona Department of Environmental Quality (ADEQ) in a series of actions adopted numeric nutrient criteria for total nitrogen and total phosphorous applicable to specific water bodies in Arizona. See Arizona Administrative Code, R18-11-109, 11-110, and 11-112. Arizona has also adopted narrative nutrient criteria applicable to all surface waters of the State. See Arizona Administrative Code, R18-11-108. Arizona's narrative nutrient criteria provide that *navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses*. See Arizona Administrative Code, R18-11-108.A.5. Since EPA's promulgation of nutrient water quality criteria in 1976, EPA has approved the numeric and narrative water quality criteria for nutrients adopted by Arizona. See, e.g., EPA's **Federal Register** notices of approvals at 53 FR 4209 (Feb. 12, 1988); 58 FR 62124 (Nov. 24, 1993); 60 FR 51793 (Oct. 3, 1995).

Arizona's adopted and approved numeric water quality criteria for nutrients are based on total phosphorous and total nitrogen whereas the numeric water quality criteria for nutrients promulgated by EPA in 1976 are based on total phosphates and total nitrates. Total phosphorous and total nitrogen are more encompassing measurements of the presence of these types of nutrients than total phosphates and total nitrates, for which EPA

promulgated water quality criteria in 1976. Elemental phosphorous and nitrogen can be present in different forms under different conditions (for example, as phosphates and nitrates). For this reason, to quantify the total phosphorous and nitrogen present, EPA recommends measuring concentrations of total phosphorous and total nitrogen. Although EPA is not able to directly compare Arizona's nutrient criteria based on total phosphorous and total nitrogen with the Federal criteria based on total phosphates and total nitrates, the CWA and EPA's regulations at 40 CFR 131.11 only require that States adopt criteria that are scientifically defensible and sufficiently detailed to protect the designated uses of the waterbodies. When EPA approved these criteria, EPA determined that they met this requirement and adequately protected Arizona waters from nutrient overenrichment (the same objective of the 1976 federal nutrients water quality criteria). Arizona's numeric nutrient criteria are also consistent with EPA's current guidance recommending water quality criteria for the control of nutrients be expressed in terms of total nitrogen and total phosphorous. See *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs*, EPA-822-B-00-001; *Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Nutrient Ecoregion II*, EPA-822-B-00-007; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion II*, EPA 822-B-00-015; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion III*, EPA 822-B-00-016. In short, the State's numeric and narrative nutrient criteria adopted from 1976 to 1996, along with the implementation procedures for the narrative nutrient criteria, fully protect the designated uses of Arizona's surface waters, and as such are consistent with the CWA and the implementing Federal regulations at 40 CFR 131.11. (For more detailed information on EPA's analysis, see EPA's approval decisions contained in the docket to this rulemaking.)

In EPA's action taken in 1993, EPA approved the numeric and narrative nutrient criteria adopted by the State, but disapproved the absence of implementation procedures for the narrative nutrient water quality criteria. In January 1996, EPA proposed Federal water quality standards addressing several deficiencies in Arizona's water quality standards, which included the identification of appropriate procedures and methods for interpreting and implementing the State's narrative

nutrient criteria. See 61 FR 2766 (January 29, 1996). Also in January 1996, ADEQ established implementation procedures for its narrative nutrient water quality criteria (see *Arizona's Implementation Guidelines for the Narrative Nutrient Standard*). On April 26, 1996, EPA approved these implementation procedures. In the preamble to the final rule promulgating other water quality standards elements for Arizona, EPA explained that promulgation of Federal implementation procedures for Arizona's narrative nutrient criteria was no longer necessary because the State had identified its own implementation procedures. See 61 FR 20686 (May 7, 1996). Although EPA did not specifically address the continuing need for the 1976 Federal nutrient criteria, in its decision not to promulgate Federal implementation procedures, EPA observed that Arizona's numeric and narrative nutrient criteria, as supplemented by the State's newly established implementation procedures, were consistent with the CWA and that no new Federal water quality standard to implement the State's narrative criteria was necessary to meet the CWA's requirements. See 61 FR 20692 (May 7, 1996). Consistent with this earlier finding, EPA has determined that the 1976 Federal criteria for nutrients for Arizona waters are redundant and no longer necessary. EPA is therefore proposing to withdraw the Federal water quality criteria for nutrients applicable to Arizona surface waters at 40 CFR 131.31(a).

*C. What Water Quality Standards for Nutrients Currently Apply in Arizona?*

Since EPA's 1976 promulgation of water quality criteria for nutrients for Arizona surface waters, the State has adopted numeric nutrient water quality criteria applicable to specified surface waters of the State, adopted narrative nutrient water quality criteria applicable to all of its surface waters, and established implementation procedures for its narrative nutrient water quality criteria. These individual adoptions were approved by EPA between 1976 and 1996.

Currently, both the Federal and State nutrient criteria apply in Arizona. This includes the Federal numeric and narrative nutrient criteria (40 CFR 131.31(a)); the State's numeric nutrient water quality criteria (R18-11-109, 11-110, and 11-112); the State's narrative nutrient water quality criteria (R18-11-108); the State's regulation regarding nutrient waivers (R18-11-115); and the State's implementation procedures established for its narrative nutrient water quality criteria.

*D. What Water Quality Standards Will Apply If EPA Withdraws the Federal Nutrient Criteria in Arizona?*

The goal of EPA's 1976 rulemaking in Arizona was to establish water quality criteria to protect the designated uses of Arizona surface waters. EPA may withdraw federally promulgated water quality standards after the State adopts, and EPA approves, water quality standards that meet the requirements of the CWA and the implementing Federal regulations. EPA is proposing to withdraw the Federal numeric and narrative nutrient criteria at 40 CFR 131.31(a). If finalized, the applicable nutrient criteria in Arizona will consist of the State's own numeric and narrative nutrient criteria along with the corresponding implementation procedures for the narrative criteria. Not affected by this proposal are federal water quality standards codified at 40 CFR 131.31(b) & (c), which among other things, designate fish consumption as a use for certain waters, and require implementation of a monitoring program regarding mercury's effects on wildlife. These provisions remain in effect.

Table 1 below displays the Federal numeric criteria for nutrients and the State's corresponding criteria. The waterbody segments listed in Table 1 are the waters for which Federal numeric nutrient criteria apply. The applicable Federal nutrient criteria and the corresponding State nutrient criteria are listed for each water body. Because the Federal and State nutrient criteria are based on measurements of different parameters (i.e., total phosphates and total nitrates versus total phosphorous

and total nitrogen), this table does not provide a direct comparison of the Federal and State nutrient criteria but rather describes how individual waters that are currently covered by the Federal criteria for nutrients will be covered by Arizona's water quality standards. For waterbodies or waterbody segments listed in rows 4, 8, 9 and 11, Arizona has adopted numeric nutrient water quality criteria for either total nitrogen, total phosphorus, or both. In addition to the numeric nutrient criteria in Table 1 for the listed stream segments, Arizona has adopted numeric nutrient criteria for additional stream segments not covered by the Federal nutrient criteria. EPA approved Arizona's numeric nutrient criteria because the criteria were derived using sound science and are protective of the designated uses of those waters. Readers interested in viewing Arizona's numeric nutrient criteria not listed in Table 1 should consult Arizona's water quality standards (R18-11-109, 11-110, and 11-112).

For waterbodies or waterbody segments where Arizona has not adopted numeric nutrient water quality criteria to replace the Federal numeric water quality criteria for nutrients (the waters listed in rows 1, 2, 3, 5, 6, and 10), the State's narrative nutrient criteria apply. The narrative nutrient criteria, in conjunction with Arizona's *Implementation Guidelines for the Narrative Nutrient Standard*, will provide the same intended level of protection as the Federal criteria by fully protecting the designated uses of these waters because it allows for consideration of site-specific factors. Indeed, when necessary, narrative criteria with the appropriate implementation procedures can be used to obtain quantitative measures having a greater degree of precision and site specificity than a single numeric target. EPA reviewed and approved Arizona's narrative nutrient criteria and the *Implementation Guidelines for the Narrative Nutrient Standard* as being scientifically defensible and consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUMERIC NUTRIENT CRITERIA

Waterbody segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
1. Colorado River from Utah border to Willow Beach .....	0.04/0.06	4/7	nnc	nnc
2. Colorado River from Willow Beach to Parker Dam .....	0.06/0.10	5/—	nnc	nnc
3. Colorado River from Parker Dam to Imperial Dam .....	0.08/0.12	5/7	nnc	nnc
4. Colorado River from Imperial Dam to Morelos Dam .....	0.10/0.10	5/7	nnc/0.33/nnc	nnc/2.50/nnc

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUMERIC NUTRIENT CRITERIA—Continued

Waterbody segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
5. Gila River from New Mexico border to San Carlos Reservoir (excluding the San Carlos Reservoir) .....	0.50/0.80	—/—	nnc	NA
6. Gila River from San Carlos Reservoir to Ashurst Hayden Dam (including San Carlos Reservoir) .....	0.30/0.50	—/—	nnc	NA
7. San Pedro River .....	0.30/0.50	—/—	nnc	NA
8. Verde River (except Granite Creek) .....	0.20/0.30	—/—	0.10/0.30/1.00	NA
9. Salt River above Roosevelt Lake (except Pinal Creek) .....	0.20/0.30	—/—	0.12/0.30/1.00	NA
10. Santa Cruz River from international boundary near Nogales to Sahuarita .....	0.50/0.80	—/—	nnc	NA
11. Little Colorado River above Lyman Reservoir .....	0.30/0.50	—/—	0.20/0.30/0.75	NA

—: No Federal numeric Nutrient Criteria were promulgated.

nnc: The State's narrative nutrient water quality criteria apply in conjunction with the State's implementation procedures.

NA: EPA has not presented the State's nutrient criteria for total nitrogen for these waters because these waters were not subject to the 1976 Federal nutrient water quality criteria.

EPA is developing waterbody-type guidance describing the techniques for assessing the trophic state of a waterbody and methodologies for deriving nutrient water quality criteria appropriate to different geographic regions. Separate guidance has been developed for rivers and lakes; guidance for coastal waters and wetlands is underway. For freshwaters, the guidance recommends that approaches for developing nutrient water quality criteria address total nitrogen, total phosphorous, chlorophyll-a, and algal turbidity. EPA has also published recommended ecoregion-specific nutrient water quality criteria for States to use as guidance in adopting water quality standards. See 66 FR 1671 (January 9, 2001). EPA has published nutrient water quality criteria guidance for the ecoregions contained within Arizona for rivers and streams and for certain lakes and reservoirs. EPA intends these recommended water quality criteria to serve as guidance for States as they develop and update their own nutrient water quality criteria. If, in the future, new data or information suggests that the State's nutrient criteria should be revised, EPA will work with Arizona to support and assist in adoption of new or revised water quality criteria for nutrients.

**III. Administrative Requirements**

This proposed withdrawal of Federal criteria is deregulatory in nature and would impose no additional regulatory requirements or costs on anyone. Therefore, it has been determined that this proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and accordingly is not

subject to review by the Office of Management and Budget nor is it subject to Executive Order 13211 (66 FR 28355, May 22, 2001). For the same reason, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this action contains no Federal mandates for State, local or tribal governments, or the private sector, nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203 and 205 of the Unfunded Mandates Reform Act (Public Law 104-4). Further, this action does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that their actions are unlikely to jeopardize the continued existence of listed species or adversely affect designated critical habitat of such species. EPA intends to fulfill any applicable ESA requirements prior to final withdrawal of the Federal nutrient standards for Arizona. (None of the Arizona waters affected by this proposed rule has species or habitats within the jurisdiction of National Marine Fisheries Service.)

**List of Subjects in 40 CFR Part 131**

Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 24, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons set out in the preamble, Part 131 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 131—WATER QUALITY STANDARDS**

1. The authority citation for Part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

**§ 131.31 [Amended]**

2. Section 131.31 is amended by removing and reserving paragraph (a).

[FR Doc. 01-18886 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-7019-7]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of intent to delete the Sussex County Landfill No. 5 Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Sussex County Landfill No. 5 Superfund Site (Site) located in Sussex County near Laurel, DE, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR Part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Delaware, through the Delaware Department of Natural Resources and Environmental Control, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Sussex County Landfill No. 5 Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we do not receive any adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the Direct Final Notice

of Deletion which is located in the Rules section of this **Federal Register**.**DATES:** Comments concerning this Site must be received by August 29, 2001.**ADDRESSES:** Written comments should be addressed to: Richard Kuhn, Community Involvement Coordinator, U.S. EPA Region III (3HS43), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3063 or 1-800-352-1973 ext. 4-3063.**FOR FURTHER INFORMATION CONTACT:** Humberto J. Monsalvo, Jr., Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2163 or 1-800-352-1973 ext. 4-2163.**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday 8 a.m. to 5:00 p.m.; Laurel Public Library, 6 E. Fourth Street, Laurel, DE 19956, (302) 875-3184, Monday through Thursday 10 a.m. to 8 p.m., Friday 10 a.m. to 5 p.m., Saturday 10 a.m. to 2 p.m.; Delaware Department of Natural Resources and Environmental Control, Division of Air and Waste Management, 391 Lukens Drive, Riveredge Industrial Park, New Castle, DE 19720, (302) 395-2600, Monday through Friday 8 a.m. to 4 p.m.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 23, 2001.

**Thomas C. Voltaggio,***Acting Regional Administrator, U.S. EPA Region III.*

[FR Doc. 01-18817 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300**

[FRL-7019-9]

**National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of intent to delete the Dixie Caverns County Landfill Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Dixie Caverns County Landfill Superfund Site (Site) located in Roanoke County, near Salem, Virginia, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the Commonwealth of Virginia, through the Virginia Department of Environmental Quality, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Dixie Caverns County Landfill Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the Direct Final Notice of Deletion which is

located in the Rules section of this **Federal Register**.

**DATES:** Comments concerning this Site must be received by August 29, 2001.

**ADDRESSES:** Written comments should be addressed to: Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3168.

**FOR FURTHER INFORMATION CONTACT:** Matthew T. Mellon, Remedial Project Manager, U.S. EPA Region III (3HS23), 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-3168 or 1-800-553-2509.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

*Information Repositories:* Repositories have been established to provide detailed information concerning this decision at the following addresses: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street (2nd Floor), Philadelphia, PA 19103-2029, (215) 814-5254, Monday through Friday, 8 a.m. to 5 p.m.; and the Glenvar Branch of the Roanoke County Public Library, 3917 Daugherty Road, Salem, VA 24153, (540) 387-6163, Monday through Thursday, 9 a.m. to 9 p.m. and Friday through Saturday, 9 a.m. to 5 p.m.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601-9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: July 23, 2001.

**Thomas C. Voltaggio,**

*Acting Regional Administrator, U.S. EPA Region III.*

[FR Doc. 01-18819 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 434

[FRL-7019-2]

#### Notice of Data Availability; Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards

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

**ACTION:** Notice of data availability.

**SUMMARY:** On April 11, 2000 (65 FR 19440), EPA published proposed amendments to effluent limitations guidelines and standards for the coal mining point source category (40 CFR part 434). EPA proposed to add two new subparts to the existing regulations, the Coal Remining Subcategory (Subpart G) and the Western Alkaline Coal Mining Subcategory (Subpart H).

In the proposal, EPA specifically solicited comment on 18 issues, in addition to a general comment solicitation on all aspects of the proposed regulation. EPA received comments from various stakeholders, including state, tribal and federal regulatory authorities, environmental groups, and industry groups.

In response to the general comment solicitation, EPA received comments and data on aspects of the proposal for which EPA did not specifically solicit comment. Due to comments received, EPA is considering changes to certain aspects of the proposed Coal Remining Subcategory. Today, EPA is making these data and comments available for public review and comment.

**DATES:** Submit your comments by August 29, 2001.

**ADDRESSES:** Submit comments to Mr. John Tinger at the following address: U.S. EPA, Engineering and Analysis Division (4303), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments sent via courier or Federal Express should be sent to: John Tinger, U.S. EPA, Engineering and Analysis Division (4303), Room 615 West Tower, 401 M St., SW., Washington, DC 20460. You are encouraged to submit comments electronically to Tinger.John@epa.gov.

The data and information being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB-57, 401 M St., SW., Washington, DC 20460. For access to the docket materials, call (202) 260-3027 between 9:00 a.m. and 4:00 p.m. for an appointment. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Tinger at (202) 260-4992 or at the following e-mail address: Tinger.John@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### Contents of This Document

- I. Purpose of this Notice
- II. Background
- III. Date of Applicability for Remining Operations
- IV. Alternative Limits for Solids in Pre-existing Discharges
- V. Summary of Comment Solicitation

#### I. Purpose of This Notice

On April 11, 2000, EPA published proposed amendments to effluent limitations guidelines and standards for the coal mining point source category (65 FR 19440). EPA proposed to add provisions for two new subcategories, the Coal Remining Subcategory and the Western Alkaline Coal Mining Subcategory. In today's notice, EPA is providing a discussion of options relating to specific issues raised by commenters on the remining subcategory that were not presented in the proposal. EPA is presenting these comments and the options that EPA is considering for the final rulemaking. EPA solicits comments on these options and on the related comments and data collected since proposal. Specifically, EPA is soliciting comment on the effective date of the Remining Subcategory and on alternative effluent limits for solids.

#### II. Background

Coal mining in the eastern United States has been an important industry for several centuries. The lack of adequate environmental controls, until recently, has produced hundreds of thousands of acres of abandoned mine land (AML). Prior to passage of the Surface Mining Control and Reclamation Act (SMCRA) in 1977, reclamation of coal mining sites was not a federal requirement, and drainage from AML has become a significant water quality problem in Appalachia.

Based on information supplied by the Interstate Mining Compact Commission (IMCC) and the Office of Surface Mining (OSM) Abandoned Mine Land Inventory System, EPA estimates there currently are over 1.1 million acres of abandoned coal mine lands in the United States. These have produced over 9,709 miles of streams polluted by acid mine drainage. In addition, there are over 18,000 miles of abandoned highwalls, 16,326 acres of dangerous piles and embankments, and 874 dangerous impoundments. Of the land disturbed by coal mining between 1930 and 1971,

only 30 percent has been reclaimed to acceptable levels. Several states have indicated that acid mine drainage from abandoned coal mine land is their most serious water pollution problem. Streams that are impacted by acid mine drainage characteristically have low pH levels (less than 6.0 standard units) and contain high concentrations of sulfate, acidity, dissolved iron and other metals.

As part of 1987 amendments to the Clean Water Act, Congress added section 301(p), often called the Rahall Amendment, to provide incentives for remining AML. Section 301(p) provides an exemption for remining operations from the Best Available Technology Economically Achievable (BAT) effluent limits for iron, manganese, and pH for pre-existing discharges from AML. Instead, a permit writer may set site-specific, numeric BAT limits for pre-existing discharges based on Best Professional Judgement (BPJ). The permit applicant must demonstrate that the remining operation will result in the potential for improved water quality from the remining operation. The permit effluent limits may not allow pollutant discharges to exceed pre-existing "baseline" levels of iron, manganese, and pH. The Rahall Amendment did not provide for alternative effluent limits for Total Suspended Solids (TSS) or Settleable Solids (SS). Despite the statutory authority provided by the Rahall Amendment, coal mining companies and most states remain hesitant to pursue remining without formal EPA approval and guidelines.

On April 11, 2000, EPA proposed to establish requirements for determining baseline pollutant loadings in pre-existing discharges and for implementing pollution abatement plans consistent with the requirements of the Rahall Amendment. In the proposal, EPA stated its belief that encouraging remining operations through the proposed subcategory has the potential for improving hazardous conditions and improving acid mine drainage from AML. EPA solicited comment on this conclusion and on potential options that may be environmentally preferable to the proposed remining subcategory. In response, EPA received comments on several issues where EPA did not specifically solicit comment. Commenters believe incorporation of these issues could increase the potential benefits of the remining subcategory.

### III. Date of Applicability for Remining Operations

The Rahall Amendment defines remining as a coal mining operation which begins after the date of the

enactment of the Rahall Amendment (February 4, 1987) at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. Thus, the Rahall Amendment attempted to encourage remining by allowing operators an alternative to treating degraded pre-existing discharges to the levels set in EPA's current effluent limitations guidelines for coal mining. EPA's proposed definition of remining as "a coal mining operation at a site on which coal mining was conducted prior to August 3, 1977," is consistent with the definition provided under the Rahall Amendment.

In response to the proposal, EPA received comments requesting that EPA extend the applicability of the proposed Remining Subcategory to include AML abandoned after August 3, 1977. Commenters noted that bonds have been forfeited on some coal mining sites since the effective date of SMCRA, and suggested that remining at these locations could result in environmental benefits.

For the reasons discussed in Sections IV.B, VI.A, and IX.A of the proposal, EPA concluded that remining has many potential benefits at little cost. During remining operations, acid-forming materials are removed with the extraction of the coal, pollution abatement Best Management Practices (BMPs) are implemented under applicable regulatory requirements, and the AML is reclaimed. During remining, many of the problems associated with AML, such as dangerous highwalls, vertical openings, and abandoned coal refuse piles can be corrected at no cost to OSM's Abandoned Mine Land Program. Furthermore, implementation of appropriate BMPs during remining operations can be effective at improving the water quality of pre-existing discharges.

EPA recognizes that one of the most successful means of improving abandoned mine land is for coal mining companies to remine abandoned areas and extract the coal reserves that remain. EPA also recognizes that if abandoned mine lands are ignored during coal mining of adjacent areas, a time-critical opportunity for reclaiming AML may be lost. Once coal mining operations have ceased on the adjacent areas, there is little incentive for operators to return.

Since the close of the public comment period, EPA has collected additional data on abandoned mine lands and bond forfeitures since 1977 (DCN 3036 in the regulatory record). Based on data obtained from OSM's abandoned mine lands database, it is estimated that there

are 260 bond forfeiture sites that are currently producing acid mine drainage. To date, these sites have not been reclaimed. There are various reasons for lack of cleanup, such as that the bonds posted in the early stages of SMCRA may not have been sufficient to cover clean up costs. Additionally, as described in the proposal, the AML fund establishes priorities for AML cleanup based on direct risks to human health, and acid mine drainage may not receive priority for use of public funds if it does not pose a direct threat to humans. However, if these sites have remaining coal reserves, remining may be a feasible option to reclaim the land at little or no cost to the abandoned mine lands fund. For the reasons described in the proposal, remining may offer an incentive for reclaiming hazardous conditions at these sites.

EPA is therefore considering extending the applicability of the subcategory to include the remining of bond forfeiture sites. By extending the remining subcategory, EPA believes that increased remediation of abandoned mine lands may be facilitated.

EPA is also considering the potential implication of such a change to bond forfeiture occurrence. EPA is trying to determine if, by allowing alternative limits for remining after bond forfeiture, EPA may be encouraging bond forfeitures in the future. To avoid providing an incentive for increased bond forfeiture, EPA is also considering limiting the applicability of the subcategory to mine sites abandoned prior to the promulgation date of the final rule. In this manner, the regulations may allow remining to correct for past failures, but not encourage future bond forfeitures.

EPA is soliciting comment on extending the applicability of the remining subcategory to include mine sites abandoned after enactment of SMCRA, and the effect that this could have on creating an incentive for a mine operator to abandon a coal mining operation. EPA is also soliciting comment on the need to limit the date of applicability of the remining subcategory to the effective date of a final rule for the Coal Remining Subcategory.

### IV. Alternative Limits for Solids in Pre-existing Discharges

Under the proposed regulations, a remining permit would contain specific numeric and non-numeric requirements. The numeric requirements would be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline

pollutant discharges. The numeric effluent limitations set at baseline levels would ensure that in no event will the pollutant discharges exceed the discharges prior to remining, consistent with section 301(p)(2). The stringency of the non-numeric permit provisions would be established using best professional judgement to evaluate the adequacy of the selected BMPs contained in a pollution abatement plan. The pollution abatement plan would demonstrate that the remining operation will result in the potential for improved water quality, as also contemplated by section 301(p)(2).

EPA proposed that the remining subcategory would establish alternative limits for pH, iron, and manganese, but not for solids. This proposal was consistent with section 301(p)(2). Existing effluent limits for solids are addressed in Subpart C—Acid or Ferruginous Mine Drainage, which establish limits for TSS (maximum for any 1 day of 70.0 mg/l and a maximum average daily value of 35.0 mg/l) and in Subpart E, Post-Mining Areas, which establish limits for reclamation areas (0.5 ml/L SS) and for underground mine drainage (maximum TSS for any 1 day of 70.0 mg/l and a maximum TSS average daily value of 35.0 mg/l).

EPA received comments stating that acid mine drainage was not the primary concern for all cases of AML, and that alternative limits for pH, iron, and manganese, but not for solids, would not be sufficient to provide an incentive for remining many AML sites. Therefore, commenters requested that EPA also apply alternative limits for the level of solids in pre-existing discharges. During the public comment period, some states submitted information to EPA that documents significant problems with sediment discharges from AML. For instance, Virginia's 1998 303(d) list identifies 15 streams in the coalfields impaired by resource extraction, but only two of those streams are identified as impaired by acid mine drainage and only one by active coal mining. The Ohio Department of Natural Resources cites that there are AML sites currently discharging over 250 tons per acre of sediment per year, and that over 500 miles of streams have been documented to have excess sediment problems due to runoff from unreclaimed mine lands. The majority of the impaired streams have been impacted by discharges from abandoned underground mines or drainage from unreclaimed surface mines containing high levels of dissolved, settleable, and suspended solids. Commenters noted that it is sediment loading that is polluting these

streams, and that the provisions under the Rahall Amendment and the proposed subcategory are not sufficient to address this problem.

The reasons for excessive solids loads in runoff from abandoned mine lands include lack of vegetative cover due to acidic or toxic soils; lack of vegetative cover due to steep slopes; and high runoff volume and velocity due to steep slopes. While EPA has focused on the benefits of reducing the toxic loadings of pre-existing discharges through implementation of Best Management Practices (BMPs), many of the activities associated with AML reclamation also have the potential to significantly reduce sediment loadings. BMPs typically implemented during the course of remining that will permanently stabilize sediment loading include the removal of spoil piles; regrading land to original contour; adding topsoil; and establishing vegetation. A study conducted by the U.S. Geological Survey, "Sedimentation and Water Quality in the West Branch Shade River Basin, Ohio, 1983–85" (Childress and Jones, 1988, DCN 3038.1) assessed the effects of BMPs on AML impacted by sediment. The study found that sediment loads decreased 98 percent (from 8.6 tons per acre to 0.15 tons per acre) after the AML was reclaimed. Reclamation activities included regrading, addition of topsoil, incorporation of fertilizer and/or lime, seeding and mulching, and sedimentation ponds.

In the proposal, EPA stated its belief that the current level of sediment control is necessary during surface disturbance operations to avoid sedimentation and erosion that can clog streams, increase the risk of flooding, impair land stability, and destroy aquatic habitats. While EPA continues to believe that sediment control is necessary for surface disturbances, EPA also acknowledges that remining operators may not be able to meet existing solids limits because of pre-existing conditions at AML. These high sediment conditions exist prior to any surface disturbance by the remining operator, and EPA is therefore considering alternative limits for sediment control.

Based on the baseline conditions of sediment present at some AML, EPA believes that the benefits of remining may be severely limited if EPA does not address sediment in the final rule. EPA notes, for example, that a pre-existing discharge with a sediment load of greater than one ton per acre may be out of compliance with current effluent limitations on the day the remining permit is issued, even prior to any

disturbance of the permit area. Sediment loads cited by commenters of 8.6 to 250 tons per acre per year would likely be significantly out of compliance with current standards. In accordance with the intent of the Rahall Amendment, which seeks to encourage remining while ensuring that the remining activity will potentially improve and reclaim AML, EPA is considering allowing alternative limits for TSS and SS in pre-existing discharges. Based on the comments and information received, EPA is soliciting comment on whether alternative limits for solids are necessary to fully realize the potential benefits of remining.

EPA envisions that the numeric requirements for sediment would be established on a case-by-case basis in compliance with standardized requirements for statistical procedures to establish and monitor baseline pollutant discharges. The standardized procedures for solids loading could be the same procedures developed for the other parameters, and could be established as mass-based loadings in pounds per day. The numeric effluent limitations set at baseline levels would ensure that in no event will the pollutant discharges exceed the discharges prior to remining. The proposed statistical procedures were discussed in Section VII of the proposal and in the Coal Remining Statistical Support Document (EPA 821–R–00–001). EPA solicits comment on how baseline standards for solids could be implemented.

While EPA is considering alternative limits for solids based on background levels, EPA is also considering whether the alternative limits for solids should be allowed in perpetuity similar to baseline levels of pH, iron, and manganese. As EPA discussed in the proposal, one of the primary reasons for the alternative limitations for pH, iron, and manganese is due to the complex hydrologic and geochemical relationships that cause acid mine drainage in abandoned mines. The full extent of the acid mine drainage problem may not be completely known at the time of remining, and mine operators are unwilling to accept the potential risk and liability associated with past mistakes if held to existing standards. Therefore, EPA stated its belief that it is infeasible to determine the level of improvement that a BMP will exhibit on an AML wastewater discharge, and that a numeric limit more stringent than baseline could not be established for pH, iron, and manganese.

However, EPA believes that the control of sediment is much less

complex than the control of pH, iron, and manganese in acid mine drainage. In contrast to the complex relationships of BMPs and their relationship on pH, iron, and manganese in pre-existing discharges, the BMPs for sediment control are typically fully understood and can be accomplished with relatively simple procedures that are already required by SMCRA such as regrading, replacing topsoil, and establishing vegetation. This was demonstrated in the data provided by the U.S. Geological Survey study, which showed a 98 percent decrease in sediment loadings after implementation of sediment controls.

Therefore, EPA is also considering establishing an alternative limit for solids until BMPs can be implemented. This option would apply standards for solids such that solids cannot be increased over baseline during re-mining activities, but that the mine operators would have to meet current standards for Post-Mining Areas prior to obtaining bond release. The current standards for sediment control at post-mining areas is either 0.5 ml/L SS for reclamation areas; or a maximum TSS for any 1 day of 70.0

mg/l and a maximum TSS average daily value of 35.0 mg/l for underground mine drainage. EPA believes that this approach may allow re-mining operators to re-mine AML contaminated with sediment, but that it may also continue to encourage reclamation and sediment control. EPA solicits comment on establishing a compliance schedule such that during re-mining, sediment loads must not exceed baseline loads, but that the solids level must meet existing standards for Post-Mining Areas prior to bond release.

As with numeric limitations for pH, iron, and manganese, and as stated in the proposed rule, these alternate limits will not be applicable to discharges from active mining operations. Therefore, the existing limits for TSS during surface disturbances from active mining (i.e. for the "extraction, removal, or recovery of coal from its natural deposits") would continue to be required to meet the existing solids limits.

#### **V. Summary of Comment Solicitation**

EPA is soliciting comment on (1) extending the applicability of the

re-mining subcategory to include mine sites abandoned after enactment of SMCRA, (2) the effect that this could have on creating an incentive for a mine operator to abandon a coal mining operation, and (3) the need to limit the date of applicability of the re-mining subcategory to the effective date of a final rule for the Coal Re-mining Subcategory.

EPA is also soliciting comment on (4) providing an alternative limit for solids, (5) on the implementation of an alternative limit for solids by using the same statistical procedures used for other alternative limits and, (6) on establishing a compliance schedule such that during re-mining, sediment loads must not exceed baseline loads, but that the solids level must meet existing standards for Post-Mining Areas prior to bond release.

Dated: July 20, 2001.

**Diane C. Regas,**

*Acting Assistant Administrator for Water.*

[FR Doc. 01-18887 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 66, No. 146

Monday, July 30, 2001

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Southwestern Region; Arizona, New Mexico, West Texas, and West Oklahoma; New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico, August 20–24, 2001. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. 106–393). The 12 to 15 member panel shall be composed of a Natural Resources Official from the State of New Mexico, two representatives from federal land management agencies, at least one tribal or pueblo representative, at least two independent scientists with experience in forest ecosystem restoration, and equal representation from: conservation interests; local communities; and commodity interests.

**DATES:** The meeting will be held August 20–24, 2001, beginning at 10 a.m. on Monday, August 20 and ending at approximately 4 p.m. on Friday, August 24.

**ADDRESSES:** The meeting will be held at the Sheraton Old Town Inn, 800 Rio Grande Blvd. NW, Albuquerque, NM.

**FOR FURTHER INFORMATION CONTACT:** Walter Dunn, at (505) 842–3425, or Angela Sandoval, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Items to be covered on the agenda include: (1) Adopting bylaws for the panel; (2) review of requirements of the Federal Advisory Committee Act; (3) review of the consensus process; (4) project proposal evaluations; and (5) public comment. Council discussion is limited to Panel members and Forest Service staff. Issues may be brought to the attention of the panel by submitting written statements to Walter Dunn at the address stated above. Written statements may also be submitted to the panel staff before or after the meeting. Public input sessions will be provided during the meeting. Individuals who submit written statements to Walter Dunn or the panel staff may address the panel during those sessions.

Dated: July 24, 2001.

**Abel M. Camarena,**

*Acting Regional Forester.*

[FR Doc. 01–18860 Filed 7–27–01; 8:45 am]

**BILLING CODE 3410–11–U**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Data User Evaluation Surveys.

*Form Number(s):* Various.

*Agency Approval Number:* 0607–0760.

*Type of Request:* Extension of a currently approved collection.

*Burden:* 4,000 hours.

*Number of Respondents:* 8,000.

*Avg Hours Per Response:* 30 minutes.

*Needs and Uses:* The Census Bureau requests a three-year extension of the generic clearance to conduct customer/product-based research. This extension will allow us to continue to use customer satisfaction surveys, personal interviews, or focus group research to effectively improve and make more customer-oriented programs, products, and services.

Extended clearance for data collections would continue to cover customer/program-based research for

any Census Bureau program area that needs to measure customer needs, uses, and preferences for statistical information and services. The customer base includes, but is not limited to previous, existing, and potential businesses and organizations, alternate Census Bureau data disseminators like State Data Centers, Business and Industry Data Centers, Census Information Centers, Federal or Census Depository Libraries, educational institutions, and not-for-profit or other organizations.

*Affected Public:* Individuals or households, Businesses or other for profit, Not-for-profit institutions, Federal Government, State, local or Tribal governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Executive Order 12862.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: July 25, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01–18934 Filed 7–27–01; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–122–836]

#### Live Processed Blue Mussels From Canada: Extension of Time Limit for Preliminary Determination of Antidumping Duty Investigation

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

**EFFECTIVE DATE:** July 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Zev Primor or Paige Rivas at (202) 482-4114 or (202) 482-0651, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2001).

**Statutory Time Limits**

Section 733(b)(1)(A) of the Act, requires the Department of Commerce (the Department) to issue the preliminary determination of an antidumping duty investigation within 140 days after the date of initiation. However, if the petitioner makes a timely request for an extension of the period and additional time is necessary to make the preliminary determination, section 733(c)(1)(A) of the Act allows the Department to extend the time limit for the preliminary determination until not later than 190 days after the date of initiation.

**Background**

On April 2, 2001, the Department initiated an antidumping duty investigation of live processed blue mussels from Canada. *See Notice of Initiation of Antidumping Investigation: Live Processed Blue Mussels From Canada*, 66 FR 18227 (April 6, 2001). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation. The preliminary determination currently is due no later than August 20, 2001.

**Extension of Preliminary Determination**

On June 29, 2001, the Department received a request for postponement of the preliminary determination from Great Eastern Mussels Farms, Inc., (hereinafter, the petitioner), in accordance with section 733(c)(1)(A) of the Act and 19 CFR 351.205(e). There are no compelling reasons for the Department to deny the petitioner's request. Therefore, pursuant to section 733(c)(1)(A) of the Act, the Department is postponing the deadline for issuing

this determination until October 9, 2001.

This notice of postponement is in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: July 19, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration*  
[FR Doc. 01-18937 Filed 7-27-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-122-838]

**Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Softwood Lumber Products From Canada**

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

**EFFECTIVE DATE:** July 30, 2001.

**FOR FURTHER INFORMATION CONTACT:** Valerie Ellis or Constance Handley, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-2336, or (202) 482-0631, respectively.

*Postponement of Preliminary Determination:* The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of certain softwood lumber products from Canada. The deadline for issuing the preliminary determination in this investigation is being postponed until September 24, 2001.

On April 23, 2001, the Department initiated an antidumping investigation of certain softwood lumber products from Canada. *See Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products from Canada*, 66 FR 21328 (April 30, 2001). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation (*i.e.*, September 10, 2001).

Pursuant to Section 733(c)(1) of the Tariff Act of 1930, as amended, (the Act), on July 13, 2001, the petitioners filed a request that the Department postpone the preliminary determination in this investigation by two weeks. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1) of the Act, the

Department is postponing the deadline for issuing this preliminary determination until September 24, 2001.

This postponement is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: July 24, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-18936 Filed 7-27-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**INTERNATIONAL TRADE COMMISSION**

[USITC SE-01-028]

**Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** August 10, 2001 at 11 a.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205-2000.

**STATUS:** Open to the public.

**Matters To Be Considered**

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731-TA-951-952

(Preliminary) (Blast Furnace Coke from China and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 13, 2001; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on August 20, 2001.)

5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 26, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-19071 Filed 7-26-01; 2:51 pm]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Submission for OMB Review; Comment Request**

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Forms, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Form 250, 250C, and 250-1; OMB Number 0704-0248.

*Type of Request:* Extension.

*Number of Respondents:* 34,180.

*Responses per Respondent:* 228 (average).

*Annual Responses:* 7,800,000.

*Average Burden per Response:* 8 minutes (average).

*Annual Burden Hours:* 988,000.

*Need and Uses:* The collection of this information is necessary to process inspection and receipt of materials and payments to contractors under Government contracts. The information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246-7000; and DD Form(s) 250, 250C, and 250-1. The clause at DFARS 252.246-7000 is used in contracts that require separate and distinct deliverables. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report in a manner and to the extent required by DFARS Appendix F. The report is required for material inspection and acceptance, shipping, and payment.

*Affected Public:* Business or Other For-Profit; Not-For-Profit Institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. Lewis W. Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD (Acquisition), Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: July 23, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-18870 Filed 7-27-01; 8:45 am]

BILLING CODE 5001-08-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form, and OMB Number:* Base Realignment and Closure (BRAC) Military Base Reuse Status; DD Form 2740; OMB Number 0790-0003.

*Type of Request:* Extension.

*Number of Respondents:* 75.

*Responses per Respondent:* 2.

*Annual Responses:* 150.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 150.

*Needs and Uses:* Through the Office of Economic Adjustment (OEA), DoD, funds are provided to communities for economic adjustment planning in response to closures of military installations. A measure of program evaluation is the monitoring of civilian job creation and type of redevelopment at the former military installations. The respondents to the semi-annual survey will generally include single points of contact at the local level who are responsible for overseeing redevelopment efforts. If this data is not collected, OEA would have no accurate, timely information regarding the civilian reuse of former military bases. A key function of the economic adjustment program is to encourage private sector use of lands and buildings to generate jobs as military activity diminishes and to serve as a clearinghouse for reuse data.

*Affected Public:* Business or Other For-Profit; State, Local, or Tribal Government.

*Frequency:* Semi-Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: July 23, 2001.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-18871 Filed 7-27-01; 8:45 am]

BILLING CODE 5001-08-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Finding of No Significant Impact; Pentagon Renovation Master Plan; New Outfall Line Associated With the Pentagon Heating and Refrigeration Plant (H&RP)

**ACTION:** Notice.

In accordance with the National Environmental Policy Act and the policies of the Department of Defense, implementing the regulations of the Council on Environmental Quality (40 CFR 1500-1508), I find that the project described in the Supplemental Environmental Assessment dated July 1999, is not a major Federal action significantly affecting the quality of the human environment. Therefore, no Environmental Impact Statement will be prepared.

This action supplements the Funding of No Significant Impact (FONSI) for the Pentagon Renovation Master Plan dated November 1, 1991. That finding was based on an Environmental Assessment dated May 28, 1991.

This finding is based on the Supplemental Environmental Assessment dated July 1999 on the Condenser Line Outfall associated with the Heating and Refrigeration Plant (H&RP). The Supplemental Environmental Assessment dated July 1999 is incorporated herein.

*Name of Responsible Official:* Walker Lee Evey.

*Title:* Program Manager, Pentagon Renovation Program.

Dated: July 23, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison, Department of Defense.*

[FR Doc. 01-18872 Filed 7-27-01; 8:45 am]

BILLING CODE 5001-08-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to add a record system.

**SUMMARY:** The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The actions will be effective on August 29, 2001 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force FOIA and Privacy Manager, Policy and Plans Directorate, Principal Deputy Assistant Secretary of the Air Force for Business and Information Management, CIO-BIM/P, 1250 Air Force Pentagon, Washington, DC 20330-1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne P. Rollins at (703) 588-6187.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 23, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **F010 AFXO A**

##### **SYSTEM NAME:**

Civil Aircraft Landing Permit Case Files.

##### **SYSTEM LOCATION:**

Associate Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civil aircraft owners and/or operators.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

A revocable license for use of Air Force real property consisting of a Civil Aircraft Certificate of Insurance, a Civil Aircraft Landing Permit, and a Civil Aircraft Hold Harmless Agreement.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

49 U.S.C. 44502, General facilities and personnel authority, as implemented by Air Force Instruction 10-1001, Civil Aircraft Landing Permits.

##### **PURPOSE(S):**

To maintain a directory on those individuals who are authorized to operate civil aircraft at Air Force airfields.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Maintained in file folders.

##### **RETRIEVABILITY:**

Retrieved by name.

##### **SAFEGUARDS:**

Records are accessed by persons responsible for processing applications to operate civil aircraft on Air Force airfields in performance of official duties and by other authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets in a vaulted office.

##### **RETENTION AND DISPOSAL:**

Expired records are destroyed by tearing into pieces and burning.

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Permits and Agreements, Civil Aviation Office, Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves should address inquiries to the Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking to determine whether information about themselves

should address inquiries to the Directorate for Civil Aviation, Directorate of Operations and Training, Deputy Chief of Staff for Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.

##### **CONTESTING RECORDS PROCEDURES:**

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

##### **RECORD SOURCE CATEGORIES:**

Information is provided by the applicant and insurance company.

##### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 01-18873 Filed 7-27-01; 8:45 am]

**BILLING CODE 5001-08-U**

## **DEPARTMENT OF DEFENSE**

### **Department of the Air Force**

#### **Privacy Act of 1974; System of Records**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to add a record system.

**SUMMARY:** The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The actions will be effective on August 29, 2001, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/INC, 1250 Air Force Pentagon, Washington, DC 20330-1250.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Anne P. Rollins at (703) 588-6187.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2001, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB

Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 23, 2001.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

#### **F036 AF FM A**

##### **SYSTEM NAME:**

Leave Request and Approval System (LeaveWeb)

##### **SYSTEM LOCATION:**

Base Financial Services Offices (FSO) at Air Force installations and units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

##### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Air Force active duty personnel.

##### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, home address and phone, unit, leave address and emergency telephone number, leave days requested, leave days taken, leave balance, grade, and approving official's name.

##### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8013, Secretary of the Air Force; implemented by Air Force Instruction 36-3003, Military Leave Program; and E.O. 9397 (SSN).

##### **PURPOSE(S):**

To document the request and authorization of military leave, and the administration of leave, to document the start and stop of such leave; record address and telephone number where the member may be contacted while on leave; and certify leave days chargeable to the member.

##### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the American Red Cross for emergency assistance to members or dependents and relatives in emergency conditions.

The DoD "Blanket Routine Uses" set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

##### **POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

##### **STORAGE:**

Maintained on computer and computer output products.

##### **RETRIEVABILITY:**

Retrieved by name and Social Security Number.

##### **SAFEGUARDS:**

Records are accessed by custodians of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly authorized. When under direct physical control by authorized individuals, records will be electronically stored in computer storage devices protected by computer system software. Computer terminals are located in supervised areas with terminal access controlled by password or other user code systems.

##### **RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

##### **SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Programs and Analysis Division, Financial Management Directorate Headquarters Air Mobility Command (HQ AMC/FMP), 402 Scott Drive, Unit 1K1, Scott Air Force Base, IL 62225-5300.

##### **NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to their unit administrator, or the base financial services office customer service desk.

Written requests must contain the full name, Social Security Number, signature of the requester and duty phone.

##### **RECORD ACCESS PROCEDURES:**

Individuals seeking to access records about themselves contained in this system should address written requests to their unit administrator, or the base financial services office customer service desk.

Written requests must contain the full name, Social Security Number, signature of the requester and duty phone.

##### **CONTESTING RECORDS PROCEDURES:**

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

##### **RECORD SOURCE CATEGORIES:**

Records in this system are obtained from the Defense Joint Military Pay System and from the individual.

##### **EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 01-18875 Filed 7-27-01; 8:45 am]

**BILLING CODE 5001-08-U**

#### **DEPARTMENT OF ENERGY**

**[Docket No. EA-208-A]**

#### **Application To Export Electric Energy; Williams Energy Marketing and Trading Company**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Williams Energy Marketing and Trading Company (Williams) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 14, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202-586-9506 or Michael Skinker (Program Attorney) 202-586-6667.

**SUPPLEMENTARY INFORMATION:** On May 12, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Williams to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on May 12, 2001. On March 28, 2001, Williams filed an application with FE for renewal of this export authority.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA-208. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the

documentation of a categorical exclusion in the FE Docket EA-208 proceeding.

#### Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on Williams' request to export to Mexico should be clearly marked with Docket EA-208-A. Additional copies are to be filed directly with Charlene K. Stanford, Regulatory Analyst, Williams Energy Marketing & Trading Company, P.O. Box 3448, Tulsa, OK 74101 and Tim W. Muller, Attorney, The Williams Companies, Inc., One Williams Center, Suite 4100, Tulsa, OK 74172.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on July 25, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01-18918 Filed 7-27-01; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

[FE Docket No. PP-231]

### Notice of Floodplain and Wetlands Involvement; Northern States Power Company

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of floodplain/wetlands involvement.

**SUMMARY:** Northern States Power Company (NSP) has applied for a Presidential permit to construct, operate, maintain, and connect electric transmission facilities across the U.S. border with Canada. The proposed action has the potential to impact on a floodplain/wetlands. In accordance with DOE regulations for compliance with

floodplain/wetlands environmental review requirements (10 CFR Part 1022), a floodplain/wetlands assessment will be performed for this proposed action in a manner so as to avoid or minimize potential harm to or within potentially affected floodplain and wetlands.

**DATES:** Comments are due to the address below no later than August 14, 2001.

**ADDRESSES:** Written comments, questions about the proposed action, and requests to review the draft environmental assessment should be directed to: Steven Mintz, Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350; Fax: (202) 287-5736; e-mail: [steven.mintz@hq.doe.gov](mailto:steven.mintz@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202-586-9506 or Michael T. Skinker (Program Attorney) 202-586-6667.

#### FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN AND WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

**CONTACT:** Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119; Phone: 202-586-4600 or leave a message at 800-472-2756.

**SUPPLEMENTARY INFORMATION:** Under Executive Order 11988, Floodplain Management, and 10 CFR Part 1022, Compliance with Floodplain-Wetlands Environmental Review Requirements ([http://tis-nt.eh.doe.gov/nepa/tools/regulate/nepa\\_reg/1022/1022.htm](http://tis-nt.eh.doe.gov/nepa/tools/regulate/nepa_reg/1022/1022.htm)), notice is given that DOE is considering an application from NSP for a Presidential permit to construct, operate, maintain and connect electric transmission facilities across the U.S. border with Canada. NSP proposes to construct a 230,000-volt, three-phase, alternating current electric transmission line that would extend approximately 53 miles from a new substation to be built in Rugby, North Dakota, to the U.S.-Canadian border just north of Rolla, North Dakota. Notice of NSP's application for a Presidential permit appeared in the **Federal Register** on February 12, 2001 (66 FR 9826).

Before making a final decision on granting or denying a Presidential permit to NSP, DOE will prepare an environmental assessment (EA) to address the environmental impacts that would accrue from the proposed project and reasonable alternatives. The EA will be prepared in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*).

Because the proposed action has the potential to impact on a floodplain/wetlands, the EA will include a floodplain and wetlands assessment. DOE expects to have a draft of the EA available for public review in Summer 2001. Copies may be requested by telephone, facsimile, or e-mail from the address given above. A floodplain statement of findings will be included in any Finding of No Significant Impact that may be issued following completion of the EA.

Issued in Washington, DC, on July 25, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01-18876 Filed 7-27-01; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency information collection activities: Submission for OMB review; comment request.

**SUMMARY:** The EIA has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (44 U.S.C. 3501 *et seq.*).

**DATES:** Comments must be filed on or before August 29, 2001. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

**ADDRESSES:** Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395-7318. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI-70), Forrestal Building, U.S. Department of

Energy, Washington, DC 20585-0670. Mrs. Sutherland may be contacted by telephone at (202) 287-1712, FAX at (202) 287-1705, or e-mail at grace.sutherland@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA-63A, "Annual Solar Thermal Collector Manufacturers Survey" and EIA-63B, "Annual Photovoltaic Module/Cell Manufacturers Survey."
2. Energy Information Administration.
3. OMB Number 1905-0196.
4. Extension and three-year approval requested.
5. Mandatory.
6. EIA's Forms EIA-63A and EIA-63B collect data on the manufacture, shipment, and importation of solar thermal collectors and photovoltaic modules/cells. The data are used by the private sector, the renewable energy industry, the DOE, and other government agencies. Respondents are U. S. companies that manufactured, shipped, and/or imported solar thermal collectors and/or photovoltaic modules and cells.
7. Business or other for-profit.
8. 330 hours (110 respondents × 1 responses per year × 3 hours per response).

**Statutory Authority:** Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13)(44 U.S.C. 3501 et seq.).

Issued in Washington, D.C., July 23, 2001.

**Nancy J. Kirkendall,**

*Acting Director, Statistics and Methods Group, Energy Information Administration.*  
[FR Doc. 01-18877 Filed 7-27-01; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EG01-230-000, et al.]

#### Metro Energy, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 23, 2001.

Take notice that the following filings have been made with the Commission:

##### 1. Metro Energy, L.L.C.

[Docket No. EG01-230-000]

Take notice that on July 19, 2001, Metro Energy, L.L.C., a Michigan limited liability company with its principal place of business at 425 South Main Street, Suite 201, Ann Arbor, Michigan 48107, tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to Section 365 of the Commission's regulations.

Metro Energy is developing a 17 MW electric generating facility located in Wayne County Michigan. The purpose of the amendment is to explain Metro Energy's intention to engage in certain activities, including the sale of certain thermal energy products, which the Commission has found are incidental to an EWG's ownership and operation of an eligible facility and the sale of electric energy at wholesale.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

##### 2. Florida Power Corporation

[Docket No. ER01-2621-000]

Take notice that Florida Power Corporation (FPC), on July 18, 2001, tendered for filing a revised Cost-Based Wholesale Power Sales Tariff (CR-1) FERC Electric Tariff, First Revised Volume No. 9 (Revised Tariff). The revision deletes an attachment containing outdated rates for transmission service and ancillary services and makes several non-substantive changes. FPC requests that the Commission waive its notice of filing requirements to allow the Revised Tariff to become effective as of July 18, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers, and the Florida Public Service Commission.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 3. American Transmission Company LLC

[Docket No. ER01-2617-000]

Take notice that on July 18, 2001, American Transmission Company LLC (ATCLLC) tendered for filing a Firm and Non-Firm Point-to-Point Service Agreement between ATCLLC and Ameren Energy Marketing Company ATCLLC requests an effective date of July 11, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 4. California Independent System Operator Corporation

[Docket No. ER01-2612-000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 18, 2001, tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Bay Environmental Management for acceptance by the Commission. The ISO states that this filing has been served on Bay Environmental Management and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 2, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 5. California Independent System Operator Corporation

[Docket No. ER01-2618-000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 18, 2001, tendered for filing a Participating Generator Agreement between the ISO and California Portland Cement Company for acceptance by the Commission.

The ISO states that this filing has been served on California Portland Cement Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 11, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 6. California Independent System Operator Corporation

[Docket No. ER01-2619-000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 18, 2001, tendered for filing a Meter Service

Agreement for ISO Metered Entities between the ISO and California Portland Cement Company for acceptance by the Commission.

The ISO states that this filing has been served on California Portland Cement Company and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective July 11, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 7. Florida Power & Light Company

[Docket No. ER01-2622-000]

Take notice that on July 18, 2001, Florida Power & Light Company (FPL) filed, pursuant to Section 205 of the Federal Power Act, an executed Construction and Connection Agreement between FPL and Oleander Power Project, L.P.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Exelon Generation Company, LLC

[Docket No. ER01-2624-000]

Take notice that on July 18, 2001, Exelon Generation Company, LLC (Exelon Generation) submitted for filing with the Federal Energy Regulatory Commission (FERC or the Commission) a service agreement for wholesale power sales transactions between Exelon Generation and Alliant Energy Corporate Services, Inc. under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff, Original Volume No. 1.

Exelon Generation requests that the Service Agreement be accepted for filing effective as of April 1, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 9. California Independent System Operator

[Docket No. ER01-2625-000]

Take notice that the California Independent System Operator Corporation, (ISO) on July 18, 2001, tendered for filing a Participating Generator Agreement between the ISO and Bay Environmental Management for acceptance by the Commission. The ISO states that this filing has been served on Bay Environmental Management and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 2, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Southern Company Services, Inc.

[Docket No. ER01-2626-000]

Take notice that on July 18, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company (APC), filed an amendment (the Amendment) to the Interconnection Agreement Between Mobile Energy Services Company, L.L.C. and APC (the Agreement) (Service Agreement No. 254 under Southern Operating Companies' FERC Electric Tariff, Fourth Revised Volume No. 5). Pursuant to the Amendment, the term of the Agreement will be extended until September 18, 2001.

*Comment date:* August 8, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Southern California Edison Company

[Docket No. ER01-2627-000]

Take notice that on July 19, 2001, Southern California Edison Company (SCE) tendered for filing the Amended and Restated Radial Lines Agreement (Amended Agreement) between SCE and Reliant Energy Coolwater L.L.C. (Reliant). The Amended Agreement serves to provide the terms and conditions under which SCE shall operate and maintain the Radial Lines, and to reflect certain capital additions to such Radial Line facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Reliant.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Commonwealth Edison Company

[Docket No. ER01-2628-000]

Take notice that on July 19, 2001, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Duke Energy Cook, LLC (Duke). Copies of the filing were served on Duke and the Illinois Commerce Commission.

ComEd requests an effective date of July 20, 2001 and accordingly seeks waiver of the Commission's notice requirements.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 13. Commonwealth Edison Company

[Docket No. ER01-2629-000]

Take notice that on July 19, 2001, Commonwealth Edison Company (ComEd) submitted for filing an

Interconnection Agreement with Ameren Energy Development Company (Ameren). Copies of the filing were served on Ameren and the Illinois Commerce Commission.

ComEd requests an effective date of July 20, 2001 and accordingly seeks waiver of the Commission's notice requirements.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Xcel Energy Services Inc.

[Docket No. ER01-2630-000]

Take notice that on July 19, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Non-Firm Point-to-Point Transmission Service Agreement between Public Service and Tri-State Transmission & Generation, Inc d.b.a. Tri-State Power Marketing under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1). XES requests that this agreement, designated as Original Service Agreement No. 109-PSCo, become effective July 2, 2001.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Xcel Energy Services Inc.

[Docket No. ER01-2631-000]

Take notice that on July 19, 2001, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between Public Service and Tri-State Transmission & Generation, Inc d.b.a. Tri-State Power Marketing under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1). XES requests that this agreement, designated as Original Service Agreement No. 108-PSCo, become effective July 2, 2001.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Mirant Americas Energy Marketing, L.P., Potomac Electric Power Company

[Docket No. ER01-2634-000]

Take notice that on July 19, 2001, pursuant to Section 205 of the Federal Power Act and Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, Potomac Electric Power Company (Pepco) submitted for filing on behalf of Mirant Americas Energy Marketing, L.P. formerly known as Southern Company Energy Marketing, L.P. (Mirant

Marketer) the following Transition Power Agreements (TPAs) as each is modified by Amendment No. 1, as service agreements under the Mirant Marketer's market-based rate tariff: Transition Power Agreement (District of Columbia) between Pepco and the Mirant Marketer dated December 19, 2000, as modified by Amendment No. 1; and Transition Power Agreement (Maryland) between Pepco and the Mirant Marketer dated December 19, 2000, as modified by Amendment No. 1.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 17. SCANA Energy Marketing, Inc. and South Carolina Electric & Gas Company

[Docket No. ER01-2635-000]

Take notice that on July 19, 2001, Scana Energy Marketing, Inc. (SEMI) and South Carolina Electric & Gas Company (SCE&G), affiliates, filed a notice of termination of SEMI's market-based rate tariff (Tariff) and the associated code of conduct, both of which were made effective in these dockets by earlier Commission orders. SEMI states that it has not made any wholesale purchases or sales for its own account under the Tariff since the fourth quarter of 1998, that it has no current sales obligations, and that it does not plan to resume wholesale marketing in the future. Therefore, SEMI states that it has no need to maintain the effectiveness of the Tariff or the associated code of conduct.

*Comment date:* August 9, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and

interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-18853 Filed 7-27-01; 8:45 am]

**BILLING CODE 6717-01-P**

### ENVIRONMENTAL PROTECTION AGENCY

[FRL-7020-6]

#### Notice of Prevention of Significant Deterioration (PSD) Final Determination for Zion Energy LLC, City of Zion, Lake County, IL

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

**ACTION:** Notice of final action.

**SUMMARY:** This document announces that on March 27, 2001, the Environmental Appeals Board (EAB) of the United States EPA dismissed a petition for review of a permit issued for Zion Energy by the Illinois Environmental Protection Agency (Illinois EPA) pursuant to EPA's Prevention of Significant Deterioration of Air Quality (PSD) regulations.

**DATES:** The effective date for the EAB's decision is March 27, 2001. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act, may be sought by filing a petition for review in the United States Court of Appeals for the Seventh Circuit within 60 days of July 30, 2001.

**ADDRESSES:** The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR-18J), Chicago, Illinois 60604. To arrange viewing of these documents, call Jorge Acevedo at (312) 886-2263.

#### FOR FURTHER INFORMATION CONTACT:

Jorge Acevedo, United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard (AR-18J), Chicago, Illinois 60604. Anyone who wishes to review the EAB decision can obtain it at <http://www.epa.gov/eab/disk11/zion.pdf>.

**SUPPLEMENTARY INFORMATION:** This supplemental information is organized as follows:

- A. What Action is EPA Taking?
- B. What is the Background Information?
- C. What did the EAB Determine?

#### A. What Action Is EPA Taking?

We are notifying the public of a final decision by EPA's EAB on a permit issued by Illinois EPA pursuant to the PSD regulations found at 40 CFR 52.21.

#### B. What Is the Background Information?

On December 8, 2000, Illinois EPA issued PSD permit 99110042 to Zion Energy LLC (Zion) for the construction of a new electric power generating facility with a capacity of 800 megawatts. The proposed facility consists of five simple-cycle combustion turbines that operate on natural gas as a primary fuel and distillate oil as a back-up fuel. The project also consists of five auxiliary boilers, two fuel heaters, and a fuel storage tank. The facility is subject to PSD for nitrogen oxides (NO<sub>x</sub>), Carbon Monoxide (CO), Sulfur Dioxide (SO<sub>2</sub>), and Particulate Matter (PM/PM<sub>10</sub>).

On January 5, 2001, Susan Zingle, on her own behalf and as executive director of the Lake County Conservation Alliance (LCCA), and the LCCA petitioned the EAB to review this permit. The petitioner alleged: (i) The facility is a major source of hazardous air pollutants (HAPs) and is subject to Maximum Available Control Technology (MACT) requirements, specifically the potential to emit HAPs is higher than reflected in the permit and the permit does not effectively cap HAP emissions, (ii) the permit should contain a provision requiring compliance with State noise regulations, (iii) Illinois' "NO<sub>x</sub> waiver" should be lifted and the facility treated as major for NO<sub>x</sub>, (iv) the permit incorrectly identified the proposed simple-cycle combustion turbines as "peaking units," (v) Illinois EPA's best available control technology (BACT) analysis was erroneous for several reasons including, Illinois EPA failed to consider certain control technologies such as combined cycle operation with catalytic controls, catalytic controls were rejected, and Illinois EPA should have considered alternative locations for the facility due to consideration of water availability, the analysis should have included an evaluation of need, energy conservation, demand side management and other alternatives to construction of the facility, Illinois EPA should have considered the use of alternative turbine configurations, the use of low NO<sub>x</sub> burners for the fuel heaters and auxiliary boilers does not constitute BACT, the permit's provision for the operation of auxiliary boilers does not constitute BACT, good combustion practices were not sufficiently defined

and are not BACT for CO and PM, Illinois failed to require the development of operation and maintenance procedures as part of the BACT analysis, and the use of diesel fuel does not constitute BACT, (vi) the permit failed to properly account for emissions during startup and shutdown of the facility, and failed to limit the number of startups, (vii) emissions limits were based on unsubstantiated assumptions regarding facility operation, (viii) the permit should specify what constitutes good air pollution control practices, (ix) the permit fails to require compliance with requirements for a major source of volatile organic compounds (VOCs) in a non-attainment area for ozone, (x) the permit's monitoring requirements were inadequate for reasons such as the 180 day period of operation prior to shakedown and emission testing should be shortened, testing for particulate matter should use method 202, testing for VOCs should use method 18 rather than 25a, (xi) emissions from facilities under common control should have been included in calculating the potential to emit, and (xii) a complete copy of the draft permit was not made available at the Waukegan Public Library or on the internet.

On January 29, 2001, Illinois EPA filed a Motion for Summary Disposition with the EAB. Illinois EPA asserted that LCCA failed to satisfy the requirements for review under 40 CFR 124.19, and the petition should be dismissed. Zion also filed a response and also asserted that LCCA failed to satisfy the requirements for review under 40 CFR 124.19. On March 2, 2001 LCCA filed a motion seeking leave to respond to Illinois EPA's Motion and to supplement the petition with comments to Illinois EPA's responsiveness summary.

### C. What Did the EAB Determine?

On March 27, 2001, the EAB denied the petition for review based on the grounds that the petitioner failed to satisfy the requirements for obtaining review under 40 CFR 124.19. Specifically, the petitioner reiterated comments previously submitted to Illinois EPA during the comment period without indicating why Illinois EPA's responses to these comments were erroneous. The EAB also denied the supplement to the petition based on the fact that accepting the supplement would expand the petitioner's appeal rights under the regulations in 40 CFR 124.19.

Dated: July 13, 2001.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-18883 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7019-5]

### B & H Transformer Superfund Site; Notice of proposed settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Proposed Settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into three administrative settlements with responsible parties for response costs pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the B & H Transformer Superfund Site (Site) located in Yorkville, Gibson County, Tennessee. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4 (WMD-CPSB), 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562-8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: July 9, 2001.

**Franklin E. Hill,**

*Chief, CERCLA Program Services Branch, Waste Management Division.*

[FR Doc. 01-18888 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7019-6]

### Proposed Administrative Cost Recovery Agreement Under CERCLA Section 122(h) for Recovery of Past Costs at the Bel-Fab Manufacturing Corp. Superfund Site, Town of Halfmoon, Saratoga County, NY

**AGENCY:** Environmental Protection Agency.

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

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement entered into pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the Bel-Fab Manufacturing Corp. Superfund Site ("Site") located in the Town of Halfmoon, Saratoga County, New York. This settlement with the U.S. Environmental Protection Agency ("EPA" or the "Agency") has been entered into with the following parties: Bray Terminals, Inc., International CMP Industries, Ltd., Crane & Company, Inc., Daniel Green Co., Farrell Oil Co., Inc., E+E (US) Inc., Kramer Chemicals Division, General Electric Company, Hasbro, Inc., Heritage Energy Co., Mirabito Fuel Group, Monsey Products Co., Saint-Gobain Performance Plastics (formerly Norton Performance Plastics Corporation), Tumble Forms, Inc., the U.S. Department of the Army (Watervliet Arsenal), and W.R. Grace & Co. (the "Settling Parties"). The settlement requires the Settling Parties to pay \$108,190.67 plus interest as provided in the Agreement. The settlement includes a covenant not to sue for the private settling parties, and a covenant not to take administrative action as to the Department of the Army, pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for recovery of past response costs as defined by the Agreement. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region II, 290 Broadway, New York, New York 10007-1866.

**DATES:** Comments must be submitted on or before August 29, 2001.

**ADDRESSES:** The proposed settlement is available for public inspection at the United States Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866. A copy of the proposed settlement may be obtained from Liliana Villatora, Assistant Regional Counsel, New York/Caribbean

Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007-1866. Comments should reference the Bel-Fab Manufacturing Corp. Superfund Site, Town of Halfmoon, Saratoga County, New York. Requests for a copy of the agreement should reference Docket No. CERCLA-02-2001-2011. Any comments or requests should be addressed to Liliana Villatora, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th floor, New York, New York 10007-1866.

**FOR FURTHER INFORMATION CONTACT:**

Liliana Villatora, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007-1866. Telephone: 212-637-3248.

Dated: July 6, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region II.*

[FR Doc. 01-18889 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## EXPORT-IMPORT BANK

### Sunshine Act Meeting

**ACTION:** Notice of open special meeting of the Board of Directors of the Export-Import Bank of the United States.

**TIME AND PLACE:** Tuesday, July 31, 2001, at 2 p.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

**AGENDA:** Draft Revised Economic Impact Procedures.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation.

**FURTHER INFORMATION:** For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. (202) 565-3957 or 3336).

**Peter B. Saba,**

*General Counsel.*

[FR Doc. 01-19014 Filed 7-26-01; 12:29 pm]

**BILLING CODE 6690-01-M**

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96-45; DA 01-1713]

### Certifications Required Pursuant to the Children's Internet Protection Act; Approval of FCC Forms 479 and 486 by the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of OMB approval of reporting forms.

**SUMMARY:** This document announces that the FCC Forms 479 (Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act) and 486 (Receipt of Service Confirmation Form) and instructions have been approved by the Office of Management and Budget. The Form 486 informs the Schools and Libraries Division of the Universal Service Administrative Company when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named Service Provider(s). The Form 479 is a new form that provides notification to a Billed Entity by an Administrative Authority of the status of the Administrative Authority's compliance for the purposes of Children's Internet Protection Act.

**DATES:** FCC Forms 479 and 486 and instructions were approved on July 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Narda Jones, Attorney, or Jonathan Secrest, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418-7400, TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** The Common Carrier Bureau of the Federal Communications Commission announces the release of two newly-adopted FCC forms and their instructions for the schools and libraries universal service support mechanism, incorporating the requirements of the Children's Internet Protection Act (CIPA) (Public Law 106-554). That act provides that schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible under section 254(h) of the Communications Act of 1934, as amended, to receive discounted Internet access or internal connection services.

The FCC Form 486 Receipt of Service Confirmation Form, which has been modified to include certifications required by CIPA, is used by the Billed Entity that filed an FCC Form 471

requesting discounts under the program. The Form 486 informs the Schools and Libraries Division (SLD) of the Universal Service Administrative Company when the Billed Entity and/or the eligible entities that it represents is receiving, is scheduled to receive, or has received service in the relevant Funding Year from the named Service Provider(s). Receipt by SLD of a properly completed Form 486 triggers the process for SLD to receive invoices.

FCC Form 479, the Certification by Administrative Authority to Billed Entity of Compliance with the Children's Internet Protection Act, is a new form that provides notification to a Billed Entity by an Administrative Authority of the status of the Administrative Authority's compliance for the purposes of CIPA. The Billed Entity will then certify on its FCC Form 486, Receipt of Service Confirmation Form, that it has collected duly completed and signed Forms 479 from Administrative Authorities that the Billed Entity represents.

These forms are designed in accordance with the rules that the Commission adopted in *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, 66 FR 19394, April 16, 2001, corrected at 66 FR 22133, May 3, 2001. As stated in the Order, those rules became effective on April 20, 2001. The information collections contained in the rules were approved by the Office of Management and Budget on July 2, 2001, OMB No. 3060-0853. The forms and instructions may be obtained at the SLD website, <<http://www.sl.universalservice.org/>>, or by contacting the SLD Client Service Bureau at (888) 203-8100.

Dated: July 19, 2001.

**Mark G. Seifert,**

*Deputy Division Chief, Accounting Policy Division.*

[FR Doc. 01-18752 Filed 7-27-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

*et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Revision of a currently approved collection.

*Title:* Acquisition Services Information Requirements.

*Form Numbers:* 1600/04; 1600/07; 1600/10; 3700/04A; 3700/12; 3700/13; 3700/29; 3700/33 and 3700/44.

*OMB Number:* 3064-0072.

*Annual Burden:*

Estimated annual number of respondents—12,546.

Estimated time per response varies from—.05 hours to 1.0 hours.

Average annual burden hours:—6,285 hours.

*Expiration Date of OMB Clearance:* August 31, 2001.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898-7453, Office of the Executive Secretary, Room F-4058, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before August 29, 2001, to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The collection involves the submission of information on various forms by contractors who wish to do business, or are currently under contract with the FDIC.

Dated: July 24, 2001.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 01-18935 Filed 7-27-01; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Wednesday, July 25, 2001, the Board of Directors of the

Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's personnel and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Director John D. Hawke, Jr. (Comptroller of the Currency), and concurred in by Acting Chairman John M. Reich, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: July 26, 2001.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 01-18993 Filed 7-26-01; 12:19 pm]

**BILLING CODE 6714-01-M**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** Federal Register cite unavailable.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Wednesday, August 1, 2001.

**CHANGES IN THE MEETING:** The Meeting has been canceled.

**CONTACT PERSON FOR MORE INFORMATION:** Michelle A. Smith, Assistant to the Board; 202-452-3204.

**SUPPLEMENTARY INFORMATION:** You may call 202-452-3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at <http://www.federalreserve.gov> for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: July 26, 2001.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 01-18994 Filed 7-26-01; 12:19 pm]

**BILLING CODE 6210-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[30DAY-44-01]

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

*Proposed Project:* Foreign Quarantine Regulations—Extension—OMB No. 0920-0134 National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC), section 361 of the Public Health Service (PHS) Act (42 U.S.C. 264) authorizes the Secretary of Health and Human Services to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Legislation and the existing regulations governing quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents in order to protect the public health. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health importance and make referrals to PHS when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel. Respondents would include airplane pilots, ships' captains, importers, and travelers. The nature of the quarantine response would dictate which forms are completed by whom.

Thus, the 'respondents' portion of the information below is replaced by the requisite form title. The estimated annualized burden 743.60 hours.

Respondents	Number of respondents	Number of responses/respondent	Average burden per respondent (in hours)
Radio reporting of death/illness:			
Aircraft .....	130	1	2/60
Cruise ships .....	90	23	1/60
Other ships .....	22	1	1/60
Report by persons held in isolation/surveillance .....	11	1	30/60
Report of death or illness on carrier during stay in port .....	5	1	3/60
Requirements for admission of dogs and cats:			
(1) .....	5	1	3/60
(2) .....	2,650	1	15/60
Application for permits to import turtles .....	10	1	30/60
Requirements for registered importers of nonhuman primates:			
(1) .....	40	1	10/60
(2) .....	50	1	30/60

Dated: July 23, 2001.  
**Nancy Cheal,**  
*Acting Associate Director of Policy, Planning and Evaluation, Centers for Disease Control and Prevention.*  
 [FR Doc. 01-18938 Filed 7-27-01; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[Program Announcement 01181]

**Animal Models of Chronic Human Disease; Notice of Availability of Funds**

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant to the University of North Carolina at Chapel Hill to support a research project on the use of animal modeling of genetic variations associated with human susceptibility to complex disease. This project addresses the "Healthy People 2010" focus area of Environmental Health.

**B. Eligible Applicant**

Assistance will be provided only to the University of North Carolina at Chapel Hill. No other applications are solicited.

Eligibility is limited to the University of North Carolina at Chapel Hill as directed by fiscal year 2001 Federal appropriations.

**Note:** Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an

award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately \$808,868 is available in FY 2001 to support this one year project. The award will be made prior to September 30, 2001 for a 12-month project period. Funding estimates may change.

**D. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov>. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron P. Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement Number 01181, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone: (770) 488-2716, Email address: [SORum@cdc.gov](mailto:SORum@cdc.gov).

For program technical assistance, contact: Timothy Baker, Deputy Director, Office of Genetics and Disease Prevention, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop K-28, Atlanta, GA 30333, Telephone: (770) 488-3235, Email address: [TBaker@cdc.gov](mailto:TBaker@cdc.gov).

Dated: July 24, 2001.  
**John L. Williams,**  
*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*  
 [FR Doc. 01-18862 Filed 7-27-01; 8:45 am]  
**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[Announcement Number 01188]

**Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies: Social and Environmental Interventions to Prevent HIV; Notice of Availability of Funds Amendment**

A notice announcing the availability of Fiscal Year 2001 funds for HIV Research Studies—Social and Environmental Interventions to Prevent HIV was published in the **Federal Register** on July 20, 2001, (Vol. 66, No. 140, pages 37969-37971). The notice is amended as follows:

On page 37970, First Column, under section G. Evaluation Criteria, change to read:

Section G. Evaluation Criteria

The quality of each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Objectives (10 points): Demonstrate the proposed study will provide data for publication that's not otherwise available concerning social and environmental interventions to reduce HIV incidence.

The application should include a detailed review of the scientific literature pertinent to the study being proposed, with evidence for the relationship of social and environmental

factors to the incidence of HIV. This literature review and a review of conditions in the study community should suggest specific research questions that will guide the research. The goals and objectives for the research should be clearly stated along with how the intervention would impact one of the underlying factors determining HIV incidence in the community.

2. Site Selection (15 points): Demonstrate high prevalence of HIV or AIDS in the study area. Demonstrate ability to work in the community or communities.

The application should include a description of the size and characteristics of the communities proposed for study. Describe the prevalence and estimated incidence of HIV infection in the study community. Include the age, gender, race/ethnicity, and HIV-risks of persons with HIV in the community where the intervention will be implemented. Describe the likely acceptability of the intervention by persons in the community. Letters of support from cooperating organizations should be included which detail the nature and extent of such cooperation.

3. Methods (45 points): Appropriateness of methods for implementing and evaluating the social and environmental interventions to reduce HIV incidence and assessing the potential impact of the intervention within a community or geographic area.

The application should describe the social-environmental issue that the recipient wants to address, how the potential intervention will influence the issue, and how the intervention might impact on HIV incidence in the study area. It should specify potential barriers to implementing the intervention and how barriers will be overcome. The potential impact on HIV reduction should be clear. The intervention should be new and sustainable in the future without ongoing CDC funding. (40 points)

In addition, (5 points)

Applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Research Capacity (20 points): Experience in similar social interventions, human rights evaluations, and HIV prevention research; and availability of qualified and experienced personnel.

The application should describe the capacity and experience of the research team and should include curriculum vitae and position descriptions for key staff and project participants. The percentage-time commitments, duties, and responsibilities of

project personnel should be sufficient to operationalize the proposed methodology. Letters of support from key collaborators and community groups should be included.

5. Evaluation Plan (10 points):

Appropriateness and comprehensiveness of:

- the schedule for accomplishing the activities of the research;

- an evaluation plan that identifies methods and instruments for evaluating progress in implementing the research objectives; and

- a proposal to complete and submit for publication, a report of research findings.

The application should include time-phased and measurable objectives. The proposed report of research findings should document the process of identifying and implementing the intervention and the acceptability and estimated impact within the community.

6. Budget (not scored): The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for up to four members of the study team to meet with CDC staff and other investigators).

7. Human Subjects (not scored): Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?"

Dated: July 24, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention  
(CDC).*

[FR Doc. 01-18861 Filed 7-27-01; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Announcement Number 01187]

#### Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Routinely Recommending HIV and Sexually Transmitted Disease (STD) Counseling and Testing in Ambulatory Care Clinics and Emergency Rooms; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2001 funds for HIV Intervention Research Studies—Routinely Recommending HIV and STD Counseling and Testing in Ambulatory Care Clinics and Emergency Rooms was published in the **Federal Register** on July 20, 2001, (Vol. 66, No. 140, pages 37966–37969). The notice is amended as follows:

On page 37967, First Column, under Section B. Eligible Applicants, add the following paragraph immediately following paragraph number one:

#### Additional Eligibility Criteria

1. Demonstrate ability to do testing for chlamydia, gonorrhea, and HIV by including a letter from a contract laboratory or facility administrator.

2. Provide evidence of adequate available space for the testing program in the form of a letter from the responsible facility administrator.

3. Provide evidence that at least 500 HIV-infected persons per year visit the ambulatory care facility or emergency room.

On page 37967, Third Column, under Section G. Evaluation Criteria, change to read:

The quality of each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Background and Objectives (10 points):* Demonstrate that the proposed study will identify persons who do not know they are infected with HIV.

The application should include:

- a. A detailed review of the scientific literature pertinent to testing in ambulatory care clinics and emergency rooms;

- b. Clearly stated goals and objectives for the research; and

- c. A description of how the intervention would impact HIV and STD prevention in the community.

2. *Site Selection (15 points):* Demonstrate high prevalence of HIV or AIDS in the study area.

The application should include a description of:

- a. The current magnitude and characteristics of the HIV epidemic;

- b. STD disease burden;

- c. The number of persons served by the clinics; and

- d. The expected number of newly-identified HIV infections that will be detected.

Letters of support from cooperating organizations should be included which clearly describe the nature and extent of such cooperation.

3. *Methods (30 points):* Appropriateness of methods for implementing and evaluating the testing program.

The application should describe the potential intervention and how it might impact on HIV and STD incidence in the study area. It should specify potential barriers to implementing the intervention and how they will be overcome. The methods for assessing the increase in number of persons tested, as well as the number of infected persons identified and successfully referred for treatment, should also be addressed. (25 points)

In addition, (5 points)

Applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. *Research Capacity (20 points)*: Experience in other similar research collaboration with State and local health departments and availability of qualified and experienced personnel.

The application should describe the capacity and experience of the research team and should include curriculum vitae and position descriptions for key staff. The percentage-time commitments, duties, and responsibilities of project personnel and involvement of state and local health department personnel should be sufficient to operationalize the proposed methodology. Letters of support from key collaborators, community groups, State and local health departments, should be included. The application should document that there is sufficient space available in the ambulatory care clinic or emergency room for the addition of the testing program.

5. *Sustainability of the intervention (15 points)*: Evidence of the health department and community planning group's commitment to sustain this program beyond the end of the project period and funding support, if it finds more infected persons at a lower cost than other existing outreach programs. Evidence includes letters of support from the community planning group and the health department, and the applicant's plan for encouraging the continuation of program activities.

6. *Evaluation Plan (10 points)*: Appropriateness and comprehensiveness of:

a. The schedule for accomplishing the activities of the research;

b. An evaluation plan that identifies methods and instruments for evaluating progress in implementing the research objectives; and

c. A proposal to complete and submit for publication, a report of research findings.

The application should include time-phased and measurable objectives. The proposed report of research findings should document the increase in number of persons tested, the number of new infections identified, and the number of persons who access treatment.

7. *Budget (not scored)*: The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for up to two members of the study team to meet with CDC staff and other investigators).

8. *Human Subjects (not scored)*: Does the application adequately address the

requirements of Title 45 CFR part 46 for the protection of human subjects?

Dated: July 24, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention  
(CDC).*

[FR Doc. 01-18864 Filed 7-27-01; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Announcement Number 01191]

#### Human Immunodeficiency Virus Prevention Intervention Research Studies—Efficacy of Condom Skills Building; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2001 funds for Human Immunodeficiency Virus Prevention Intervention Research Studies—Efficacy of Condom Skills Building was published in the **Federal Register** on July 23, 2001, (Vol. 66, No. 141, pages 38283-38285). The notice is amended as follows:

On page 38284, Second Column, Under Section G. Evaluation Criteria, change to read:

The quality of each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Background and objectives (10 points)*: The degree to which the applicant demonstrates knowledge in the area of condom use and skills-building demonstrations and understands the evaluation methodology (i.e., randomized controlled trial) that would be used in the project.

The application should include a detailed review of the scientific and other literature pertinent to new condom technologies and condom skills-building and other single session skills-building demonstrations for use in waiting room settings. The literature review should discuss the strengths and limitations of previous research in this area, including discussion of pros and cons of various research designs. The application should also include one or more potential condom skills-building demonstrations from the literature that are brief (30 minutes or less), feasible for use in waiting room settings, and acceptable for both men and women. Potential control conditions should also be described. Presentation of data on acceptability of the proposed intervention based on previous research, focus groups, or pilot studies would enhance the application.

2. *Site selection (25 points)*: The extent to which the applicant demonstrates adequate capacity to conduct the research study, including:

a. Access to one or two existing clinical settings with a waiting room;

b. Sufficient patient volume of "new" (i.e., not follow-up) visits among both men and women who are infected with either gonorrhea or chlamydia to allow evaluation of the intervention with urine-based nucleic acid amplification tests; and

c. Access to an experienced laboratory capable of conducting urine-based nucleic acid amplification test for detection of gonorrhea and chlamydia.

The application should include a description of the clinic in which the demonstrations are anticipated to be conducted, including waiting room characteristics, size of the clinic population (e.g., number of men and women aged 15-34 years seen each month), and STD (gonorrhea, chlamydia, syphilis, NGU, cervicitis, or trichomonas) prevalence among men and women.

Sufficient patient enrollment is estimated to be 60 to 80 STD-infected clients aged 15-34 years per month, of which at least 30 are women.

Participant refusal should be taken into account. Previous research in STD clinic settings indicates that no more than 50% of eligible participants will enroll in a study with long-term follow-up for STD infection. Enrollment rates are typically lower for men than women. The application should also include a description of the collaborating laboratory and its capabilities, including experience with new urine-based nucleic acid amplification technologies. The application should include a description of the proposed investigators and their previous research in conducting brief, group interventions aimed at STD/HIV prevention, including condom-based interventions. Letters of support from cooperating organizations, including clinic, laboratory, and (if applicable) health department directors and other participating staff should be included, and these should detail the nature and extent of such cooperation. The letter from the clinic director should specifically address patient volume, STD control, and the number of patients that potentially could be enrolled in a specific time period.

3. *Methods (30 points)*: The appropriateness of the methods presented for developing, implementing, and evaluating the intervention.

The goals and objectives for the proposed research study should be clearly stated and should include a detailed discussion of the intervention(s) and control conditions, description of an appropriate study design, estimated sample size for men and women, and follow-up requirements using existing STD information.

The application should include a detailed description of:

a. One or more brief, waiting room interventions that involve condom use demonstrations that could potentially be studied; and

b. A control condition that could potentially be used.

The proposed intervention condition(s) should include supporting data on: the appropriateness of the intervention for the

clinic and for the intended audience (including men and women), brevity (preferably less than 30 minutes), use of new condom technologies and a variety of condom types, use of appropriate and effective intervention techniques (e.g., role play scenarios, skills-building demonstrations as opposed to information-only approaches), feasibility and appropriateness of the intervention for waiting room settings, simplicity to allow existing staff to conduct the intervention, ease of the intervention in fitting in with current waiting room and clinic patterns, and discussion about how the proposed intervention(s) could be transferred to other high risk populations. Potential barriers to implementing the intervention and how these will be overcome should be discussed.

The application should also include detailed methods for implementing and evaluating the intervention using a controlled design that minimizes bias (e.g., randomized controlled trial using group-level or individual randomization). Sample size calculations should be presented, as well as discussion of appropriateness of the sample size (separate evaluation for men and women). In addition, the application should include description of the outcome measures planned including urine-based, nucleic acid amplification tests for gonorrhea and chlamydia and use of other outcomes (e.g., behavioral outcomes such as condom appeal and correct and consistent use, and process outcomes including quality assurance plans). (25 points)

In addition, (5 points)

Applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. *Research Capacity (20 points)*: The experience of the applicant in similar clinical interventions, condom research, and HIV/STD prevention research, and availability of qualified and experienced personnel.

The application should include a description of the capacity and experience of the research team in prior interventions, including clinical and prevention trials, condom use research, skills-building demonstrations, outcomes research (e.g., laboratory capacity for nucleic acid amplification testing). Curriculum vitae's and position descriptions for key staff and project participants should be included. (Note: Previous experience in testing of condom efficacy in laboratory or in vitro settings would not be considered relevant experience).

5. *Evaluation Plan (15 points)*: The extent to which the applicant includes time-phased and measurable objectives for all phases of the proposed study (formative, intervention, and evaluation phases).

The application should include a detailed discussion of objectives for the pilot studies, and separate discussion for the intervention phase including enrollment and follow-up objectives. Clear plans for enrollment should be outlined, and discussion of means to reduce recidivism in follow-up should be included. A detailed time-line should also be included.

6. *Budget (not scored)*: The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for up to two members of the study team to meet with CDC staff and other investigators).

7. *Human Subjects (not scored)*: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

Dated: July 24, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention  
(CDC).*

[FR Doc. 01-18865 Filed 7-27-01; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Announcement Number 01190]

#### Human Immunodeficiency Virus (HIV) Prevention Intervention Research Studies—Prevention for HIV-Positive Persons; Notice of Availability of Funds; Amendment

A notice announcing the availability of Fiscal Year 2001 funds for HIV Intervention Research Studies—Prevention for HIV-Positive Persons was published in the **Federal Register** on July 19, 2001, [Vol. 66, No. 139, pages 37694–37696]. The notice is amended as follows:

On page 37694, First Column, under section B. Eligible Applicants, add the following paragraph immediately following paragraph number one:

#### Additional Eligibility Criteria

Eligible applicants must have:

1. A minimum of three participating clinics in the project. Provide evidence of this by including letters from each participating clinic signed by the responsible facility administrator; and

2. Each participating clinic must be currently serving a minimum of 300 HIV

infected persons. Provide a statement signed by the responsible facility administrator certifying the number of HIV infected persons served.

On page 37695, Third Column, Under Section G. Evaluation Criteria, change to read:

The quality of each application will be evaluated individually against the following criteria by an objective review group appointed by CDC.

1. *Background, understanding of problem and objectives (10 points)*:

a. Demonstrates knowledge of literature pertinent to the proposed program and its goals. Demonstrates an understanding of how prevention models developed for high-risk individuals should be adapted, as suggested by theory or research, to customize the service for HIV infected persons. (5 points)

b. Provides a compelling argument for justifying the care setting in which program will be implemented (patient load, lack of available prevention services, etc.). (5 points)

2. *Demonstrating the quality of proposed prevention program. (15 points)*

a. Exceeds the minimum number of 900 clients served by the clinics participating in the study (minimum three (3) clinics X minimum 300 clients per clinic). One point will be given for every 200 additional HIV infected clients, up to a maximum of 5 points. (5 points)

b. Demonstrates adequacy of proposed program to address the purpose stated in the background section; reduction in unprotected sex and/or needle sharing with HIV negative partners and partners of unknown status. (Disclosure of serostatus and adherence to therapy are acceptable but not required as additional outcomes). (5 points)

c. Presents a program which adequately incorporates into the prevention model organizational and personnel factors which accelerate adoption and proper implementation by the care organizations specified in the application. (5 points)

3. *Demonstrating the appropriateness of research design to evaluate the proposed program. (35 points)*

a. Presents an overall research design which can generate reasonably certain conclusions about the effects of the proposed program; and which includes appropriate design elements such as: outcome measures taken at pre-intervention, post-intervention and follow-up; process measures; control or comparison group(s). (20 points)

b. Presents reliable and valid measures to gauge effectiveness at three levels: Organizational adoption (ability and willingness of the service organization to provide sustained support); adoption by care personnel (acceptance and use by the individual service providers); reduction in risk behaviors by clients. (10 points)

In addition, (5 points)

Applications will be evaluated on the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

4. Demonstrating the ability to implement the intervention and the research design. (40 points)

a. Demonstrates the extent to which the applicant has the necessary skills and resources needed for both program and research design implementation. In cases where a collaboration is necessary between different organizations, demonstrates the ability to put together the collaboration necessary for adequately implementing the program and the research design. Demonstrates the degree of commitment from non-lead organizations to the project and explains how the lead organization intends to maintain this commitment. Letters of support from all collaborating organizations are the required minimum. (10 points)

b. Identifies the technical assistance and training needs required for the proper implementation of the prevention service and the research protocol, and presents a plan that ensures that these needs will be met. (5 points)

c. Specifies methods for careful verification that the proposed intervention is actually being implemented. (5 points)

d. Specifies a plan for tracking participants and ensuring successful follow-up. (5 points)

e. Presents a plan for carrying out the program and research activities. (5 points)

f. Demonstrates experience and expertise in conducting similar prevention programs and research. (10 points)

5. *Budget (not scored)*: The extent to which the budget is reasonable, clearly justified, and consistent with the intent of the announcement.

The 12 month budget should anticipate the organizational and operational needs of the study. The budget should include staff, supplies, and travel (including two trips per year for up to two members of the study team to meet with CDC staff and other investigators).

6. *Human Subjects (not scored)*: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

Dated: July 24, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention  
(CDC).*

[FR Doc. 01-18866 Filed 7-27-01; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 01186]

#### Landmine and War-Related Trauma Awareness Program; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program to develop, implement, and evaluate diverse activities addressing landmine and war-related trauma (physical injury and mental health) directly and indirectly caused by war, including the evaluation of mine awareness programs in current and former conflict-affected countries. This program addresses the "Healthy People 2010" focus areas of Injury and Violence Prevention and Environmental Health.

The purpose of the program is to establish a better understanding of the burden of landmine and other war-related trauma, particularly on women and children globally; to evaluate, using existing data, mine awareness and other war-associated injury prevention programs; and to develop and distribute best practices applicable to mine awareness and other conflict-related injury prevention programs.

No human subjects research may be conducted under this program announcement.

##### B. Eligible Applicant

Assistance will be provided only to The United Nations Children's Fund (UNICEF). No other applications are solicited.

UNICEF is the most appropriate and qualified organization for conducting activities under this program because:

UNICEF is the United Nations organization tasked with taking the lead on mine awareness. UNICEF is also the United Nations organization tasked with the protection of health and human rights of women and children. Therefore, UNICEF provides a unique opportunity to evaluate current mine awareness and other war-associated injury prevention programs.

UNICEF has a singularly high level of expertise and experience in mine awareness programs and working with women and children affected by conflict.

UNICEF is the leader in the international community as a provider of data about and support to women and

children affected by war, giving it the resources and contacts to implement this program.

**Note:** Title 2 of the United States Code, Chapter 26, section 1611, states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

##### C. Availability of Funds

Approximately \$175,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—<http://www.cdc.gov> Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: (770) 488-2716, Email address: [SPO2@cdc.gov](mailto:SPO2@cdc.gov).

For program technical assistance, contact: Marilyn DiSirio, International Emergency and Refugee Health Branch, Division of Emergency and Environmental Health Services, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway (F-48), Atlanta, GA 30341, Telephone number: (770) 488-4024, Email address: [mdisirio@cdc.gov](mailto:mdisirio@cdc.gov).

Dated: July 24, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office,  
Centers for Disease Control and Prevention  
(CDC).*

[FR Doc. 01-18863 Filed 7-27-01; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services**

[Document Identifier: CMS-21]

**Agency Information Collection Activities: Proposed Collection; Comment Request****AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Centers for Medicare and Medicaid Services (CMS) (formerly know as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quarterly Children's Health Insurance Program Statement of Expenditures for title XXI; *Form No.:* CMS-21 (OMB# 0938-00731); *Use:* States use certain schedules of form 21 to report their budget, expenditure, and related statistical information required for the implementation of the Children's Health Insurance Program (title XXI of the Social security Act); *Frequency:* Quarterly; *Affected Public:* State, local or tribal govt.; *Number of Respondents:* 56; *Total Annual Responses:* 448; *Total Annual Hours:* 7,840.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed

information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, Att. CMS-21, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 20, 2001.

**Julie Brown,**

*Acting Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01-18893 Filed 7-27-01; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services**

[Document Identifier: CMS-64]

**Agency Information Collection Activities: Proposed Collection; Comment Request****AGENCY:** Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program; *Form No.:* CMS-64 (OMB # 0938-0067); *Use:* State Medicaid agencies use the CMS-64 to report their actual program benefit costs and administrative expenses to CMS. CMS uses this information to

compute the Federal financial participation for the State's Medicaid program; *Frequency:* Quarterly; *Affected Public:* State, local or tribal govt.; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 16,464.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, Att. CMS-64, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: July 20, 2001.

**Julie Brown,**

*Acting Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01-18894 Filed 7-27-01; 8:45 am]

BILLING CODE 4120-03-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare and Medicaid Services**

[Document Identifier: CMS-R-231]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Request:*

Extension of a currently approved collection; *Title of Information Collection:* Medicare+Choice (M+C) Provider Sponsored Organization (PSO) Waiver Request Form and Supporting Regulations in 42 CFR 422.370–422.378; *Form Number:* CMS–R–231 (0938–0722); *Use:* The PSO waiver request form is for use by PSO's that do not have a State risk-bearing entity licence and that wish to enter into a M+C contract with CMS to provide prepaid health care services to eligible Medicare beneficiaries. CMS will use the information requested on this form to determine whether the applicant is eligible for a waiver of the state licensure requirement for M+C organizations as allowed under section 1855(a)(2) of the Social Security Act.; *Frequency:* One-time.; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government.; *Annual Number of Respondents:* 10.; *Total Annual Responses:* 10.; *Total Annual Hours Requested:* 100.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access CMS's Web Site Address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address and phone number, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 10, 2001.

**Julie Brown,**

*Acting, CMS Reports Clearance Officer, CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–18846 Filed 7–27–01; 8:45 am]

**BILLING CODE 4120–03–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare and Medicaid Services**

[Document Identifier: HCFA–116]

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**AGENCY:** Centers for Medicare and Medicaid Services, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Application Form and Supporting Regulations in 42 CFR 493.1—.2001; *Form No.:* HCFA–116 (OMB# 0938–0581); *Use:* Certification requirements have been established for any entity that performs testing on human beings for diagnostic or treatment purposes. Laboratories must apply for and obtain a certificate in order to perform this testing; *Frequency:* Biennially; *Affected Public:* Business or other for profit, Not for profit institutions, Federal Government, and State, local or tribal government; *Number of Respondents:* 16,000; *Total Annual Responses:* 16,000; *Total Annual Hours:* 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or

call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 17, 2001.

**John P. Burke III,**

*CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.*

[FR Doc. 01–18892 Filed 7–27–01; 8:45 am]

**BILLING CODE 4120–03–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[CMS–1135–CN]

RIN 0938–0938–ZA14

**Medicare Program; Hospice Wage Index Fiscal Year 2001; Correction Notice**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of notice.

**SUMMARY:** This document corrects technical errors that appeared in the notice published in the **Federal Register**, (65 FR 60072) on October 6, 2000 entitled “Hospice Wage Index.” **EFFECTIVE DATE:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lynn Riley, (410) 786–1286.

**SUPPLEMENTARY INFORMATION:** In the October 6, 2000 notice entitled “Hospice Wage Index,” there were several technical and typographic errors. Due to the typographical errors, we are correcting several hospice wage index values as published in the October 6, 2000 notice (65 FR 60072). Specifically, Table A reflects the correct hospice wage index values for MSA code numbers, 0600, 0840, 1950, 1960, 2000, 2020, 2040, 2840, 2880, 3285, 5140, 5483, 6020, 6483, 6640, 6780, 6800, and 8160. Table B lists the correct hospice wage index value for MSA code number 9950. This Correction Notice conforms the published hospice wage index values to the values used to make payment as of October 1, 2000.

In addition, the MSA code numbers 8050 through 8800 on page 60079 in Table A were inadvertently misplaced. We are correcting Table A by moving MSA codes 8050 through 8800 to be

between MSA codes 8003 and 8840, located on page 60078.

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS—Continued

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA-18]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance in 42 CFR 406.7; *Form No.:* HCFA-18 (OMB# 0938-0251); *Use:* The HCFA-18F5 is used to establish entitlement to hospital insurance and supplementary medical insurance for beneficiaries entitled under title XVIII of the Social Security Act; *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer:

TABLE A.—HOSPICE WAGE INDEX FOR URBAN AREAS

MSA code No.	Urban area (constituent counties or county equivalents) <sup>1</sup>	Wage index <sup>2</sup>
0600 ....	Augusta-Aiken, GA-SC ... Columbia, GA. McDuffie, GA. Richmond, GA. Aiken, SC. Edgefield, SC.	0.9604
0840 ....	Beaumont-Port Arthur, TX. Hardin, TX. Jefferson, TX. Orange, TX.	0.9188
1950 ....	Danville, VA ..... Danville City, VA. Pittsylvania, VA.	0.9655
1960 ....	Davenport-Moline-Rock Island, IA-IL. Scott, IA. Henry, IL. Rock Island, IL.	0.9277
2000 ....	Dayton-Springfield, OH ... Clark, OH. Greene, OH. Miami, OH. Montgomery, OH.	1.0080
2020 ....	Daytona Beach, FL ..... Flagler, FL. Volusia, FL.	0.9576
2040 ....	Decatur, IL ..... Macon, IL.	0.8866
2840 ....	Fresno, CA ..... Fresno, CA. Madera, CA.	1.0934
2880 ....	Gadsden, AL ..... Etowah, AL.	0.9257
3285 ....	Hattiesburg, MS ..... Forrest, MS. Lamar, MS.	0.8133
5140 ....	Missoula, MT ..... Missoula, MT.	0.9680
5483 ....	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT. Fairfield, CT. New Haven, CT.	1.3165
6020 ....	Parkersburg-Marietta, WV-OH. Washington, OH. Wood, WV.	0.8966
6483 ....	Providence-Warwick-Pawtucket, RI. Bristol, RI. Kent, RI. Newport, RI. Providence, RI. Washington, RI.	1.1390
6640 ....	Raleigh-Durham-Chapel Hill, NC. Chatham, NC. Durham, NC. Franklin, NC. Johnston, NC. Orange, NC. Wake, NC.	1.0169
6780 ....	Riverside-San Bernardino, CA. Riverside, CA.	1.1944

MSA code No.	Urban area (constituent counties or county equivalents) <sup>1</sup>	Wage index <sup>2</sup>
6800 ....	San Bernardino, CA. Roanoke, VA ..... Botetourt, VA. Roanoke, VA. Roanoke City, VA. Salem City, VA.	0.8671
8160 ....	Syracuse, NY ..... Cayuga, NY. Madison, NY. Onondaga, NY. Oswego, NY.	1.0029

<sup>1</sup> This column lists each MSA area name (in italics) and each county, or county equivalent, in the MSA area. Counties not listed in this Table are considered to be Rural Areas. Wage Index values for these areas are found in Table B.

<sup>2</sup> Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and included them in the wage index values reflected in this table.

TABLE B.—WAGE INDEX FOR RURAL AREAS

MSA Code No.	Nonurban area	Wage index <sup>1</sup>
9950 ....	Washington .....	1.1130

<sup>1</sup> Wage index values are based on FY 1996 hospital cost report data before reclassification. This wage index is further adjusted. Wage index values greater than 0.8 are subject to a budget-neutrality adjustment of 1.065425. Wage index values below 0.8 are adjusted to be the greater of a 15-percent increase, subject to a maximum wage index value of 0.8, or an adjustment by multiplying the hospital wage index value for a given area by the budget-neutrality adjustment. We have completed all of these adjustments and have included them in the wage index values reflected in this table.

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2001.

**Brian P. Burns,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 01-18524 Filed 7-27-01; 8:45 am]

BILLING CODE 4120-03-P

OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 18, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards,*

[FR Doc. 01-18891 Filed 7-27-01; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Notification of Request for Emergency Clearance; Modification of OMB Number 0925-0361, "National Institutes of Health Loan Repayment Programs"

**SUMMARY:** In accordance with section 3507(j) of the Paperwork Reduction Act of 1995, the National Institutes of Health hereby publishes notification of request for Emergency Clearance for modification of the information collection related to the "Loan Repayment Program for Health Disparities Research" and the "Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds," published elsewhere in today's **Federal Register**. The currently approved information collection, "National Institutes of Health Loan Repayment Programs" (OMB No. 0925-0361), permits the NIH to request from applicants information related to eligibility, qualifications, career interests and recommendations necessary to evaluate their applications for repayment of educational indebtedness in return for agreeing to conduct research as an employee of the National Institutes of Health. Public Law 106-525 amended the Public Health Service Act (42 U.S.C. 288-5) by adding a new section 485G to provide repayment of educational loan indebtedness of qualified health professionals who are not Federal employees and who agree to conduct basic, clinical, or behavioral research directly related to health disparities. Public Law 106-554 amended section 487E of the Public Health Service Act (42 U.S.C. 288-5) to allow expansion of the existing program to provide repayment of educational loan indebtedness of qualified health professionals from disadvantaged backgrounds who are not Federal

employees and who agree to conduct clinical research.

To implement these new loan repayment programs, NIH must request additional information from applicants and the institutions that submit applications on their behalf. Specifically, in the case of the Loan Repayment Program for Health Disparities Research, information in the application will also include: (1) A Research Plan—a description of the applicant's proposed role in the research conducted in the extramural laboratory or clinical research setting; (2) A brief statement addressing the applicant's long-range career plan for engaging in research on health disparities; (3) Institutional Assurance of future/current employment/affiliation; (4) Description of Training Environment, including a Training Plan, describing the applicant's mentoring program, the types of training interactions, research methods to be used and scientific techniques to be taught, journal clubs or groups the applicant will join, conferences and seminars to be attended, and a Description of the Advisor's/Supervisor's Research Program, with a description of the current research, listing of research support and a current C.V. with a list of publications.

In regard to the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds, applicants are required to submit: (1) A Research Plan—a description of the applicant's proposed clinical research assignment, including the applicant's specific responsibilities and roles in conducting the research; (2) Institutional Assurance of future/current employment/affiliation; (3) Description of Training Environment, including a Training Plan, describing the applicant's mentoring program, the types of training interactions, research methods to be used and scientific techniques to be taught, journal clubs or groups the applicant will join, conferences and seminars to be attended, and a Description of the Advisor/Supervisor's Research Program, with a description of the current research, listing of research support and a current C.V. with a list of publications.

The present modification relates to the additional reporting requirement of submission of information and documentation to permit the agency to evaluate the eligibility, qualifications, and overall merit of the applications, including, for example, the quality of the mentoring program, the quality of the mentor/supervisor's research program, the proposed training

mechanism, and the research methods and scientific techniques to be taught.

The modification is essential to the mission of NIH (42 U.S.C. 241 and 282(b)) and pursuant to the statutory mandates of 42 U.S.C. 287c-33 and 42 U.S.C. 288-5a requiring the NIH to establish loan repayment programs for eligible qualified health professionals, not employed by the Federal Government, who enter into contracts with the Secretary of Health and Human Services (HHS) to engage in minority health disparities research and for qualified health professionals from disadvantaged backgrounds, not employed by the Federal Government, who enter into contracts with the Secretary, HHS, to conduct clinical research.

The United States Congress conducted hearings to establish these expansions of the National Institutes of Health Loan Repayment Programs on the basis of which it determined that these measures are essential to the public welfare. In view of the record established in legislative hearings and congressional deliberations, NIH is herewith requesting that OMB approve the modification of the collection of information simultaneously with the publication of this **Federal Register** Notice and the publication of the Program Announcements in the **Federal Register**.

#### Proposed Collection

*Title:* National Institutes of Health Loan Repayment Programs. *Type of Information Collection Request:* REVISION. *Need and Use of Information Collection:* The additional NEW reporting requirement is needed to permit the agency to evaluate the eligibility, qualifications and overall merit of the applications. *Frequency of Response:* One-time response to accommodate NEW programs. *Affected Public:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or tribal Government. *Type of Respondents:* Loan Repayment Program Applicants; Scientific and Clinical Researchers; Research and Academic Institutions; Lending Organizations and Banks. The annual reporting burden was: *Estimated Number of Respondents:* 990. *Estimated Number of Responses per Respondent:* 1. *Average Burden Hours Per Response:* 1.53. *Estimated Total Annual Burden Hours Requested:* 1,424. The NEW annual reporting burden is as follows: *Estimated Number of Respondents:* 1,540. *Estimated Number of Responses per Respondent:* 1.02. *Average Burden Hours Per Response:* 1.43. *Estimated Total Annual Burden Hours Requested:*

2,214. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

NIH is herewith requesting that OMB approve the modification of the collection of information simultaneously with the publication of this **Federal Register** notice and the publication of the Program Announcements in the **Federal Register**.  
**FOR FURTHER INFORMATION CONTACT:** The Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Stuart Shapiro, Desk Officer for NIH.

Dated: July 13, 2001.

**Ruth L. Kirschstein,**

*Acting Director, NIH.*

[FR Doc. 01-18910 Filed 7-27-01; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institutes of Health Extramural Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH) hereby announces the availability of educational loan repayment under the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (the Program). The Program, which was originally authorized by section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288-5), as amended by the National Institutes of Health Revitalization Act of 1993 (Public Law 103-43), provides for the repayment of the educational loan debt of health professionals who are from disadvantaged backgrounds, who have substantial debt relative to income, and who agree to conduct clinical research as employees of the NIH. The Consolidated Appropriations Act of 2001 (Public Law 106-554) amended section 487E of the PHS Act to allow expansion of the existing program to include health professionals who are not employees of the National Institutes of Health. Under the expanded authority, the Secretary of Health and Human Services (HHS) in consultation with the Director of NIH will enter into contracts with qualified health professionals from disadvantaged backgrounds under which such health professionals agree to conduct clinical

research; in return, the Federal Government agrees to repay for each year of such research, up to \$35,000 of their student loan debt. The purpose of the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds is the recruitment and retention of highly qualified health professionals, from disadvantaged backgrounds, in careers in clinical research. Through this notice, the NIH invites health professionals, who are from disadvantaged backgrounds and interested in engaging in clinical research for at least two years, to apply for participation in the NIH Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR-LRP). Concurrent with the publication of this notice, NIH is publishing elsewhere in the **Federal Register** Notification of Request for Emergency Clearance for Modification of the information collection, OMB No. 0925-0361, "National Institutes of Health Loan Repayment Programs," to obtain approval for the additional information in connection with the application process, with the comment period to close July 31, 2001.

**DATES:** Interested persons may request information about the Program beginning on July 30, 2001.

**ADDRESSES:** Information regarding the requirements and application procedures for the Program may be obtained by calling or writing: National Center on Minority Health and Health Disparities, National Institutes of Health, Democracy II, Suite 800, 6707 Democracy Blvd, MSC 5465, Bethesda, Maryland 20892-5465, Attention: Kenya McRae, telephone (301-402-1366).

**SUPPLEMENTARY INFORMATION:** The definition of clinical research is found in section 206 of Public Law 106-505, the Public Health Improvement Act, enacted on November 13, 2000: The term clinical research means patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which the investigator or colleague directly interacts with human subjects in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials. An "individual from a disadvantaged background" (see 42 CFR 68a.2) is one who: (1) Comes from an

environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or (2) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**.

Applicants must certify disadvantaged status under the above definition by submitting: (1) A personal statement explaining the applicability of the above definition to his/her circumstances; or (2) a letter in the application package from the individual's former health professions school(s) or other documentation verifying that the applicant qualified for Federal disadvantaged assistance during attendance. Current financial need alone is not sufficient to classify an individual as being from a disadvantaged background.

The Consolidated Appropriations Act, 2001 (Public Law 106-554) was enacted on December 21, 2000, and amends section 487E of the PHS Act to allow the Secretary of HHS, in consultation with the Director of NIH, to enter into contracts for loan repayment with appropriately qualified health professionals from disadvantaged backgrounds who agree to conduct clinical research, at NIH-supported or otherwise funded research sites, but not as employees of NIH. This program is known as the NIH Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR-LRP). Under the contracts, qualified health professionals who are from disadvantaged backgrounds with substantial educational loan debt relative to income agree to conduct clinical research for at least two years in consideration of the Federal Government agreeing to repay, for each year of service, not more than \$35,000 of the principal and interest of the educational loans of such health professionals. The Acting Director of NIH delegated authority for implementation of the Extramural Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (ECR-LRP) for fiscal year 2001 to the Director, National Center on Minority Health and Health Disparities (NCMHD), NIH.

### Eligibility Requirements

Specific eligibility criteria with regard to participation in the ECR-LRP include the following:

(1) Participants must be United States citizens, nationals, or permanent residents.

(2) Participants must have an M.D., Ph.D., D.O., D.D.S., Sc.D., or equivalent professional degree.

(3) Participants must come from a disadvantaged background. An individual from a disadvantaged background (see 42 CFR 68a.2) is one who: (a) Comes from an environment that inhibited the individual from obtaining the knowledge, skill and ability required to enroll in and graduate from a health professions school; or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register**. Participants must certify disadvantaged status under the above definition by submitting: (a) A personal statement explaining the applicability of the above definition to his/her circumstances; or (b) a letter in the application package from the individual's former health professions school(s) or other documentation verifying that the applicant qualified for Federal disadvantaged assistance during attendance. Current financial need alone is not sufficient to classify an individual as being from a disadvantaged background.

(4) Participants must have qualifying educational debt in excess of 20 percent of their annual salary, stipend, or compensation at their expected date of program eligibility. The expected date of program eligibility is the date by which the following conditions will be met: (a) An applicant agrees to begin clinical research and (b) the Secretary executes an ECR-LRP contract.

(5) Participants must not be Federal employees.

(6) Participants must have a research sponsor or mentor with experience in the area of proposed research and may be enrolled in a training program or appointed under a temporary (at least two years) or permanent employment mechanism.

(7) Participants must engage in qualified clinical research for a minimum of two years.

(8) Individuals with existing service obligations to Federal, State, or other

entities will not be considered for the ECR-LRP unless and until the existing service obligation is discharged or deferred for the length of Program participation.

(9) Individuals are ineligible who have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds, until the judgment is paid in full or satisfied.

### Application Procedures and Selection Process

Submission of applications for participation in the ECR-LRP by eligible individuals should be made to the NCMHD on behalf of the applicant by the extramural research institution. The application package should include: (1) All required forms, completed, signed and dated; (2) research and training plan; (3) the credentials or curriculum vitae of the applicant and mentor/advisor; and (4) a description of the research/training environment. The NCMHD will provide current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin.

Individuals may submit their applications to the Director, NCMHD, and qualified applications will be forwarded to the NCMHD Loan Repayment Review Panel (the Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review, rank, and approve or disapprove all applications submitted to the ECR-LRP.

The Panel will review and select applications for approval based on the merit of the proposed clinical research, the credentials of the applicant and supervisor, and other criteria the Secretary deems appropriate. For example, all of the following contribute to the merit of the application: the quality of the mentoring program, which includes the journal clubs or other groups available to the applicant and the planned conferences and seminars to be attended; the quality of the mentor's research program; the proposed training mechanism; and the research methods and scientific techniques to be taught.

The definition of clinical research used by the Panel can be found in section 206 of Public Law 106-505, the Public Health Improvement Act: The term clinical research means patient-oriented clinical research conducted with human subjects, or research on the causes and consequences of disease in human populations involving material of human origin (such as tissue specimens and cognitive phenomena) for which an investigator or colleague directly interacts with human subjects

in an outpatient or inpatient setting to clarify a problem in human physiology, pathophysiology or disease, or epidemiologic or behavioral studies, outcomes research or health services research, or developing new technologies, therapeutic interventions, or clinical trials.

Funds for repayment will only be awarded to Review Panel-approved applications. Priority in funding will be given to qualified health professionals who are from disadvantaged backgrounds and/or who are underrepresented in biomedical/behavioral research, including members from racial and ethnic minority groups and disabled individuals. The emphasis on "clinical research" and on individuals from "disadvantaged backgrounds" highlights the need for the involvement of a cadre of culturally competent physician scientists in clinical research. Such a cadre of clinical investigators can impact the medical processes within their communities and promote the development of clinical research programs that reflect an understanding of the variety of issues and problems that impact health outcomes.

### Program Administration and Details

Under the ECR-LRP, the NIH will repay a portion of the extant qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or health professional school educational expenses. Upon application, individuals must have total qualified educational debt that exceeds their anticipated annual compensation ("debt threshold") on the date of program eligibility.

Only qualified loan amounts in excess of 50 percent of the debt threshold will be considered for repayment ("repayable debt"). The repayable debt of qualified health professionals will be satisfied at the rate of one-half of the repayable debt per year, subject to a statutory limit of \$35,000 per year, for each year of obligated service. Obligated service requires selected individuals to engage in qualified clinical research for at least 2 years. Following conclusion of the initial two-year contract, participants may apply for renewal contracts to satisfy their remaining repayable debt. These continuation contracts may be submitted and approved on a competitive year-to-year basis, subject to a finding by the NCMHD that the applicant's clinical research accomplishments are acceptable and qualified clinical research continues. Funding of contracts is contingent upon appropriation and/or

allocation of funds from the U.S. Congress and/or the NIH.

Concurrent with the issuance of each loan repayment, a 39% Federal tax payment is issued to compensate participants for the tax liabilities incurred on their loan payments, which are considered taxable income by the IRS. Depending on the availability of funds and the final level of benefits offered, the NCMHD may make additional tax payments, whether they be for Federal or State taxes, for the additional incremental taxes incurred by recipients that are directly attributable to the loan repayment and Federal tax payments.

In return for the repayment of their educational loans, participants must agree to: (1) Engage in clinical research for a minimum requirement of 2 years; (2) pay monetary damages as required for breach of contract; and (3) satisfy other terms and conditions of the ECR-LRP's contract and application procedures.

Applicants must submit a signed contract, prepared by the NIH, agreeing to obligated service at the time they apply for consideration under the ECR-LRP. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments will be authorized for direct payment to lenders, following receipt of: (1) the supervisor's verification of completion of the prior period of obligated service and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NCMHD will repay loans in the following order unless significant savings would result from repaying loans in a different priority order:

(1) Health Education Assistance Loans (HEAL);

(2) other loans guaranteed by the Federal Government; and

(3) other qualifying loans.

The following loans are NOT repayable under the ECR-LRP:

(1) Loans not obtained from a Government entity or commercial or other chartered lending institution, such as loans from friends and relatives, or other private individuals;

(2) Loans for which contemporaneous documentation is not available; and

(3) Loans, or those portions of loans, obtained for educational or living expenses which exceed a "reasonable" level as determined by a review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made.

In addition, for other programs which provide loans, scholarships, loan repayments, or similar awards in exchange for a future service obligation, the NIH will NOT repay any sums that may result from failure to serve as required or conversion of the obligation to a loan or debt under these programs. This includes, but is not limited to the following:

(1) Physicians Shortage Area Scholarship Program (Federal or State);

(2) National Research Service Award Program;

(3) Public Health Service and National Health Service Corps Scholarship Programs;

(4) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs; and

(5) Indian Health Service Scholarship Program.

Finally, payments will not be made under the ECR-LRP for loans that participants have already repaid, delinquent loans, loans in default, loans not current in their payment schedule, or loans for which promissory notes have been signed after the program eligibility date and PLUS loans. During lapses in loan repayments, due either to administrative complications or a break in service, ECR-LRP participants are wholly responsible for making payments or other arrangements that maintain loans in a current payment status such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications may be considered for reimbursement.

Dated: July 13, 2001.

**Ruth L. Kirschstein,**

*Acting Director, NIH.*

[FR Doc. 01-18911 Filed 7-27-01; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Loan Repayment Program for Health Disparities Research

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH) hereby announces the availability of educational loan repayment under the NIH Loan Repayment Program for Minority Health Disparities Research (HDR-LRP). The NIH HDR-LRP, which was authorized by section 103 of Public Law 106-525, the Minority Health and Health Disparities Research and Education Act of 2000, which added section 485G of the Public Health Service (PHS) Act, provides for the repayment of the educational loan debt of health professionals who have substantial debt relative to income and who agree to conduct minority health disparities research or other health disparities research. Under authority of the extramural HDR-LRP, the "Director of the Center shall establish a program of entering into contracts with qualified health professionals under which such health professionals agree to engage in minority health disparities research or other health disparities research;" in return, the Federal Government agrees to repay for each year of such research, up to \$35,000 of their student loan debt. The purpose of the extramural HDR-LRP is the recruitment of highly qualified health professionals to careers in minority health and other health disparities research. The Program will be administered by the National Center on Minority Health and Health Disparities (NCMHD) of the NIH. Through this notice, the NIH invites health professionals who are interested in engaging in minority health and other health disparities research for at least two years to apply for participation in the extramural HDR-LRP. Concurrent with the publication of this notice, NIH is publishing elsewhere in the **Federal Register** Notification of Request for Emergency Clearance for Modification of the information collection, OMB No. 0925-0361, "National Institutes of Health Loan Repayment Programs," to obtain approval for the additional information in connection with the application process, with the comment period to close July 31, 2001.

**DATES:** Interested persons may request information about the HDR-LRP beginning on July 30, 2001.

**ADDRESSES:** Information regarding the requirements and application

procedures for the HDR-LRP may be obtained by calling or writing: National Center on Minority Health and Health Disparities, National Institutes of Health, Democracy II, Suite 800, 6707 Democracy Blvd, MSC 5465, Bethesda, Maryland 20892-5465, Attention: Kenya McRae, telephone (301-402-1366).

**SUPPLEMENTARY INFORMATION:** The definition of "minority health disparities research" may be found in section 101 of Public Law 106-525, the Minority Health and Health Disparities Research and Education Act of 2000, enacted on November 22, 2000. Minority health disparities research is defined as basic, clinical, and behavioral research on minority health conditions, including research to prevent, diagnose, and treat such conditions. "Minority health conditions" with respect to individuals who are members of minority groups means all diseases, disorders, and conditions (including mental health and substance abuse): (1) Unique to, more serious, or more prevalent in such individuals; (2) for which the medical risk factors or types of medical interventions may be different; (3) for which there has been insufficient research involving such individuals as subjects or for which there is insufficient data on such individuals.

For the purposes of this program, health disparities research is defined as basic, clinical, and behavioral research on health conditions including diseases, disorders, and such other conditions, including the causes of such disparities and methods to prevent, diagnose, and treat the diseases associated with health disparities, that are unique to, more serious, or more prevalent in health disparities populations (either individual members or communities of such populations). "A health disparities population" is defined as a population for which, as determined by the NCMHD Director in consultation with the Director of the Agency for Healthcare Research and Quality, there is a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population.

The NCMHD Director is required to ensure that not fewer than 50 percent of contracts made through the extramural HDR-LRP are entered into with individuals from health disparities populations and that priority is given to projects of biomedical and behavioral research. At least 50 percent of the successful applicants will be chosen from health disparities populations as defined in Public Law 106-525: "A

population is a health disparities population if \* \* \* there is a significant disparity in the overall rate of disease incidence, prevalence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population." Pursuant to Public Law 106-525, the Director, NCMHD, in consultation with the Director of the Agency for Healthcare Research and Quality, will determine which groups qualify as health disparities populations. For purposes of this announcement, reference may be made to section 2 of Public Law 106-525, entitled "Findings" for some examples of groups currently considered as health disparities populations. Section 2 of Public Law 106-525 expressly states that "there are continuing disparities in the burden of illness and death experienced by African Americans, Hispanics, Native Americans, Alaska Natives and Asian Pacific Islanders" and that "the largest numbers of medically underserved are white individuals \* \* \* [living] below the poverty line with many living in nonmetropolitan, rural areas such as Appalachia, where [a] high percentage of counties [are] designated as health professional shortage areas and the high rate of poverty contribute to disparate outcomes."

The Minority Health and Health Disparities Research and Education Act of 2000 (Pub. L. 106-525), adds section 485G of the PHS Act to allow the Director, NCMHD, to enter into contracts for loan repayment with appropriately qualified health professionals who agree to conduct minority health or other health disparities research at NIH-supported or otherwise funded research sites for at least two years. Under such contracts, the Federal Government agrees to repay, for each year of service, not more than \$35,000 of the principal and interest of the educational loans of such health professionals.

#### Eligibility Requirements

Specific eligibility criteria with regard to participation in the HDR-LRP include the following:

- (1) Participants must be a United States citizen, national, or permanent resident.
- (2) Participants must have a M.D., Ph.D., D.O., D.D.S., Sc.D., or equivalent professional degree.
- (3) Participants must have qualifying educational debt in excess of 20 percent of their annual salary, stipend, or compensation at their expected date of program eligibility. The expected date of program eligibility is the date by which

the following conditions will be met: (a) An applicant agrees to begin minority health or health disparities research and (b) the Director, NCMHD, executes the HDR-LRP contract.

(4) Participants must not be Federal employees.

(5) Participants must have a research sponsor or mentor with experience in the area of proposed research and may be enrolled in a training program or appointed under a temporary or permanent employment mechanism for at least two years.

(6) Participants must engage in qualified minority health or other health disparities research for the entire period of their contract, the minimum period of which is for 2 years. Note, however, that membership in racial or ethnic minority groups or in economically disadvantaged groups is not a prerequisite for participation in the HDR-LRP.

(7) Individuals with existing service obligations to Federal, State, or other entities will not be considered for the HDR-LRP unless and until the existing service obligation is discharged or deferred for the length of Program participation.

(8) Individuals are ineligible who have a Federal judgment lien against their property arising from a Federal debt from receiving Federal funds, until the judgment is paid in full or satisfied.

#### Application Procedures and Selection Process

Submission of applications for participation in the HDR-LRP by eligible individuals should be made to NCMHD on behalf of the applicant by the extramural research institution. The application package should include: (1) All required forms, completed, signed and dated; (2) proposed research and training plan; (3) the credentials or curriculum vitae of the applicant and mentor/advisor; and (4) a description of the research/training environment. The NCMHD will provide current deadlines, sources for assistance, and additional details regarding application procedures in an Applicant Information Bulletin.

Individuals may submit their applications to the Director, NCMHD, and qualified applications will be forwarded to the NCMHD Loan Repayment Review Panel (the Panel), chaired by the Deputy Director, NCMHD, for review. The Panel will review, rank, and approve or disapprove all applications submitted to the HDR-LRP. Priority will be given to biomedical and behavioral researchers.

The Panel will review and select applications for approval based on the merit of the proposed research, the

credentials of both the applicant and supervisor, and other criteria deemed appropriate, for example the quality of the mentoring program, which includes the journal clubs or other groups available to the applicant and the planned conferences and seminars to be attended. The quality of the mentor's research program, the proposed training mechanism, and the research methods and scientific techniques to be taught contribute to the merit of the application.

Funds for repayment will only be awarded to applications approved by the NCMHD Loan Repayment Review Panel. As specified by statute, at least 50 percent of contracts will be given to qualified health professionals who are from health disparities populations, which include racial and ethnic minorities as well as individuals from economically disadvantaged backgrounds. This priority is consistent with the statute and the goals of both the NCMHD and the NIH to develop a diversified biomedical research workforce. Meeting this goal is a critical component of the strategy of the NCMHD and the NIH to reduce or eliminate health disparities since investigators from health disparities populations not only have the potential of impacting the medical processes within their communities but they can also engage in as well as promote the development of research programs that reflect an understanding of the variety of issues and problems associated with disparities in health status.

However, membership in a health disparities population is not a prerequisite for participation in the HDR-LRP. Members of the general population may also participate in the program, providing they are conducting minority health or other health disparities research and are United States citizens, nationals, or permanent residents.

#### **Program Administration and Details**

Under the HDR-LRP, the NCMHD will repay a portion of the extant qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or health professional school educational expenses. Upon application, individuals must have total qualified educational debt that exceeds their anticipated annual salary, stipend, or compensation ("debt threshold") on the date of program eligibility.

Only qualified loan amounts in excess of 50 percent of the debt threshold will be considered for repayment ("repayable debt"). The repayable debt of qualified health professionals will be

satisfied at the rate of one-half of the repayable debt per year, subject to a statutory limit of \$35,000 per year, for each year of obligated service. Obligated service requires selected individuals to engage in minority health or other health disparities research for at least 2 years. Following conclusion of the initial two-year contract, participants may apply for renewal contracts to satisfy their remaining repayable debt. These continuation contracts may be submitted and approved on a competitive year-to-year basis, subject to a finding by the NCMHD that the applicant's health disparities research accomplishments are acceptable. Funding of contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress and/or the NIH.

Concurrent with the issuance of each loan repayment, a 39-percent Federal tax payment is issued to compensate participants for the tax liabilities incurred on their loan payments, which are considered taxable income by the IRS. Depending on the availability of funds and the final level of benefits offered, the NCMHD may make additional tax payments, whether they be for Federal or State taxes, for the additional incremental taxes incurred by recipients that are directly attributable to the loan repayment and Federal tax payments.

In return for the repayment of their educational loans, participants must agree to: (1) Engage in minority health or other health disparities research for a minimum of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the HDR-LRP's contract and application procedures.

Applicants must submit a signed contract, prepared by the NIH, agreeing to obligated service at the time they apply for consideration under the HDR-LRP. Substantial monetary penalties will be imposed for breach of contract.

The NCMHD will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for the following:

- (1) Undergraduate, graduate, and health professional school tuition expenses;
- (2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the NCMHD Director.

Repayments will be authorized for direct payment to lenders, following receipt of: (1) The supervisor's verification of completion of the prior period of obligated service and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NCMHD will repay loans in the following order unless significant savings would result from repaying loans in a different priority order:

(1) Health Education Assistance Loans (HEAL);

(2) Other loans guaranteed by the Federal Government; and

(3) Other qualifying loans.

The following loans are NOT repayable under the HDR-LRP:

(1) Loans not obtained from a Government entity or commercial or other chartered lending institution, such as loans from friends and relatives, or other private individuals;

(2) Loans for which contemporaneous documentation is not available; and

(3) Loans, or those portions of loans, obtained for educational or living expenses which exceed a "reasonable" level as determined by a review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made.

In addition, for other programs that provide loans, scholarships, loan repayments, or similar awards in exchange for a future service obligation, the NIH will NOT repay any sums that may result from failure to serve as required or conversion of the obligation to a loan under these programs. This includes, but is not limited to the following:

(1) Physicians Shortage Area Scholarship Program (Federal or State);

(2) National Research Service Award Program;

(3) Public Health Service and National Health Service Corps Scholarship Programs;

(4) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs;

(5) Indian Health Service Scholarship Program.

Finally, payments will not be made under the HDR-LRP for loans that participants have already repaid, delinquent loans, loans in default, loans not current in their payment schedule, or loans for which promissory notes have been signed after the program eligibility date, and PLUS loans. During

lapses in loan repayments, due either to administrative complications or a break in service, HDR-LRP participants are wholly responsible for making payments or other arrangements that maintain loans in a current payment status such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications may be considered for reimbursement.

Dated: July 13, 2001.

**Ruth L. Kirschstein,**

*Acting Director, NIH.*

[FR Doc. 01-18909 Filed 7-27-01; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institute of Health

#### National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Dental and Craniofacial Research Council Review of RFAs, P01s, R43 & R44 grants.

*Date:* August 20, 2001.

*Open:* 10:00 a.m. to 10:30 a.m.

*Agenda:* Director's comments.

*Place:* Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

*Closed:* 10:30 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

*Contact Person:* Dushanka V. Kleinman, DDS, Deputy Director, National Institute of Dental & Craniofacial Res., National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892, (301) 496-9469.

Information is also available on the Institute's/Center's home page: [www.nidcr.nih.gov/discover/nadrc/index.htm](http://www.nidcr.nih.gov/discover/nadrc/index.htm), where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: July 20, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01-18912 Filed 7-27-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4650-N-51]

#### Notice of Submission of Proposed Information Collection to OMB; Contract and Subcontract Activity Reporting for Housing's Multifamily Programs—Minority Business Enterprise (MBE)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments Due Date: August 29, 2001.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Q, Department of Housing and

Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail [Wayne.Eddins@HUD.gov](mailto:Wayne.Eddins@HUD.gov); telephone (202) 708-2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

#### This Notice Also Lists the Following Information

*Title of Proposal:* Contract and Subcontract Activity Reporting for Housing's Multifamily Programs—Minority Business Enterprise (MBE).

*OMB Approval Number:* 2502-0355.

*Form Numbers:* HUD-2516.

*Description of the Need for the Information and Its Proposed Use:* Executive Order 12432 dated 7/14/1983, directs that Minority Business Development Plans shall be developed by each Federal Agency and that these plans shall establish minority business development objectives. The information summarized from this report will enable HUD to monitor and evaluate Minority Business Enterprise (MBE) activities against the total program activity and the designated MBE goals.

*Respondents:* Business or other for-profit.

*Frequency of Submission:* Semi-annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden .....	569		2		1		1,138

*Total Estimated Burden Hours:* 1,138.  
*Status:* Reinstatement, without change.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 20, 2001.

**Wayne Eddins,**

*Departmental Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 01-18845 Filed 7-27-01; 8:45 am]

**BILLING CODE 4210-72-M**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Information collection; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of specific information collection requirements and explanatory materials may be obtained by contacting our Information Collection Officer at the address or phone number listed below.

**DATES:** You must submit comments on or before August 29, 2001.

**ADDRESSES:** Send your comments and suggestions on specific requirements to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of the Interior Desk Officer, 725 17th Street NW, Washington, DC 20503, and to Rebecca Mullin, Information Collection Officer, U.S. Fish and Wildlife Service, MS 222-ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance and Habitat Restoration, Arlington, Virginia, at 703/358-1718.

**SUPPLEMENTARY INFORMATION:** We have submitted the following information collection clearance requirements to the OMB for review and approval under the Paperwork Reduction Act of 1995,

Public Law 104-13. The OMB has up to 60 days to approve or disapprove information collection, but they may respond after 30 days. Therefore, for your comments and suggestions to receive maximum consideration, the OMB should receive your input by August 29, 2001.

Currently, we have approval from the OMB to collect this information under OMB control number 1018-0070. This approval expires on October 31, 2001. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless we display a currently valid OMB control number.

On February 14, 2001, we published in the **Federal Register** (66 FR 10311) a 60-day notice of our intention to request information collection authority from the OMB; our notice solicited public comments. We received no comments in response to that notice.

As with our 60-day notice, this 30-day notice invites you to comment on: (1) Whether this collection of information is necessary for us to properly perform our functions, including whether the information will have practical utility; (2) the accuracy of our estimate of burden, including the validity of the methodology and assumptions we used; (3) ways to enhance the quality, utility, and clarity of the information we propose to collect; and (4) ways for us to minimize the burden of the collection of information on people who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972 authorizes us to allow the incidental, unintentional take of small numbers of marine mammals during a specified activity (other than commercial fishing) in a specified geographic region. Prior to allowing these takes, however, we must find that the total of such taking will have a negligible impact on the species or stocks, and will not have an unmitigable adverse impact on the availability of the species or stocks for subsistence uses by Alaska Natives.

The information that we propose to collect will be used to evaluate applications for specific incidental take regulations to determine whether such regulations, and subsequent Letters of

Authorization (LOA), should be issued; the information is needed to establish the scope of specific incidental take regulations. The information is also required to evaluate the impacts of the activities on the species or stocks of the marine mammals and on their availability for subsistence uses by Alaska Natives. It will ensure that all available means for minimizing the incidental take associated with a specific activity are considered by applicants.

We estimate that the burden associated with the request will be a total of 3,140 hours for the full 3-year period of OMB authorization. Two hundred hours will be required to complete the request for specific procedural regulations. For each LOA expected to be requested by you, and issued by us subsequent to issuance of specific procedural regulations, we estimate that 20 hours will be invested: eight hours will be required to complete each request for a LOA, four hours will be required for on-site monitoring activities, and eight hours will be required to complete each final monitoring report. We estimate that seven companies will be requesting LOAs and submitting monitoring reports annually for each of seven sites in the region covered by the specific regulations.

*Title:* Marine Mammals: Incidental Take During Specified Activities.

*Bureau form number:* None.

*Frequency of collection:* Biannually.

*Description of respondents:* Oil and gas industry companies.

*Number of respondents:* Seven for each of seven active sites per year (49).

*Estimated completion time:* For the one time application to request promulgation of the procedural rule, we estimate a 200-hour burden. Annually for three years, 8 hours per LOA, 4 hours for on-site monitoring, and 8 hours per final monitoring report are estimated for each requesting company for seven active sites (20 hours × 7 companies × sites = 980 hours × three years = 2,940 + 200 + 3,140 hours burden for three years).

*Burden estimate:* 3,140 hours.

Dated: April 25, 2001.

**Rebecca A. Mullin,**  
*Information Collection Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 01-18867 Filed 7-27-01; 8:45 am]

**BILLING CODE 4310-55-M**

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management****[CA-610-01-1610-DL]****Lower Chemehuevi Valley, San Bernardino County, CA****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Proposed order for temporary closure of selected routes of travel in the Lower Chemehuevi Valley of San Bernardino County, California and notice of availability of environmental assessment and draft finding of no significant impact on the proposed closures.

**SUMMARY:** Selected routes of travel located in the lower Chemehuevi Valley, California are proposed to be temporarily closed to vehicle use pursuant to 43 CFR 8364.1. The proposed closure is intended to protect public lands and resources by minimizing potential adverse impacts to sensitive resources, including the desert tortoise and its habitat from motorized vehicle use. This is an interim protection measure pending designation of routes as "open", "closed", or "limited" through an amendment to the California Desert Conservation Area (CDCA) Plan of 1980, as amended. By taking this interim action as allowed under 43 CFR 8364.1, the Bureau of Land Management contributes to the conservation of the threatened and endangered desert tortoise in accordance with section 7(a)(1) of the Endangered Species Act, 16 U.S.C. 1536(a)(1). BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternatives which might be required as a result of the consultation on the CDCA plan in accordance with section 7(d) of the ESA, 16 U.S.C. 1536(d). We anticipate that this closure will remain in effect until September 1, 2002, when a record of decision is signed for the amendment to the California Desert Conservation Area Plan for the Northern and Eastern Colorado Desert, the subject of the consultation.

Exceptions to the vehicle closure include Bureau of Land Management (BLM) operation and maintenance vehicles, law enforcement and fire vehicles, and other emergency vehicles. In addition, on certain specified routes in the lower Chemehuevi Valley, valid mining claim holders are exempt from the closure for purposes of gaining access to their claims.

The Environmental Assessment concerning this closure is available for

a 15 day review period. Interested parties should contact the Field Office Manager at the address below for a copy and review schedule. The documents are also available for review on the BLM Needles Field Office web site ([www.ca.blm.gov/needles](http://www.ca.blm.gov/needles)). Written comments may be sent to the address listed below in this notice.

The Order for closure will be posted in the California BLM Needles Field Office and the Arizona BLM Lake Havasu Field Office, and at places near and/or within the area to which the closure applies.

**DATES:** No sooner than 30 days after publication of this notice, a final closure determination will be published.

**ADDRESSES:** Written comments may be sent to the Needles Field Office, Attn: Planning and Environmental Coordinator, at 101 W. Spikes Road, Needles, California 92363.

**SUPPLEMENTARY INFORMATION:** On March 16, 2000, the Center for Biological Diversity, and others (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management (BLM) alleging that the BLM was in violation of section 7 of the Endangered Species Act, 16 U.S.C. 1536(ESA) by failing to enter into formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under the CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species.

Although BLM has received biological opinions on selected activities, consultation on the overall CDCA Plan is necessary to address the cumulative effects of *all* the activities authorized by the CDCA Plan. Consultation on the overall Plan is complex and the completion date is uncertain. Absent consultation on the entire Plan, the impacts of individual activities, when added together with the impacts of other activities in the desert, are not known. The BLM entered into negotiations with plaintiffs regarding interim actions to be taken to provide protection for endangered and threatened species

pending completion of the consultation on the CDCA Plan. Agreement on these interim actions avoided litigation of plaintiffs' request for injunctive relief and the threat of an injunction prohibiting all activities authorized under the Plan. These interim agreements have allowed BLM to continue to authorize appropriate levels of activities throughout the planning area during the lengthy consultation process while providing appropriate protection to the desert tortoise and other listed species in the short term. By taking interim actions as allowed under 43 CFR Subpart 8364, BLM contributes to the conservation of endangered and threatened species in accordance with section 7(a)(1) of the ESA, 16 U.S.C. 1536(a)(1). BLM also avoids making any irreversible or irretrievable commitment of resources which would foreclose any reasonable and prudent alternative measures which might be required as a result of the consultation on the CDCA plan in accordance with section 7(d) of the ESA, 16 U.S.C. 1536(d). In January 2001, the parties signed the Stipulation and Proposed Order Concerning All Further Injunctive Relief providing for closures described in this Notice.

All existing routes in the subject areas are being or will be evaluated and proposed for designation as Open, Closed, or Limited through the land use planning process as amendments to the California Desert Conservation Area Plan. These designations will be based on criteria identified in 43 CFR 8342.1. Management of routes proposed for closure will minimize the potential for any adverse effects pending designation.

The proposed closure in the lower Chemehuevi Valley is necessary to minimize potential adverse impacts to the desert tortoise and its habitat. The proposed project area lies adjacent to and partially within the desert tortoise Chemehuevi Critical Habitat Unit. The closure will reduce the extent of motorized vehicle use in desert tortoise habitat and help prevent mortality of desert tortoise and other species.

The lower Chemehuevi Valley closure is described as follows: The closed routes are located south of Havasu Lake Road, one-mile west of the border of the Chemehuevi Indian Tribe Reservation, north of the northern boundary of the Whipple Mountains Wilderness Area and the East Mojave Heritage Trail, and east of U.S. Highway 95, San Bernardino County, California. Specifically, this order closes dirt routes identified in the Northern and Eastern Colorado Desert Plan in the following areas:

Route #690517, Township 4 North, Range 24 East, Sections 6, 7, 8, 10

Route #690522, Township 4½ North, Range 24 East, Section 32; Township 4 North, Range 24 East, Section 5

Route #690523, Township 4½ North, Range 24 East, Sections 32; Township 4 North, Range 24 East, Sections 4, 5; closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

Route #690524, Township 4½ North, Range 24 East, Section 32; Township 4 North, Range 24 East, Sections 4, 5; closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

Route #690525, Township 4½ North, Range 24 East, Section 33; Township 4 North, Range 24 East, Sections 3, 4

Route #690527, Township 4 North, Range 24 East, Section 4, closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

Route #690528, Township 4 North, Range 24 East, Section 4, closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

Route #690529, Township 4 North, Range 24 East, Section 4, closed except to persons holding valid mining claims accessible only by these otherwise closed routes.

Route #690530, Township 4 North, Range 24 East, Section 3, 4, 9

Route #690531, Township 4 North, Range 24 East, Sections 2,3, 10

Route #690532, Township 4 North, Range 24 East, Section 1, 2

Route #690533, Township 4 North, Range 24 East, Section 1, 2

Route #690534, Township 4 North, Range 24 East, Section 2

Route #690536, Township 4 North, Range 24 East, Section 2, 3, 10, 11

Route #690537, Township 4 North, Range 24 East, Section 10

Route #690538, Township 4 North, Range 24 East, Section 2

Route #690540, Township 4 North, Range 24 East, Sections 11

Route #690542, Township 4½ North, Range 24 East, Section 34, 35, 36; Township 5 North, Range 24 East, Sections 34, 35

Route #690543, Township 4½ North, Range 24 East, Section 34, 35

Route #690544, Township 4½ North, Range 24 East, Section 35; Township 4 North, Range 24 East, Section 2

Route #690546, Township 4 North, Range 24 East, Section 14, 15

Route #690896, Township 4 North, Range 23 East, Section 1 and Township 5 North, Range 23 East, Section 36.

Less than one-quarter mile of route numbers 690532 and 690533 extend

onto public lands managed by the BLM's Arizona Lake Havasu Field Office.

**FOR FURTHER INFORMATION CONTACT:** George R. Meckfessel, Planning and Environmental Coordinator, Needles Field Office, 101 W. Spikes Rd., Needles, CA 92363, Tel: 760-326-7000.

Dated: July 11, 2001.

**Timothy Z. Smith,**

*Acting DSD, Natural Resources.*

[FR Doc. 01-19047 Filed 7-27-01; 8:45 am]

**BILLING CODE 4310-40-P**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731-TA-873-874 and 877-879 (Final)]**

### Certain Steel Concrete Reinforcing Bars From Belarus, China, Korea, Latvia, and Moldova

#### Determinations

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova, and that an industry in the United States is threatened with material injury by reason of imports from China, of certain steel concrete reinforcing bars,<sup>2</sup> provided for in subheading 7214.20.00 of the Harmonized Tariff Schedule of the United States,<sup>3</sup> that have been found

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Chairman Stephen Koplman, Vice Chairman Deanna Tanner Okun, and Commissioner Lynn M. Bragg determine that a regional industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova of certain steel concrete reinforcing bars. Chairman Koplman and Vice Chairman Okun also determine that a regional industry in the United States is threatened with material injury by reason of imports from China of the subject merchandise. Commissioner Bragg determines that a regional industry in the United States is materially injured by reason of imports from China of certain steel concrete reinforcing bars. The defined region consists of all the states east of the Mississippi plus Arkansas, Louisiana, Missouri, and Texas, as well as the District of Columbia and Puerto Rico. Commissioner Marcia E. Miller, Commissioner Jennifer A. Hillman, and Commissioner Dennis M. Devaney determine that an industry in the United States is materially injured by reason of imports from Belarus, Korea, Latvia, and Moldova of certain steel concrete reinforcing bars and that an industry in the United States is threatened with material injury by reason of imports from China of the subject merchandise.

<sup>3</sup> The Commission determines that critical circumstances do not exist with respect to subject imports from China and Korea.

by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

#### Background

The Commission instituted these investigations effective June 28, 2000, following receipt of petitions filed with the Commission and Commerce by the Rebar Trade Action Coalition (RTAC) (Washington, DC) and its individual members.<sup>4</sup> The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain steel concrete reinforcing bars from Belarus, China, Indonesia, Korea, Latvia, Moldova, Poland, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).<sup>5</sup> Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 14, 2001 (66 FR 10317). The hearing was held in Washington, DC, on April 5, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 23, 2001. The views of the Commission are contained in USITC Publication 3440 (July 2001), entitled Certain Steel Concrete Reinforcing Bars from Belarus, China, Korea, Latvia, and Moldova: Investigations Nos. 731-TA-873-874 and 877-879 (Final).

Issued: July 25, 2001.

**Donna R. Koehnke,**  
*Secretary.*

[FR Doc. 01-18920 Filed 7-27-01; 8:45 am]

**BILLING CODE 7020-02-P**

<sup>4</sup> The individual members of RTAC on whose behalf the petitions were filed are as follows: AmeriSteel (Tampa, FL); Auburn Steel Co., Inc. (Auburn, NY); Birmingham Steel Corp. (Birmingham, AL); Border Steel, Inc. (El Paso, TX); CMC Steel Group (Seguin, TX); Marion Steel Co. (Marion, OH); Nucor Steel (Darlington, SC); and Riverview Steel (Glassport, PA).

<sup>5</sup> On May 15, 2001, the Commission made affirmative determinations of material injury with respect to imports from Indonesia, Poland, and Ukraine of certain steel concrete reinforcing bars (see Certain Steel Concrete Reinforcing Bars from Indonesia, Poland, and Ukraine, Investigations Nos. 731-TA-875, 880, and 882 (Final), USITC Pub. 3425, May 2001).

## DEPARTMENT OF JUSTICE

**Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act**

Notice is hereby given that a consent decree in *United States of America v. Ming Ming Chua and Sophia Keh*, Civil Action No. 01-CV-811 (E.D. Pa.) was lodged with the court on July 23, 2001.

The proposed consent decree resolves the alleged liability of the defendants, Ming Ming Chua and Sophia Keh, in this action for response costs and penalties at the Belfield Paint Superfund Site at 5250-5252 Belfield Avenue in Philadelphia, Pennsylvania brought pursuant to sections 106(b), 107(a), and 107(c)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9696(b), 9607(a), and 9607(c)(3). The decree obligates the Settling Defendants to reimburse the United States for past response costs and penalties in the amount of \$107,000.

The Department of Justice will receive, for a period of thirty ("30") days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States of America v. Ming Ming Chua and Sophia Keh*, DOJ Ref. #90-11-3-07102.

The proposed consent decree may be examined and copied at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; or at the Region III Office of the Environmental Protection Agency, c/o Gail Wilson, Assistant Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, PO Box No. 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. A copy of the exhibits to the decree may be obtained from the same source for an additional charge.

**Nuriye C. Uygur,**

*Assistant, U.S. Attorney's Office for the Eastern District of Pennsylvania.*

[FR Doc. 01-18895 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-15-M

## DEPARTMENT OF JUSTICE

**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Coalition for Healthcare eStandards, Inc.**

Notice is hereby given that, on June 21, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Coalition for Healthcare eStandards, Inc. (the "Coalition") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, empactHEALTH.com, Nashville, TN; and HealthTrust Purchasing Group, Nashville, TN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Coalition intends to file additional written notification disclosing all changes in membership.

On February 14, 2001, the Coalition filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of June 1, 2001 (66 FR 29835).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18901 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.**

Notice is hereby given that, on May 11, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the

recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Applied Science Fiction, Austin, TX; Pixology Limited, Guildford, Surrey, UNITED KINGDOM; QBeo Inc., North Bend, WA; and Share-A-Photo, Reading R, Berkshire, UNITED KINGDOM have been added as parties to this venture. Also EPFL, Lausanne, Switzerland; House of Images, Inc., Beverly Hills, CA; In-System Design, Boise, ID; IXLA, Ltd., Danbury, CT; Kaidan Incorporated, Feasterville, PA; NewHeights Software Corporation, Victoria, British Columbia, CANADA; NUWAVE Technologies, Inc., Fairfield, NJ; PhotoTablet, Inc., Sebastopol, CA; Pixami, Inc., San Ramon, CA; SmashCast, Inc. (formerly MSlide, Inc.), San Francisco, CA; Societe des Auteurs et Compositeurs Dramatiques, Paris, FRANCE; Xippix.com (formerly Island Graphics), Larkspur, CA; and Zing, Inc., San Francisco, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group, Inc. intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on November 3, 2000. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 11, 2001 (66 FR 2448).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18897 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Digital Imaging Group, Inc.**

Notice is hereby given that, on May 30, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Imaging Group, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, InfoTrends Research Group, Boston, MA has been added as a party to this venture. Also, Alinari Photo Archives, Firenze, ITALY; iPIX, Inc., Oakridge, TN; Iterated Systems, Inc., Atlanta, GA; Pixo Arts Corporation, Redwood City, CA; ST Microelectronics, San Diego, CA; pix.com, Inc., San Jose, CA; HMR Inc., Veauport, Quebec, CANADA; Pegasus Imaging Corporation, Tampa, FL; Photoaccess.com, Mountain View, CA; CNS Development, Colleyville, TX; Octalis, Louvain La Neuve, BELGIUM; PhotoWorks, Inc., Seattle, WA; Digital Copyright Technologies, Zurich, SWITZERLAND; and Ofoto, Inc., Berkeley, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group, Inc. intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on May 11, 2000. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18899 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ductile Iron Pipe Research Association

Notice is hereby given that, on June 25, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ductile Iron Pipe Research Association has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and

objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Ductile Iron Pipe Research Association, Birmingham, AL; American Cast Iron Pipe Company, Birmingham, AL; Atlantic States Cast Iron Pipe Company, Phillipsburg, NJ; Canada Pipe Company, Hamilton, Ontario, CANADA; Clow Water Systems Company, Coshocton, OH; Griffin Pipe Products Company, Downers Grove, IL; McWane Cast Iron Pipe Company, Birmingham, AL; Pacific States Cast Iron Pipe Company, Provo, UT; and United States Pipe and Foundry Company, Inc., Birmingham, AL. The nature and objectives of the venture are (1) to research, develop, and promote innovations in the manufacturing, testing, standards development, and quality control of ductile iron pipe, fittings, and associated products; (2) to identify best practices in the ductile iron pipe and fittings manufacturing industry; and (3) to promote the exchange of technology among members of the joint venture. Each of these purposes, in turn, supports the overall objective of the joint venture, which shall be to produce products of enhanced quality at lower costs, in order to promote the future competitiveness of domestic ductile iron products.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18898 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project

Notice is hereby given that, on June 29, 2001, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending

the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Access Softeck, Inc., Berkeley, CA; Bank of America, Richmond, VA; Business Logic Corporation, Chicago, IL; Federal Reserve Bank of Chicago, IL; and Fidelity Investments, Boston, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project intends to file additional written notification disclosing all changes in membership.

On June 28, 2001, Financial Services Technology Consortium, Inc.: Financial Agent Secure Transaction (FAST) Project filed its original notification pursuant to section 6(a) of the Act. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18896 Filed 7-27-01; 8:45 am]

BILLING CODE 4410-11-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on June 29, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Financial Services Technology Consortium, Inc. ("Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Comerica, Livonia, MI has joined the Consortium as a principal member. Access Softeck, Inc., Berkeley, CA; and ESI International, Woodland Hills, CA have joined the Consortium as associate members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc.

intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on March 30, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 2001 (66 FR 28201).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18905 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on May 29, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Advantest Corporation, Shinjuku-ku, Tokyo, JAPAN; Agilent Technologies, Loveland, CO; ASCOR, Fremont, CA; BAE Systems, Edinburgh, UNITED KINGDOM; BCO, Inc., Billerica, MA; Bode Enterprises, San Diego, CA; C&H Technologies, Round Rock, TX; Ericsson Radio Systems, Aktie Bolag, Gevle, SWEDEN; Keithley Instruments, Cleveland, OH; LeCroy, Chestnut Ridge, NY; Lucent Technologies, Columbus, OH; National Instruments, Austin, TX; Nokia Mobile Phones, Inc., San Diego, CA; Northrop Grumman ESSS, Baltimore, MD; Pacific MindWords, Inc., San Diego, CA; PX Instrument Technology, Bray, County Wicklow, IRELAND; Racal Instruments Inc., San Antonio, TX; Rohde & Schwarz, Muehlendorfstr, Munich, GERMANY;

Software AG, San Ramon, CA; Tektronix, Beaverton, OR; Teradyne, North Reading, MA; The Boeing Company, Seattle, WA; The MathWorks, Inc., Natick, MA; TYX, Reston, VA; and Vektrex Electronic Systems, San Diego, CA.

The nature and objectives of the venture are: (a) to promote the development and adoption of standard specifications for programming test instrument capabilities ("Specifications"); (b) to focus on the needs of the people that use and develop test systems who must take off-the-shelf instrument drivers and build and maintain high-performance test systems; (c) to build on existing industry standards to deliver specifications that simplify interchanging instruments and provide for better performing and more easily maintainable programs that use IVI drivers; (d) to support such specifications and solutions worldwide to ensure that a broad spectrum of goods and services is developed and available; (e) to investigate and, if approved by the Board of Directors, participate in a program to provide for testing and conformity assessment of products implementing Specifications; (f) to create and own distinctive trademarks; (g) to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with the Specifications; and (h) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18906 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on June 18, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications

were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Concentus Technology Corporation, Dublin, OH; Focused Research, Inc., Santa Clara, CA; and WebEnable, Inc., Harver, MA were added as active members. The National Security Agency, Ft. Meade, MD was added as an affiliate member. GMI Engineering & Management Institute, Flint, MI changed its name to Kettering University, Flint, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on August 9, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1999 (64 FR 69800).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18902 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PKI Forum, Inc.

Notice is hereby given that, on June 27, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PKI Forum, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aladdin Knowledge Systems Ltd., Tel Aviv, ISRAEL; Arthur Andersen, Houston, TX; Certicom Corp., Mississauga, Ontario, CANADA; EEMA, Inkberrow, Worcestershire, UNITED KINGDOM; Entegriety Solutions, Inc., San Jose, CA; Fannie Mae, Washington,

DC; Gemplus International S.A., Redwood City, CA; Enterasys Networks, Acton, MA; KPMG LLP, Boston, MA; Litronic Inc., Irvine, CA; Mitsubishi Electric Corporation, Kamakura, Kanagawa, JAPAN; NEC Corporation, Tokyo, JAPAN; NORTEL Networks Corporation, Kanata, Ontario, CANADA; PricewaterhouseCoopers LLP, McLean, VA; Protegrity, Inc., Stamford, CT; Securify, Inc., Waltham, MA; Spyryus, Inc., San Jose, CA; TC TrustCenter GmbH, Hamburg, GERMANY; Sonera SmartTrust AB, Stockholm, SWEDEN; nCipher, Inc., Woburn, MA; Korea Information Security Agency, Seoul, REPUBLIC OF KOREA; CardBase Technologies Limited Co., Dublin, IRELAND; 724 Solutions Inc., Toronto, Ontario, CANADA; U.S. Postal Service Headquarters, Washington, DC; MIMOS Berhad, Kuala Lumpur, MALAYSIA; Deutsche Post Sign Trust GmbH, Bonn, GERMANY; and Giesecke & Devrient, Munich, GERMANY have been added as parties to this venture. Also, De La Rue InterClear Limited, Basingtoke, UNITED KINGDOM; and LockStar, Inc., Lyndhurst, NJ have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PKI Forum, Inc. intends to file additional written notification disclosing all changes in membership.

On April 2, 2001, PKI Forum, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 3, 2001 (66 FR 22260).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18904 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (“SwRI”): Fuel Water Separation Characteristics Program

Notice is hereby given that, on June 11, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Southwest Research Institute (“SwRI”) : Fuel/Water Separation characteristics Program has filed written notifications

simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its project status. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the period of performance has been extended to December 31, 2001.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute intends to file additional written notification disclosing all changes in membership.

On March 10, 2000, Southwest Research Institute filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 2, 2000, (65 FR 65882).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18903 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 5, 2001, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ATMOS Corporation, Kanata, Ontario, CANADA; Ellipsis Digital Systems, Inc., Carlsbad, CA; Hefei University of Technology—The Institute of VLSI Design, Hefei, PEOPLE’S REPUBLIC OF CHINA; HDLab, Inc., Yokohama, JAPAN; IPTC Corporation, Yokohama, JAPAN; Jet Propulsion Laboratory, Pasadena, CA; Kyoto University—Dept. of Communications & Computer Engineering, Kyoto, JAPAN; Microelectronics Centre of Harbin Institute of Technology, Harbin,

PEOPLE’S REPUBLIC OF CHINA; Brahmaji Potu, Ph.D. (individual member), Cupertino, CA; Eung Shin (individual member), Atlanta, GA; Spiritech Ltd., Manchester, England, UNITED KINGDOM; Spirea AB, Kista, SWEDEN; Christos Sotiriou (individual member), Herachon-Crete, GREECE; Vulcan Machines Limited, Royston, Hertfordshire, England, UNITED KINGDOM; and Xylon, Zagreb, CROATIA have been added as parties to this venture. Also, Advanced Hardware Architecture, Pullman, WA; Agilent Technologies, Corvallis, OR; Angeles Design Systems, San Jose, CA; Aptix Corp., San Jose, CA; Ben Cheese Electronic Design, Royston, Hertfordshire, England, UNITED KINGDOM; DSP Group Inc., Herzlia, ISRAEL; Ikos Systems, Cupertino, CA; IMODL, San Jose, CA; Levatate Design Systems, Beaverton, OR; Lucent Technologies, Allentown, PA; Magima, Inc., Monterey Park, CA; National Semiconductor Corp., Santa Clara, CA; Power X Limited, Sale, Cheshire, England, UNITED KINGDOM; Q Systems, Inc., Festerville, PA; The Western Design Center, Mesa, AZ; Glenn Vinogradov (individual member), Newton, PA; and Xentec, Inc., Oakville, Ontario, CANADA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 10, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 23, 2001 (66 FR 28548).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 01-18900 Filed 7-27-01; 8:45 am]

**BILLING CODE 4410-11-M**

## DEPARTMENT OF LABOR

### Innovative Demonstration Grants for Youth With Disabilities

**AGENCY:** Office of Disability Employment Policy, Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications (SGA 01-07).

**SUMMARY:** The U.S. Department of Labor (DOL or Department), Office of Disability Employment Policy (ODEP) announces the availability of \$3.5 million to award competitive grants to fund model demonstration programs designed to enhance the capacity of youth programs to serve youth with disabilities. Up to nine competitive grants will be awarded in the range of \$350,000 to \$500,000. These awards are for a two-year period of performance. All youth service applicants, other than 501(c)(4) entities, will be eligible.

Each grant must involve members of two specific groups in strategic planning and implementation activities: youth with disabilities and relevant experts in the field of young people with disabilities (such as disability organizations, researchers, policy makers, employers, family members and/or family organizations, independent living centers, or service providers). Each grant must also include a management and evaluation component. All forms necessary to prepare an application are included in this Solicitation for Grant Application (SGA.)

**DATES:** One (1) ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Procurement Services Center, Attention Grant Officer, Reference SGA 01-07, Room N-5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m. EST, August 29, 2001. Hand-delivered applications must be received by the Procurement Services Center by that time.

**ADDRESSES:** Grant applications must be hand delivered or mailed to U.S. Department of Labor, Procurement Services Center, Attention: Grant Officer, Reference SGA 01-07, Room N-5416, 200 Constitution Avenue, NW, Washington, DC 20210. Applicants must verify delivery to this office directly through their delivery service and as soon as possible.

**FOR FURTHER INFORMATION, CONTACT:** Applications will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. Questions concerning this solicitation may be sent to Cassandra Willis, at the following Internet address: [willis-cassandra@dol.gov](mailto:willis-cassandra@dol.gov).

### Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. EST, August 29, 2001, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before August 29, 2001;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 29, 2001.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise place impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications

sent by telegram or facsimile (FAX) will not be accepted.

### SUPPLEMENTARY INFORMATION:

#### I. Authority

Consolidated Appropriations Act, 2001, Public Law 106-554, 114 STAT 2763A-10, 29 USC 557(b).

#### II. Background

The President's "New Freedom Initiative" is designed to increase the number of people with disabilities who enter, re-enter, and remain in the workforce. This initiative is dedicated to increasing investment in, and access to, assistive technologies; expanding educational opportunities; in order to increase the ability of individuals with disabilities to integrate into the workforce; and promoting increased access into the community.<sup>1</sup>

A key to increasing the employment of people with disabilities is to ensure that young people with disabilities are provided resources and assistance to move from school to work, as opposed to becoming dependent on welfare or other benefits programs. One way of accomplishing this is to increase the participation of youth with disabilities into mainstream workforce development activities under Workforce Investment Act of 1998 (WIA).

According to the U.S. Department of Education, the national high school graduation rates (e.g. diplomas, GED, alternative certificates) for students with disabilities are below that of youth without disabilities. According to the National Center on Education Statistics (2001) 88% of students without disabilities graduate; according to the Office of Special Education Programs (2000) 62% of youth with disabilities graduate.<sup>2</sup> Students with disabilities experience a school drop out rate of 31%, compared to 11% of non-disabled youth. Youth with emotional disabilities experience an even higher drop out rate of 54%. It is estimated that only one-third of young people with disabilities who need job training receive it. Young people with disabilities also have significantly lower rates of participation in post-secondary education. Finally,

<sup>1</sup> For more information about the New Freedom Initiative, go to the White House web page at [www.whitehouse.gov/news/freedominitiative](http://www.whitehouse.gov/news/freedominitiative).

<sup>2</sup> U.S. Department of Education, National Center on Education Statistics, The Condition of Education 2000 in Brief, Jeanne H. Nathanson NCES 2001-045, Washington, DC; U.S. Government Printing Office, 2001.

U.S. Department of Education, Office of Special Education and Rehabilitation Services, Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Act, Washington, DC, U.S. Government Printing Office, 2000.

the Social Security Administration has found that many young people with disabilities who enter the Supplementary Security Income (SSI)/ Social Security Disability Insurance (SSDI) rolls are likely to remain on the program rolls for their entire life.

The federal/state vocational rehabilitation system is neither large enough to, nor solely responsible for, serving all youth with disabilities who depart the school system. According to the U.S. Department of Education, each year approximately 500,000 young people with disabilities leave our nation's schools. Vocational rehabilitation programs are able to serve less than 40,000 of these young people with disabilities. A large portion of the remaining 460,000 youth with disabilities are potentially eligible for youth programs financially assisted under WIA. One of the most significant reforms under WIA section 129(c) (29 U.S.C. 2854(c)), is the consolidation of the year-round youth program and the summer youth program into a single formula-based funding stream. Under WIA, each local workforce investment area must have a year-round youth services strategy that incorporates summer youth employment opportunities as one of ten required program elements (WIA section 129(c)(2)(C.), 29 U.S.C. 2854(c)(2)). The ten program elements reflect successful youth development approaches and focus on the following four key themes:

1. Improving educational achievement (including such elements as tutoring, study skills training, and instruction leading to secondary school completion, drop-out prevention strategies, and alternative secondary school offerings);

2. Preparing for and succeeding in employment (including summer employment opportunities, paid and unpaid work experience, and occupational skills training);

3. Supporting youth (including supportive services needs, providing adult mentoring, follow-up services, and comprehensive guidance and counseling); and

4. Offering services intended to develop the potential of young people as citizens and leaders (including leadership development opportunities.)

WIA provides a variety of work preparation programs that can assist youth with disabilities with their career ambitions. The potential is great for these programs to prepare eligible youth participants with disabilities for employment. Moreover, WIA-assisted youth programs must take up their responsibilities as vital partners in the broad spectrum of programs which prepare individuals for the workforce.

These services need to be made available to young people with disabilities. Traditionally, however, they are not recruited to participate in these programs. WIA youth service providers may not be aware of the need to serve youth with disabilities in their communities and may lack the resources to develop strong partnerships and an equitable referral and assessment system.

In addition, Vocational Rehabilitation agencies, Special Education agencies, and other agencies serving youth with disabilities may not be informed about the potential for coordinating resources with WIA-based programs, or for creating mechanisms for such programs to cooperate and support young people with disabilities.

The U.S. Department of Labor has determined that youth programs need to be strengthened to better serve young people with disabilities. This need has been highlighted as a critical priority in the FY 2001 budget appropriation for the Department through the Consolidated Appropriations Act, 2001, Public Law 106-554, 114 STAT 2763A-10, 29 USCA 557(b). Recently, the Office on Disability Employment Policy (ODEP) was established within DOL (Pub. L. 106-554) to provide policy direction for serving all individuals with disabilities. Key among ODEP's responsibilities is to provide technical assistance and support designed to assist various youth programs, including WIA-assisted youth programs, and thereby increase the capacity of those programs to serve people with disabilities.

In order to accomplish this goal, a two-pronged approach will be used. This approach includes:

1. Awarding these grants which are designed to demonstrate and further develop the capacity of various youth programs to serve youth with disabilities; and,

2. Establishment of a technical assistance program to support capacity building for various youth programs.

In combination, these activities will substantially contribute to achieving the goals of the President's New Freedom Initiative.

This SGA is designed to initiate the first of these activities. Establishment of the supporting national technical assistance program is being implemented simultaneously, under a separate SGA. The technical assistance program is expected to be in operation in time to help with the implementation of these demonstration grants.

### III. Purpose

This SGA supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches that generate knowledge, and promote best practices to the various youth programs, in order to increase participation and improve results in those programs for young people with disabilities.

For the purposes of this SGA, a "youth with disabilities" is defined as a youth aged 14 to 21 years old to whom one or more of the following applies:

- a. Has a physical or mental impairment that substantially limits one or more of his or her major life activities;
- b. Has a record of such an impairment; or,
- c. Is regarded as having such an impairment.<sup>3</sup>

The purpose of these demonstration projects is to help various youth programs develop their staff's capacity to serve youth with disabilities. This capacity building will allow these programs to develop and further demonstrate strategies and techniques to increase the participation of youth with disabilities; these strategies and techniques can, in turn, serve as models for similar various youth programs. These projects will target youth both in- and out-of-school. As a result of these demonstrations, and associated technical assistance efforts, ODEP anticipates that all various youth programs will learn from and follow these examples, resulting in a system wide increase in the successful participation of youth with disabilities in all various youth programs.

Included in the objectives of these model demonstration projects is a goal of building upon and enhancing the integrated youth development approach envisioned under WIA, by incorporating knowledge of best practices developed through 15 years of research from the fields of rehabilitation, special education, maternal and child health, school-to-work, and youth development as discussed in Section IV of this SGA.

Projects are required to collaborate with the technical assistance program (described above in the Background section).

<sup>3</sup> This definition is consistent with the definition of "disability" that applies under four Federal laws barring discrimination on the basis of disability, including section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 705(9) and 705(20)); title I and II of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. 12102(2)); and section 101(17) of the Workforce Investment Act of 1998 (29 U.S.C. 2801(17)), as well as the regulations implementing these laws.

#### IV. Statement of Work

Grantees must implement demonstration projects designed to develop their youth program's capacity to increase its services to youth with disabilities. This capacity building will allow these programs to develop and further demonstrate strategies and techniques to increase both the participation of and results for youth with disabilities.

These grant funds are designed to enable various youth programs to support those needed efforts to achieve a greater level and quality of service to youth with disabilities in their existing programs. These grant funds are not intended as direct service payments for youth with disabilities. Rather, these funds are intended to be used in ways which create systems change or overall program improvements to enable various youth programs to be better able to successfully serve youth with disabilities.

Under this grant, grantees must serve at least 40 youth with disabilities each year or, if the program has fewer than 200 participants, at least 20% of them must be participants with disabilities.

Grantees must develop, implement, evaluate, and disseminate new or improved approaches to the youth programs that generate knowledge, and promote best practices, in order to increase participation and improve results in those programs for young people with disabilities. In addition, grantees must participate in technical assistance efforts designed to disseminate to other programs their successful strategies and techniques for serving greater numbers of youth with disabilities.

All grantees must operate demonstration projects that integrate the four key themes discussed above with one or more of the following best practice features:

1. Demonstrations focused on promoting effective structures, policies, and practices to improve results for youth with disabilities in WIA programs, in areas such as admission, enrollment, assessment, staff development, interagency coordination, etc.;

2. Demonstrations of effective service interventions and approaches that help young people with disabilities to overcome barriers to positive education and employment outcomes;

3. Demonstrations that focus on the link between academic and occupational skill standards; and on the integration of academic and applied learning in real work settings;

4. Demonstrations that focus on supporting and accommodating young

people with disabilities in integrated, inclusive work, and work-preparation environments at all times, especially if their educational program has been delivered even partially in a segregated setting;

5. Demonstrations that focus on youth-centered planning and development (e.g., assessment, choice, rights and responsibilities, life skills, drop out prevention strategies, paid and unpaid work experiences, leadership development, adult mentoring);

6. Demonstrations that focus on promoting physical and mental health, and the link between health and positive educational and employment outcomes;

7. Demonstrations that focus on increasing the type of involvement by business, labor, family, and community, that creates effective connections to intermediaries with strong links to the job market and to local and regional employers;

8. Demonstrations which develop and leverage linkages with other state and local initiatives that provide services and supports for young people with significant disabilities (such initiatives may include, but are not limited to, systems change efforts promoting enduring systems improvement and comprehensive coordination; health care; housing; transportation; education; supported employment; small business development; technology related assistance; private foundations; faith-based initiatives); and

9. Demonstrations that research alternative methods of measuring WIA performance outcomes that consider the various characteristics of people with disabilities.

Some examples of suggested resources for information about various youth program components and these best practice features can be located on the following web sites:

1. Employment and Training Administration (ETA) Office of Youth Services web site: [www.doleta.gov/youth\\_services](http://www.doleta.gov/youth_services)

2. National Transition Alliance for Youth with Disabilities: [www.dssc.org/nta](http://www.dssc.org/nta)

3. The Department of Health and Human Services, Maternal and Child Health, "Healthy and Ready to Work" website: [www.mchbhrtw.org](http://www.mchbhrtw.org)

4. National Youth Employment Coalition, Program and Effective Practices Network (PEPNET) website: [www.nyec.org](http://www.nyec.org)

5. National Center on Secondary Education and Transition website: [www.ici.edu](http://www.ici.edu)

In addition, a model demonstration project must:

1. Provide a detailed management plan for project goals, objectives, and activities;

2. Use rigorous quantitative or qualitative evaluation methods and data;

3. Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies for continuous program improvements;

4. Produce detailed procedures and materials that would enable others to replicate the model;

5. Communicate with appropriate audiences through means such as technical assistance providers and disseminators, publications, conference presentations, and/or a web site. (If the project maintains a web site, it must include relevant information and documents in an accessible form); and

6. Collaborate with appropriate Federal and state agencies and programs, such as Maternal and Child Health/Children with Special Health Care Needs Program, Social Security Administration, Health Care Financing Administration, Department of Education, Vocational Rehabilitation, Developmental Disabilities.

The Department will arrange for an independent evaluation of outcomes, impacts, and benefits of the demonstration projects. Grantees must make records available to evaluation personnel, as specified by the evaluator(s) under the direction of the Department.

#### V. Funding Availability

The period of performance will be 24 months from the date of execution by the Government. Up to nine (9) competitive grants will be awarded in the range of \$350,000 to \$500,000. It is expected that the funds used for this SGA will support the costs associated with the development, implementation, and evaluation of a model demonstration project for a youth program to significantly increase the numbers of young people with disabilities participating and benefitting from program activities. Projects can use the available funds to conduct a variety of activities to support these models, such as outreach, recruitment, staff training, strategic planning, assessment, curriculum/materials development, career development, student-focused planning, program alignment, partnership building, reasonable accommodations, etc., youth programs are required to use existing funding to provide direct services to young people with disabilities.

## VI. Eligible Applicants

All youth service applicants, other than Section 501 (c)(4) entities, are eligible. Each grantee must involve members of two specific groups in strategic planning and implementation activities: Youth with disabilities, and relevant experts in the field of young people with disabilities (such as disability organizations, researchers, policy makers, employers, family members and/or family organizations, independent living centers, or service providers.)

Please note that Eligible Grant Applicants must not be Classified Under the Internal Revenue Code as a 501(c)(4) entity.

See 26 U.S.C. 506(c)(4). According to Section 18 of the Lobbying Disclosure Act of 1995, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

## VII. Application Contents

**General Requirements**—Three copies and an original of the proposal must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. There are three required sections of the application. Requirements for each section are provided in this application package.

### Part I—Executive Summary

The Executive Summary should be no more than 2 single-spaced pages in length giving a clear summary of the project narrative.

### Part II—Project Narrative— (Appendices—Letters of Commitment/ Support, Resumes, etc.)

Applicants must include a narrative that addresses the Statement of Work in Part IV of the notice and the selection criteria that are used by reviewers in evaluating the application. You must limit Part II to the equivalent of no more than fifty (50) pages using the following standard. This page limit does not apply to Part I the Executive Summary; Part III the Project Financial Plan (Budget); and, the Appendices (the assurances and certifications, resumes, a bibliography or references, and the letters of support.) A page is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides). All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs double-spaced (no more than three lines per vertical inch); and,

if using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, do not use more than 12 characters per inch.)

Applicants must include in Part II of the proposal a narrative that addresses all of the Evaluation Criteria (section VIII below) that will be used by reviewers in evaluating individual proposals.

Grantees must collaborate with other research institutes, centers, and studies and evaluations, that are supported by DOL and other relevant Federal agencies.

### Part III—Project Financial Plan (Budget)

Applications must include a detailed financial plan which identifies by line item the budget plan designed to achieve the goals of this grant. The Financial Plan must contain the SF 424, Application for Federal Assistance, (Appendix A) and a Budget Information Sheet SF 424A (Appendix B).

In addition, the budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a grant should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix C).

## VIII. Evaluation Criteria/Selection

### A. Evaluation Criteria

The application must include appropriate information of the type described below.

#### 1. Significance of the Proposed Project (15 points)

In determining the significance of the proposed project, the Department considers the following factors:

a. The potential contribution of the proposed project to increase knowledge or understanding of problems, issues, or effective strategies for youth programs in serving young people with disabilities;

b. The extent to which the proposed project is likely to yield findings that may be used by other appropriate agencies and organizations;

c. The extent to which the proposed project involves the development or demonstration of promising new

strategies that build on, or are alternatives to, existing strategies;

d. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for the products' being used effectively in a variety of other settings;

e. The extent to which the promising practices of the proposed project are to be disseminated in ways that will enable others to use the information or strategies;

f. The potential replicability (national significance) of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and

g. The importance or magnitude of the results which are likely to be attained by the proposed project.

#### 2. Quality of the Project Design (25 Points)

In evaluating the quality of the proposed project design, the Department considers the following factors:

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

b. The extent to which the design of the proposed project is appropriate to, and will successfully address the needs of the target population and other identified needs;

c. The extent to which the design of the proposed project can measure methods for recruiting and serving youth with disabilities each year;

d. The extent to which the proposal demonstration incorporates the four key themes identified in Part IV, Statement of Work;

e. The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of this grant;

f. The extent to which the design of the proposed project reflects a review of disability related literature, up-to-date knowledge from research and effective practice of youth-centered planning and youth development principles and approaches, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

g. The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources;

h. The extent to which the applicant encourages involvement of young people with disabilities, relevant experts, and organizations in project activities; and,

g. The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

### 3. Quality of Project Personnel (15 Points)

The Project Narrative must describe the proposed staffing of the project and must identify and summarize the qualifications of the personnel who will carry it out. In evaluating the quality of project personnel, the Department considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, and disability.

The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities. In addition, the Department considers the qualifications, including relevant education, training and experience of key project personnel as well as the qualifications, including relevant training and experience of project consultants or subcontractors. Resumes must be included in the Appendices.

### 4. Adequacy of Resources (15 Points)

In evaluating the adequacy of resources for the proposed project, the Department considers the following factors:

- a. The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;
- b. The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and,
- c. The extent to which the budget is adequate to support the proposed project;

d. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project; and

e. The extent to which the applicant proposes to leverage other resources and funds, or to use these funds to leverage other funds.

The applicant may include letters of commitment from proposed partners in the Appendix.

### 5. Quality of the Management Plan (15 Points)

In evaluating the quality of the management plan for the proposed project, the Department considers the following factors:

a. The extent to which a high-quality management plan for project implementation is provided to achieve the objectives of the proposed project on time and within budget, including clearly defined staff responsibilities, and time allocated to project activities, time lines, milestones for accomplishing project tasks and project deliverables;

b. The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

c. The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

### 6. Quality of the Project Evaluation (15 Points)

In evaluating the quality of the project's evaluation design, the Department considers the following factors:

a. The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, context and outcomes of the proposed project the extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

b. The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data;

c. The extent to which the evaluation will provide information to other youth programs about effective strategies suitable for replication or testing in other settings; and

d. The extent to which the methods of evaluation measure in both quantitative and qualitative terms, program results and satisfaction of youth with disabilities.

#### B. Selection Criteria

Acceptance of a proposal and an award of federal funds to sponsor any program(s) is not a waiver of any grant requirement and/or procedures. Grantees must comply with all applicable Federal statutes, regulations, administrative requirements and OMB Circulars. For example, the OMB circulars require, and an entity's procurement procedures must require that all procurement transaction shall be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the award does not provide the justification or basis to sole-source the procurement, i.e., avoid competition.

A panel will objectively rate each complete application against the criteria described in this SGA. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussion occurs, an award will be based on the signed SF 424 form (see Appendix A), which constitutes a binding offer. The Grant Officer may consider the availability of funds and any information that is available and will make final award decisions based on what is most advantageous to the government, considering factors such as:

1. Findings of the grant technical evaluation panel;
2. Geographic distribution of the competitive applications;
3. Assuring a variety of different program designs; and,
4. The availability of funds.

### IX. Reporting

Grantees must submit on a quarterly basis by March 30, June 30, September 30, and December 31 financial and participation reports under this program as prescribe by OMB Circulars A-102 and A-110. It is estimated that the quarterly program report will take five (5) hours to complete.

1. Financial Reports
2. Quarterly and Final Program Results and Reports on the Satisfaction of Youth with Disabilities
3. Other Reporting (to Technical Assistance Service Providers, etc.), as prescribed by DOL

### X. Administration Provisions

#### A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The grant awarded under this SGA shall be subject to the following as applicable:

- 29 CFR Part 95—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, etc.
- 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts, and Agreements
- 29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments

#### B. Allowable Cost

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and Local Government—OMB

Circular A-87

Nonprofit Organizations—OMB Circular

A-122

Profit-making Commercial Firms—48

CFR Part 31

*C. Grant Assurances*

The applicant must include the attached assurances and certifications.

Profit will not be considered an allowable cost in any case.

**BILLING CODE 4510-23-P**

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:  | Item: | Entry:   |
|-------|---|-------|--|
| 1.    | Self-explanatory.   | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).   | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).   | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.   | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <i>only</i> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.  | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.   | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.   | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br><br>-- "New" means a new assistance award.<br><br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br><br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.  |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.   |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.   |       |  |

Appendix A. Application for Federal Assistance, Form SF 424

OMB Approval No. 0348-0043

**APPLICATION FOR  
FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction  Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>	State Application Identifier
		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>	Federal Identifier
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, State, and zip code):		Name and telephone number of person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> <ul style="list-style-type: none"> <li>A. State</li> <li>B. County</li> <li>C. Municipal</li> <li>D. Township</li> <li>E. Interstate</li> <li>F. Intermunicipal</li> <li>G. Special District</li> <li>H. Independent School Dist.</li> <li>I. State Controlled Institution of Higher Learning</li> <li>J. Private University</li> <li>K. Indian Tribe</li> <li>L. Individual</li> <li>M. Profit Organization</li> <li>N. Other (Specify) _____</li> </ul>	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es)    [ ] [ ] A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other(specify): _____		<b>9. NAME OF FEDERAL AGENCY:</b>	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b> [ ] [ ] - [ ] [ ] [ ] [ ] TITLE: _____		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>	
<b>12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):</b>			
<b>13. PROPOSED PROJECT</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>	
Start Date	Ending Date	a. Applicant	b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$ _____ <sup>00</sup>	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____  b. No. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E. O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
b. Applicant	\$ _____ <sup>00</sup>		
c. State	\$ _____ <sup>00</sup>		
d. Local	\$ _____ <sup>00</sup>		
e. Other	\$ _____ <sup>00</sup>		
f. Program Income	\$ _____ <sup>00</sup>		
g. TOTAL	\$ _____ <sup>00</sup>		
		<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes If "Yes," attach an explanation. <input type="checkbox"/> No	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.</b>			
a. Type Name of Authorized Representative		b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed	

## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

For *new* applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** - Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Line 6a-i** - Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

**INSTRUCTIONS FOR THE SF-424A (continued)**

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

Appendix B. Budget Information Sheet, Form SF 424A

OMB Approval No. 0348-0044

**BUDGET INFORMATION - Non-Construction Programs**

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. Totals		\$	\$	\$	\$	\$

**SECTION B - BUDGET CATEGORIES**

Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (e)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	\$
9.					
10.					
11.					
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$	\$
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	\$
17.					
18.					
19.					
20. TOTAL (sum of lines 16-19)	\$	\$	\$	\$	\$
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:					
22. Indirect Charges:					
23. Remarks:					

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## Appendix C. Assurances and Certifications Signature Page

**ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE**

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

- A. Assurances - Non-Construction Programs
- B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.
- C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

---

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TITLE

---

APPLICANT ORGANIZATION

DATE SUBMITTED

**Please Note: This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Signed at Washington, D.C. this 25th day  
of July, 2001

**Lawrence J. Kuss,**  
*Grant Officer.*

[FR Doc. 01-18940 Filed 7-27-01; 8:45 am]

BILLING CODE 4510-23-C

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration**

[Application No. D-10848, et al.]

**Proposed Exemptions; Bank of America Corporation (BAC) et al.****AGENCY:** Pension and Welfare Benefits Administration, Labor.**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. \_\_\_\_, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of

proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Bank of America Corporation (BAC) Located in Dallas, Texas**

[Application No. D-10848]

**Proposed Exemption***Section I—Exemption for In-Kind Redemption of Assets*

The restrictions of section 406(a) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply, effective August 1, 2001,<sup>1</sup> to certain in-kind redemptions (the Redemptions) by the NationsBank Cash Balance Plan (the In-house Plan) of shares (the Shares) of proprietary mutual funds (the Portfolios) offered by investment companies for which Bank of America, N.A. (Bank of America) or an affiliate thereof provides investment advisory and other services (the Nations Funds), provided that the following conditions are met:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than Bank of America and affiliates of Bank of America (Bank of America Affiliates));

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferrable Securities. Notwithstanding the foregoing,

Transferrable Securities which are odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the Investment Company Act of 1940, as amended from time to time (the 1940 Act) (using sources independent of Bank of America and Bank of America Affiliates);

(D) Bank of America, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with any redemption of the Shares;

(E) Prior to a Redemption, Bank of America provides in writing to an independent fiduciary, as such term is defined in Section II (an Independent Fiduciary), a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary provides written authorization for such Redemption to Bank of America, such authorization being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by Bank of America of written or electronic notice regarding such termination (unless circumstances beyond the control of Bank of America delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Portfolios to the Independent Fiduciary, the Independent Fiduciary determines that the terms of the Redemption are fair to the participants of the In-house Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the In-house Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the relevant Fund will provide to an independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including each security valued in accordance with Rule 17a-7(b)(4),

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, the Independent Fiduciary performs a post-transaction review which will include, among other things, a random sampling of the pricing information supplied by Bank of America; and

(K) Each of the In-house Plan's dealings with: the Nations Funds, the investment advisors to the Nations Funds (the Investment Advisers), the principal underwriter for the Nations Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Nations Funds and other shareholders holding shares of the same class as the Shares;

(L) The Bank maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (M) below to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Bank of America, the records are lost or destroyed prior to the end of the six-year period, (ii) no party in interest with respect to the In-house Plan other than Bank of America shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (M) below.

(M)(1) Except as provided in subparagraph (2) of this paragraph (M), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (L)

above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission, (ii) any fiduciary of the In-house Plan or any duly authorized representative of such fiduciary, and (iii) any participant or beneficiary of the In-house Plan or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (M)(1)(ii) and (iii) shall be authorized to examine trade secrets of Bank of America or the Nations Funds, or commercial or financial information which is privileged or confidential.

#### *Section II—Definitions*

For purposes of this proposed exemption,

(A) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Portfolio's prospectus and statement of additional information, and other assets belonging to the Portfolio, less the liabilities charged to each such Portfolio, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) Independent of and unrelated to Bank of America and its affiliates, and (ii) appointed to act on behalf of the In-house Plan with respect to the in-kind transfer of assets from one or more Portfolios to or for the benefit of the In-house Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Bank of America if: (i) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Bank of America, (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any

transaction described in this exemption; except that an independent fiduciary may receive compensation from Bank of America in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (iii) more than 1 percent (1%) of such fiduciary's gross income, for federal income tax purposes, in its prior tax year, will be paid by Bank of America and its affiliates in the fiduciary's current tax year.

(E) The term "Transferable Securities" shall mean securities (1) for which market quotations are readily available as determined under Rule 17(a)-7 of the 1940 Act; and (2) which are not: (i) Securities which may not be publicly offered or sold without registration under the 1933 Act; (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Nations Funds, or (b) permit transfers of ownership or securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements; and (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable).

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of ERISA (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

#### **Summary of Facts and Representations**

1. BAC is a bank holding company headquartered in Charlotte, North Carolina and organized as a Delaware corporation. Bank of America, a federally chartered bank and trust company also headquartered in Charlotte, North Carolina, is an indirect, wholly-owned subsidiary of BAC. As of August 31, 1999, Bank of America had approximately \$231,300,000 in total fiduciary assets under management.

2. Bank of America is the trustee of the In-house Plan. The In-house Plan is a cash balance plan maintained by BAC for certain current and former employees of BAC and Bank of America Affiliates. As of April 14, 2000, the In-house Plan had approximately 204,000 participants and \$8.2 billion in assets.

3. According to the applicant, in 1992, BAC's Corporate Benefits Committee (the Committee) determined that the In-house Plan would benefit from the investment of its assets in the Portfolios. The Portfolios are mutual fund portfolios organized within the Nations Funds. The Nations Funds are open-end investment companies registered under the 1940 Act with respect to which a BAC subsidiary acts as an investment adviser and an investment sub-adviser.

At the time, the Committee considered the Portfolios to be an appropriate vehicle for diversifying the In-House Plan's assets. In addition, the Committee determined that investment in the Portfolios by the In-house Plan would allow the In-house Plan to continue to use certain in-house investment management services which otherwise might not have been available. As a result, the Committee decided to invest In-house Plan assets in the Portfolios in accordance with Prohibited Transaction Exemption 77-3 (PTE 77-3, 42 FR 18734 (1977)).<sup>2</sup>

4. The applicant states that the Committee recently decided to reconsider the investment strategy implemented on behalf of the In-house Plan. Such reconsideration was the result, in large part, of a substantial increase in the total amount of assets held by the In-house Plan. In this regard, the applicant states that several defined benefit plans have recently merged into the In-house Plan. For example, on December 31, 1998, the Bank America Pension Plan merged with the In-house Plan, nearly doubling the amount of assets held by the In-house Plan.

Ultimately, the Committee and Bank of America determined that given the

<sup>2</sup> The applicant has not requested exemptive relief with respect to any investment in the Nations Funds by the In-house Plan. The applicant notes that the In-house Plan may acquire or redeem shares in the Nations Funds pursuant to PTE 77-3. In this regard, PTE 77-3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met. The Department is expressing no opinion in this proposed exemption regarding whether any transactions with the Nations Funds by the In-house Plan is covered by PTE 77-3.

current size of the In-house Plan's assets, Bank of America may now separately manage the assets underlying the Shares on a cost-effective basis.<sup>3</sup> Such management would avoid, the applicant notes, the mutual fund fees and regulatory costs paid by the In-house Plan in association with its investment in SEC-registered mutual fund portfolios. Thus, following a Redemption, Bank of America intends to provide direct in-house investment management services with respect to the In-house Plan's assets.

5. The applicant represents that the Redemptions, as proposed, are the appropriate means of effectuating this shift in investment strategy. In this regard, the applicant represents that effecting redemptions of the Shares for cash, as provided for in PTE 77-3, followed by the reinvestment of such cash for securities similar to the securities underlying the redeemed Shares, would cause the In-house Plan to incur certain costs, including potentially large brokerage expenses. As a result, BAC represents that the proposed Redemptions, being on an in-kind basis having no associated brokerage commission or other fees or expenses (other than customary transfer charges paid to parties other than Bank of America Affiliates), are a cost-effective means of implementing the investment strategy sought by Bank of America.

6. If this proposed exemption is granted, BAC anticipates the immediate Redemption of certain Portfolio Shares offered by two of the Nations Funds. Such Portfolios are both advised and subadvised by a BAC subsidiary. In this regard, Bank of America Advisors, Inc. (BAAI), a wholly-owned subsidiary of BAC, serves as investment adviser to each of the affected Portfolios, and TradeStreet Investment Associates, Inc. (TradeStreet), another wholly-owned subsidiary of BAC, serves as investment sub-adviser to each of the affected Portfolios. BAAI and TradeStreet (collectively, the Investment Advisers) are each registered under the Investment Advisers Act of 1940 (the Advisers Act). The applicant describes these immediately affected Nations Funds and Portfolios as follows:

(A) The Nations Fund Trust (NFT), a Massachusetts business trust, is an open-end management investment company registered under the 1940 Act.

<sup>3</sup> BAC represents that in the event that this exemption is not granted, or in the event that the Independent Fiduciary does not give a favorable opinion with respect to the Redemptions, BAC intends to proceed with a redemption of the Shares for cash, and, thereafter, BAC intends to subsequently reinvest the proceeds.

NFT is currently comprised of 37 portfolios including the following seven Portfolios:

- (i) Nations Capital Growth Fund
- (ii) Nations Value Fund
- (iii) Nations Disciplined Equity Fund
- (iv) Nations Managed Index Fund
- (v) Nations Equity Index Fund
- (vi) Nations Emerging Growth Fund
- (vii) Nations Managed SmallCap Value Index Fund

(B) The Nations Fund, Inc. (NFI), a Maryland corporation, is an open-end management investment company registered under the 1940 Act. NFI is currently comprised of seven portfolios including the following Portfolio:

- (i) Nations Small Company Growth Fund

As previously noted, BAAI serves as investment adviser and TradeStreet serves as investment subadviser to each of the Portfolios listed above. The applicant represents that, in addition, Bank of America and Bank of America Affiliates provide other services to the Nations Funds and the Portfolios, including co-administration and sub-transfer agency services.

7. The applicant also represents that, as of August 31, 1999:

- (i) A total of approximately \$144,071,000 in In-house Plan assets was invested in the Nations Capital Growth Fund (representing a 17% ownership in such Portfolio);
- (ii) A total of approximately \$364,266,000 in In-house Plan assets was invested in the Nations Value Fund (representing a 17% ownership interest in such Portfolio);
- (iii) A total of approximately \$215,182,000 in In-house Plan assets was invested in the Nations Disciplined Equity Fund (representing a 40% ownership interest in such Portfolio);
- (iv) A total of approximately \$320,642,000 in In-house Plan assets was invested in the Nations Managed Index Fund (representing a 45% ownership interest in such Portfolio);
- (v) A total of approximately \$424,183,000 in In-house Plan assets was invested in the Nations Equity Index Fund (representing a 41% ownership interest in such Portfolio);
- (vi) A total of approximately \$112,622,000 in In-house Plan assets was invested in the Nations Emerging Growth Fund (representing a 50% ownership interest in such Portfolio);
- (vii) A total of approximately \$40,322,000 in In-house Plan assets was invested in the Nations Managed SmallCap Value Index Fund (representing a 20% ownership interest) in such Portfolio; and
- (viii) A total of approximately \$216,341,000 in In-house Plan assets

was invested in the Nations Small Company Growth Fund representing a 43% ownership interest in such Portfolio).<sup>4</sup>

8. BAC represents that it is possible that the In-house Plan fiduciaries may at a later date determine that it is in the best interest of the In-house Plan and its participants and beneficiaries to redeem the In-house Plan's interest in Portfolios, other than those described in Paragraphs 6 and 7 above, for which a BAC subsidiary provides investment advisory services. Consequently, in the event that this proposed exemption is granted, and to the extent that all of the terms and conditions of the exemption, as granted, are met, the relief requested herein shall apply to any such future redemption.

9. The applicant states that the proposed Redemptions involve ministerial transactions to be performed in accordance with pre-established objective procedures. As a result, the applicant represents that the proposed transactions do not permit the trustee or any affiliate of the trustee to use its influence or control to purchase particular securities from the Portfolios.<sup>5</sup> In addition, the applicant states that all Portfolio Shares are offered and sold exclusively through the use of prospectuses and materials provided pursuant to the requirements of the Securities Act of 1933 and the 1940 Act and the rules and regulations thereunder.

10. The applicant states that, to the extent possible, the In-house Plan will transfer Shares in return for a proportionate share of the securities held by each Portfolio. According to the applicant, the In-house Plan will receive only cash and Transferrable Securities

<sup>4</sup> As previously noted, the Department is expressing no opinion regarding the applicability of PTE 77-3 to the acquisition of the Shares by the In-house Plan. In addition, the Department is expressing no opinion as to the applicability of section 404 of ERISA to the acquisition of the Shares by the In-house Plan. In this regard, the Department directs the applicant's attention to an advisory opinion issued to Federated Investors [Advisory Opinion 98-06A (July 30, 1998)], in which the Department noted that if the decision by a plan fiduciary to enter into a transaction is not "solely in the interest" of the plan's participants and beneficiaries, e.g., if the decision is motivated by the intent to generate seed money that facilitates the marketing of the mutual fund, then the plan fiduciary would be liable for any loss resulting from such breach of fiduciary responsibility, even if the acquisition of mutual fund shares was exempt by reason of PTE 77-3.

<sup>5</sup> BAC represents that Bank of America's predecessor, NationsBank, N.A., determined to discontinue offering discretionary trustee and investment management services to third party employee benefit plans in September of 1997. As a result, all but a de minimus amount of third party employee plan assets have been redeemed from the Nations Funds.

pursuant to any Redemption. In this regard, each Transferrable Security subject to a Redemption will be transferred in-kind to the In-house Plan. However odd lot securities, fractional shares and accruals on such securities may be transferred in cash. In addition, securities which are not Transferrable Securities will be transferred in cash. The applicant states that the proposed Redemptions will be therefore be carried out, to the extent possible, on a pro rata basis as to the number and kind of securities transferred to the In-house Plan.<sup>6</sup>

11. The applicant represents that, for purposes of the Redemptions, the values of the Portfolio securities will be determined based on the current market price of such securities as of the close of business on the date of the Redemption request (the Valuation Date). The value of the securities in each Portfolio will be determined by using the valuation procedures described in Rule 17a-7 under the 1940 Act. In this regard, the "current market price" for specific types of securities held by the Nations Funds will be determined as follows:

a. If the security is a "reported security" as the term is defined in Rule 11Aa3-1 under the Securities Exchange Act of 1934 (the 1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Valuation Date; or, if there are no reported transactions in the Consolidated System that day, such price will equal the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1-1 under the 1934 Act), as of the close of business on the Valuation Date.

b. If the security is not a reported security, and the principal market for such security is an exchange, the "current market price" will equal the price of the last sale on such exchange on the Valuation Date or, if there were no reported transactions on such exchange that day, such price will equal the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the Valuation Date.

c. If the security was not a reported security and was quoted in the NASDAQ system, the "current market price" will equal the average of the highest current independent bid and

lowest current independent offer reported on NASDAQ as of the close of business on the Valuation Date.

d. For all other securities, the "current market price" will equal the average of the highest current independent bid and lowest current independent offer, as of the close of business on the Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, BAC intends to obtain quotations from at least three sources that are broker-dealers or pricing services independent of and unrelated to BAC. When more than one valid quotation is available, BAC intends to use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practices under Rule 17a-7.

12. The applicant represents that, not later than 30 business days after completion of a Redemption, the Nations Funds will confirm in writing to the Independent Fiduciary the following: (i) The number of Portfolio shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the aggregate dollar value of the shares held); (ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan upon the Redemption, including each security that was valued in accordance with Rule 17a-7(b)(4), as described above; (iii) the price of each such security for purposes of the Redemption; and (iv) the identity of each pricing service or market-maker consulted in determining the value of such securities. In accordance with the conditions of this proposed exemption, similar procedures will be implemented with respect to any future Redemptions of Shares of the Portfolios by an employee benefit plan maintained by BAC for the benefit of certain of its employees or the employees of its affiliates.

13. BAC represents that Independent Fiduciary Services, Inc. (IFS), a registered investment adviser under the 1940 Act, has confirmed its independence from BAC and is qualified to serve as an independent fiduciary as that term is defined in Section II. IFS, in turn, represents that it understands and will accept the duties, responsibilities and liabilities in acting as a fiduciary under the Act for the In-house Plan.

IFS represents that, initially, it was responsible for: (i) analyzing, from an investment perspective, the fairness and reasonableness of the methodology used with respect to each Redemption, and (ii) giving its opinion as to the fairness and reasonableness of such

<sup>6</sup> According to the applicant, the securities actually transferred from any particular Portfolio may have different purchase dates and tax bases attached to them as compared with otherwise identical securities remaining in the Portfolio.

methodology, as compared with a redemption for cash and subsequent reinvestment of such cash, based on such analysis. This analysis and opinion was set forth in a written report (the Report) dated March 1, 2000.<sup>7</sup> Specifically, in the Report, IFS stated that:

(a) the Redemptions would likely avoid certain transactions costs otherwise incurred in a cash redemption;<sup>8</sup>

(b) The Shares and cash associated with the proposed Redemptions will be calculated based on the Portfolios' respective statements of assets and liabilities, valued in accordance with Rule 17a-7. In this regard, IFS has reviewed a sample spreadsheet developed by BAC to calculate the exact number of Shares and the residual cash to be transferred, and believes the information provided to be conceptually and mathematically correct;

(c) All securities held by the Portfolios, other than the non-Transferrable Securities, are qualifying securities. The securities held by the Portfolios will be identified from a listing supplied by the Nations Funds' custodian, the Bank of New York. The Bank of New York has stated that the Portfolios that will be subject to the Redemptions currently holds no bonds or other securities (that are not non-Transferrable Securities) whose value is normally quoted as a percent of par, or in any way other than price per share.

(d) The proposed transactions would be in compliance with the In-house Plan's investment guidelines.

<sup>7</sup> The Redemptions, as originally proposed and with respect to which IFS expressed an opinion, included the redemption of In-house Plan shares of the International Growth Fund (offered by NFI) and the International Value Fund (offered by Nations Reserves, an open end investment management company advised by BAAI). Bank of America subsequently determined not to include the redemption of such shares as part of the proposed Redemptions.

<sup>8</sup> The Report states that if the In-house Plan were to receive cash rather than securities pursuant to the transaction, substantially all of that cash would be reinvested in securities which would result in brokerage commissions and a buy-sell spread, the costs of which would be incurred by the Plan. The Report states further that depending on the form and timing of the Redemptions, part of the Portfolios' selling costs might be absorbed by the In-house Plan as a shareholder in the Portfolios. Therefore, according to IFS, to the extent that the In-house Plan effects the Redemption for retained securities, those costs will be avoided. IFS notes, however, that the In-house Plan may sell up to \$400 million of the redeemed securities within a few months of the Redemptions. In this regard, the Department notes that the fiduciaries must determine, consistent with their fiduciary duties under section 404 of ERISA, whether it is prudent to accept an in-kind redemption of Shares of the Portfolios where the In-house Plan may incur transaction costs in connection with the disposition of such redeemed securities shortly after receipt.

The Independent Fiduciary represents that, if this proposed exemption is granted and the Redemptions are thereafter undertaken, it will be responsible for updating its findings and opinions to confirm whether such findings and opinions are applicable as of the anticipated date(s) of the Redemptions. In this regard, IFS states that it will review each Redemption and confirm in writing whether such Redemption was effectuated consistent with the required criteria and procedures set forth in the Report. In carrying out this duty, IFS represents that, if the proposed exemption is granted, it will conduct a post-exemption review, which will include: (i) Reviewing the In-house Plan's current investment policy guidelines, (ii) reviewing the In-house Plan's investment portfolio and the Portfolios' assets as of the most recent common date for which such data is available, (iii) estimating whether the Excluded Assets are consistent with the types of securities so defined, and whether the amount of these securities might be material, and (iv) ascertaining whether the policies, procedures and controls established for effectuating the transfers remain unchanged. Moreover, IFS represented that it will conduct a post-transfer review to provide an additional safeguard to the In-house Plan. In this regard, IFS will evaluate and test whether the transfer was effectuated consistent with the required criteria and procedures and confirm this in writing. Consistent with this, IFS represents that if exemption is granted, it will update the findings and opinions as set forth in the Report so as to confirm whether they still apply as of the expected date(s) of the transfer(s).

In the Report, IFS stated its opinion that the proposed Redemption methodologies are fair to the In-house Plan and reasonable in all material respects. In addition, IFS stated that the proposed Redemptions are in the interests of the participants and beneficiaries of the In-house Plan since the anticipated costs savings is likely to be material. IFS concluded that if the exemption is granted, and all other essential facts and circumstances of the Redemptions remain materially unchanged at the time Bank of America seeks to effectuate the Redemptions, it will issue a favorable recommendation regarding the commencement of such effectuation.

13. In summary, it is represented that the proposed Redemptions satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(A) The In-house Plan pays no sales commissions, redemption fees, or other similar fees in connection with the Redemptions (other than customary transfer charges paid to parties other than Bank of America and Bank of America Affiliates);

(B) The assets transferred to the In-house Plan pursuant to the Redemptions consist entirely of cash and Transferrable Securities. Notwithstanding the foregoing, odd lot securities, fractional shares and accruals on such securities may be distributed in cash;

(C) With certain exceptions defined below, the In-house Plan receives a pro rata portion of the securities of the Portfolio upon a Redemption that is equal in value to the number of Shares redeemed for such securities, as determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a-7 under the 1940 Act (using sources independent of Bank of America and Bank of America Affiliates);

(D) Bank of America, or any affiliate thereof, does not receive any fees, including any fees payable pursuant to Rule 12b-1 under the 1940 Act, in connection with any redemption of the Shares.

(E) Prior to a Redemption, Bank of America provides in writing to IFS a full and detailed written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, IFS provides written authorization for such Redemption to Bank of America, such authorization being terminable at any time prior to the date of the Redemption without penalty to the In-house Plan, and such termination being effectuated by the close of business following the date of receipt by Bank of America of written or electronic notice regarding such termination (unless circumstances beyond the control of Bank of America delay termination for no more than one additional business day);

(G) Before authorizing a Redemption, based on the disclosures provided by the Portfolios to IFS, IFS determines that the terms of the Redemption are fair to the participants of the In-house Plan, and comparable to and no less favorable than terms obtainable at arms-length between unaffiliated parties, and that the Redemption is in the best interest of the In-house Plan and its participants and beneficiaries;

(H) Not later than 30 business days after the completion of a Redemption, the relevant Fund will provide to IFS a written confirmation regarding such Redemption containing:

(i) the number of Shares held by the In-house Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held),

(ii) the identity (and related aggregate dollar value) of each security provided to the In-house Plan pursuant to the Redemption, including each security valued in accordance with Rule 17a-7(b)(4),

(iii) the current market price of each security received by the In-house Plan pursuant to the Redemption, and

(iv) the identity of each pricing service or market-maker consulted in determining the value of such securities;

(I) The value of the securities received by the In-house Plan for each redeemed Share equals the net asset value of such Share at the time of the transaction, and such value equals the value that would have been received by any other investor for shares of the same class of the Portfolio at that time;

(J) Subsequent to a Redemption, IFS performs a post-transaction review which will include, among other things, a random sampling of the pricing information supplied by Bank of America; and

(K) Each of the In-house Plan's dealings with: the Nations Funds, the Investment Advisers, the principal underwriter for the Nations Funds, or any affiliated person thereof, are on a basis no less favorable to the In-house Plan than dealings between the Nations Funds and other shareholders holding shares of the same class as the Shares.

*Notice to Interested Persons:* The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the most practical means of notifying such participants and beneficiaries of this proposed exemption, in addition to the publication of this notice in the **Federal Register**, is by notifying active participants by an individual direct interoffice mailing, and by notifying participant retirees in pay status. The applicant represents such notification covers more than 160,000 of the In-house Plan's 204,000 and that the time and expense of notifying the remaining participants would be substantial. Comments and requests for a hearing must be received by the Department not later than 60 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

*For Further Information Contact:* Mr. Christopher J. Motta of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

**Sierra Health Services, Inc. Profit Sharing Plan (the Plan) Located in Las Vegas, Nevada**

[Applicant No. D-10884]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, will not apply to the proposed sale by the Plan of certain limited partnership interests (collectively, the Interest(s)) to Sierra Health Services, Inc., (the Employer) the sponsor of the Plan and a party in interest with respect to the Plan, provided that the following conditions are met:

(a) The sale is a one-time transaction for cash;

(b) The Plan pays no commissions or any other expenses relating to the sale;

(c) The sales price is the greater of (i) the fair market value of the Interests as determined by a qualified, independent, appraiser (ii) the value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale or (iii) the Plan's original acquisition and holding costs.

(d) The Plan suffers no loss, as a result of its acquisition and holding of the Interests, taking into account all cash distributions received by the Plan as a result of owning the Interests.

*Summary of Facts and Representations*

1. The Employer is a diversified health care company that, through its subsidiaries, provides and administers the delivery of managed care benefit plans for employers, government groups, and individuals. The Employer is the sponsor of the Plan. The Plan is a defined contribution profit sharing plan. The Plan has 4,570 participants with account balances and approximately \$70,964,714.73 in total assets, as of September 30, 2000. The non-liquid assets consist of the four limited partnership units, the Interests.

2. Prior to the second quarter of 1999, Dreyfus Management, Inc. (Dreyfus) acted as the trustee of the Plan holding only the employees' contributions while the Employer acted as the trustee of the Plan holding the Employer's

contributions to the Plan. During the second quarter of 1999, assets held in the Employer directed account were transferred to Dreyfus. As of December 1999, the Employer combined the previously segregated Employer contributions with employee's contributions into a single fund under the control of an independent trustee, with the exception of the Interests. A group of employees makes up the 401(k) committee, which approves the guidelines for investment of the Employer directed fund. The 401(k) committee retains control over the assets involved in the proposed exemption transaction.

The Employer and the 401(k) committee represents that there is no ready market for the Interests. The trustee fees for holding the Interests temporarily until they can be disposed of is \$15 per participant, per year, which amounts to \$29,190 annually based upon 1,946 participants as of December 31, 1998. Allowing the Employer to purchase the Interests would eliminate the trustee fees to the participants and the current administrative burden upon the Employer caused by having to account for the illiquid assets outside of the Plan administrator's custody. The Employer's efforts to find a buyer for the Interests have been unsuccessful. As a result, the Plan now proposes to sell the Interests for the greater of: (i) The "adjusted cost basis" of the Plan's investment in each Interest (the Adjusted Cost); (ii) the fair market value of the Interests, as determined on the date of the proposed sale by an independent, qualified, appraiser; or (iii) the estimated value of the Interests, as determined by the general partner of each partnership and reported on the most recent account statements available at the time of the sale. The partnerships and their general partners are unrelated to the Employer.

3. The Interests consist of:

(a) A 4.92% interest in the Centennial Parkway/Bufalo Drive Limited Partnership (Centennial LP), holding 10 acres of unimproved land in Clark County, Nevada. The Interest has not been used by the Plan. The Interest was acquired by the Plan for investment purposes on October 1, 1983 for \$13,548.54 from the Centennial LP, an unrelated party. The Centennial LP has generated \$8,359 in income and incurred a total of \$3,422 in expenses. Therefore, the Adjusted Cost of Centennial LP is \$18,485.54 as of June 26, 2000 (\$13,548.54 + \$8,359 - \$3,422 = \$18,485.54);

(b) A 5.74% interest in the Great North Limited Partnership (Great North LP) holding 37.66 acres of unimproved

land in Clark County, Nevada. The Interest has not been used by the Plan. The Interest was acquired by the Plan for investment purposes on August 12, 1981 for \$41,670 from the Great North Limited Partnership, an unrelated party. The Great North LP has generated \$19,057 in income and incurred a total of \$9,137 in expenses. Therefore, the Adjusted Cost of Great North LP is \$51,590 as of June 26, 2000 (\$41,670 + \$19,057 - \$9,137 = \$51,590); and

(c) A 4.92% interest in the Nevada Rainbow Limited Partnership (Nevada Rainbow LP) holding 38.39 acres of unimproved land in Clark County, Nevada. The Interest has not been used by the Plan. The Interest was acquired by the Plan for investment purposes on October 1, 1983 for \$43,891.18 from the Nevada Rainbow Limited Partnership, an unrelated party. The Plan received \$30,000 on December 31, 1999. The Nevada Rainbow LP has generated \$6,155 in income and incurred a total of \$8,767 in expenses. Therefore, the Adjusted Cost of Nevada Rainbow LP is \$41,279.18 as of June 26, 2000

(\$43,891.18 + \$6,155 - \$8,767 = \$41,279.18).

The value of the Interests, as determined by the Adjusted Cost is \$111,354.72 (\$18,485.54 + \$51,590 + \$41,279.18 = \$111,354.72).

4. William P. Geary (Mr. Geary), an accredited appraiser with R.O.I. Appraisal, Ltd., located in Henderson, Nevada, performed the appraisal (the Appraisal) of the Interest on June 26, 2000. Mr. Geary states that he is a full time qualified, independent, appraiser, as demonstrated by his status as a Certified General Appraiser, licensed by the State of Nevada. In addition, Mr. Geary represents that both he and his firm are independent of the employer.

In the Appraisal, Mr. Geary estimated the fair market value of each of the Interests, taking into account commissions, expenses, and discounts for the partial interest nature of these assets. Mr. Geary analyzed the net asset value of each of the real estate limited partnerships, based upon standard deductions for expenses, including commissions, return of principal,

preferred returns to limited partners, preferred returns to general partners, and the remaining profits to limited partners. Mr. Geary also analyzed the net asset value on a per unit basis for each of the Interests owned by the Plan. After analyzing all relevant data, Mr. Geary determined that the fair market value of Centennial LP is \$57,210, the fair market value of Great North LP is \$114,450, and the fair market value of Nevada Rainbow LP is \$112,990. Therefore, the Appraisal value is \$284,650 as of June 26, 2000 (\$57,210 + \$114,450 + \$112,990 = \$284,650).

5. The value of the Interests, as determined by the general partners (GPs) of each partnership as of December 31, 1999 is the following:

- (a) Centennial LP = \$73,250;
- (b) Great North LP = \$111,056; and
- (c) Nevada Rainbow LP = \$121,500.

Therefore the price of Interests as valued by the GPs is \$305,806 (\$73,250 + \$111,056 + \$121,500 = \$305,806).

6. The Interests have been evaluated as follows:

	Adjusted cost	Appraisal	GPs valuation
Centennial LP .....	\$18,485.54	\$57,210	\$73,250
Great North LP .....	51,590	114,450	111,056
Nevada Rainbow LP .....	41,279.18	112,990	121,500

7. After selecting the greater price of the (i) the Appraisal, (ii) the GPs valuation, or (iii) the Adjusted Cost, the sales price of the Interests is \$309,200 (\$73,250 + \$114,450 + \$121,500 = \$309,200).

8. The Employer represents that the subject transaction is in the interest of the Plan because the Plan could not at this time sell the Interests to an unrelated third party at other than a substantial discount.

9. In summary, the Employer represents that the subject transaction satisfies the statutory criteria for an exemption under section 408 of the Act for the following reasons: (a) The sale will be a one-time transaction for cash; (b) the Plan will not pay commissions nor other expenses relating to the sale; (c) the Plan suffers no loss, as a result of its acquisition and holding of the Interests, taking into account all cash distributions received by the Plan as a result of owning the Interests; and (d) the sale price for each Interest will be the greater of: (i) The fair market value of the Interests as determined by a qualified, independent, appraiser, (ii) the value as determined by the general partner of each partnership and reported on the most recent account statements

available at the time of the sale, or (iii) the Adjusted Cost.

**Notice to Interested Persons:** Notice of the proposed exemption shall be given to all interested persons by personal delivery and by first-class mail within 10 days of publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing are due within 40 days of the date of publication of the notice in the **Federal Register**.

**For Further Information Contact:** Mr. Khalif I. Ford of the Department, telephone (202) 219-8883. (This is not a toll-free number.)

**Riggs Bank N.A., Located in Washington, D.C.**

[Exemption Application No. D-10928]

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section

4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

**Section I—Transactions**

If the exemption is granted, the restrictions of section 406(a) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (a) The extension of credit (the Advance or Advances) by Riggs Bank N.A. (Riggs) to a participant-directed individual account plan (Plan); and (b) the Plan's repayment of an Advance or Advances, plus accrued interest.

**Section II—Conditions**

The relief provided under Section I is available only if the following conditions are met:

(a) Each Advance is made in connection with the administration of a portion of the Plan's assets by Riggs as a unitized fund (Unitized Fund) in order to facilitate redemptions from the Unitized Fund.

(b) Each Advance is made in accordance with the terms of a written agreement (the Agreement) that describes terms and procedures for the

Advances, including standing instructions addressing the initiation, amount, repayment and formula or method for determining the interest rate payable with respect to each Advance and is approved in writing by a fiduciary of the Plan who is independent of and not an affiliate of Riggs (Independent Plan Fiduciary).

(c) Interest payable by the Plan on each Advance is determined in accordance with an objective formula or method described in the Agreement.

(d) The Plan repays each Advance and accrued interest in accordance with the terms of the Agreement within ten (10) business days after the initiation of the Advance.

(e) Each Advance is unsecured.

(f) The aggregate amount advanced on any business day that an Advance is initiated does not, after the Advance is made, exceed 25% of the total market value of the Unitized Fund.

(g) On the date that an Advance is initiated, Riggs provides the Independent Plan Fiduciary with notice of the amount of the Advance and the actual interest rate to be applied.

(h) Within ten (10) days after an Advance is fully repaid, Riggs provides the Independent Plan Fiduciary with a confirmation statement which includes the date of repayment, the amount of the Advance, the actual interest rate applied, and the total amount of interest paid by the Plan.

(i) The Agreement may be terminated by the Independent Plan Fiduciary at any time, subject to the Plan's repayment of any outstanding Advances.

(j) The Advances are made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party.

(k) Neither Riggs nor its affiliate has or exercises any discretionary authority or control with respect to the initiation of an Advance, the amount of an Advance, the interest rate payable on an Advance, or the repayment of the Advance.

(l) The fair market value of the assets in the Unitized Fund is determined by an objective method specified in the Agreement. In the case of employer stock, such stock must be stock for which market quotations are readily available from independent sources.

(m) Riggs or its affiliate is not (i) a trustee of the Plan (other than a nondiscretionary trustee who does not render investment advice with respect to the assets of the Unitized Fund), (ii) a plan administrator (within the meaning of section 3(16)(A) of the Act and Code section 414(g)), (iii) a fiduciary who is expressly authorized in

writing to manage, acquire or dispose of on a discretionary basis any assets of the Unitized Fund, or (iv) an employer any of whose employees are covered by the Plan.

(n) (a) Riggs will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Riggs, the records are lost or destroyed prior to the end of the six-year period; and

(2) No party in interest, other than Riggs, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (b); and

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by: (A) Any duly authorized employee or representative of the Department or the Internal Revenue Service; (B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and (C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (b)(1)(B) and (b)(1)(C) shall be authorized to examine trade secrets of Riggs or commercial or financial information which is privileged or confidential.

### Section III—Definitions

(a) The term "affiliate" means (i) any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

*Effective Date:* If the proposed exemption is granted, the exemption will be effective as of September 11, 2000.

### Summary of Facts and Representations

1. Riggs is a wholly-owned subsidiary of Riggs National Corporation, a Washington, DC-based financial services holding company incorporated in the State of Delaware. Riggs provides diverse products and services within the financial services industry, including traditional banking services to retail, corporate and commercial customers, international banking, trust services, and investment management services. In 1999, Riggs earned \$31.6 million in net income and had total assets of \$5.7 billion at year-end, with more than 1,500 employees.

In addition to its traditional banking services, Riggs provides fiduciary and administrative services to employee benefit plans through its financial services division, Riggs & Company. Riggs's employee benefit plan customers include tax-qualified defined benefit plans and welfare plans, and, as here relevant, tax-qualified defined contribution plans (e.g., 401(k) plans) that offer participants the opportunity to direct the investment of their individual accounts among a selection of investment options (Plans). Riggs's services to Plans include trustee and custodial services, recordkeeping, and other administrative services, including as here relevant, unitization services.

As described more fully below, unitization services facilitate daily trading between investment options offered under a plan by permitting daily trading of plan investment options that would otherwise not be able to be traded or settled within one day. A Unitized Fund would generally consist of an investment that is not traded on a daily basis (e.g., company stock) and liquid investments (e.g., money market fund shares). Unitization services permit daily transactions by establishing "units" representing undivided interests in all of the assets of the Unitized Fund. Riggs establishes a daily unit value by dividing the market value of the Unitized Fund by the number of units held by participants, and on a daily basis, processes participant contributions to and withdrawals from the Unitized Fund as purchases and sales of units at the daily unit value. When cash is required to settle transactions in units resulting from participant withdrawals and exchanges of units from the Unitized Fund, the cash requirements are satisfied first from the liquid investments of the Unitized Fund and then, shares of the

Unitized Fund investments may be sold to restore the liquidity. Riggs proposes to offer Plans the opportunity to receive short-term cash advances (Advance or Advances) from Riggs if the cash portion of a Unitized Fund is insufficient to cover unit redemption requests on a particular business day.

2. Riggs's services to participant-directed Plans are provided primarily in connection with the DCXchange<sup>®</sup> trading system. DCXchange<sup>®</sup> is a proprietary system owned by PFPC Inc., the fund servicing subsidiary of PNC Bank Corp., and is unrelated to Riggs. DCXchange<sup>®</sup> is maintained and operated by PFPC Distributors, a registered broker-dealer and a PFPC Inc. affiliate.

Generally, Plans participate in DCXchange<sup>®</sup> through a third-party administrator or other service provider that performs the Plan's recordkeeping services (the recordkeeper). DCXchange<sup>®</sup> provides an automated link between the recordkeeper's participant recordkeeping system and mutual fund transfer agents. This linkage allows participant investment transactions (e.g., contributions, withdrawals and exchanges between investment options) to be transmitted to and processed by mutual funds on a daily basis.

DCXchange<sup>®</sup> is linked to more than 700 different mutual funds and also can be linked to other types of investments, if the investment is administered to permit daily trading. For example, investments available for daily trading through DCXchange<sup>®</sup> include interests in certain collective trust funds maintained by banks. In providing unitization services, Riggs administers other types of Plan investments to permit daily trading on DCXchange<sup>®</sup>.

3. Riggs provides a variety of services to Plans participating in DCXchange<sup>®</sup>. Where a Plan engages Riggs to serve as a trustee or custodian and as recordkeeper to provide participant recordkeeping services, Riggs uses DCXchange<sup>®</sup> to process the Plan's investment transactions. Plans receiving trust or custodial and recordkeeping services from Riggs may invest among a broad selection of mutual funds, including mutual funds advised by Riggs Investment Management Corporation (RIMCO), a Riggs affiliate, as well as mutual funds not affiliated with Riggs.

In other cases, Riggs may be engaged as trustee or custodian to a Plan that has engaged a recordkeeper that is not affiliated with Riggs. In still other cases, another bank or trust company that maintains the direct contractual relationship with the Plan and provides

participant recordkeeping (or engages a recordkeeper for the Plan) may subcontract with Riggs to provide custodial services.<sup>9</sup> In these cases, the recordkeeper maintains participant records, receives participant investment instructions, and submits the Plan's investment transactions through DCXchange<sup>®</sup>. Riggs, as trustee or custodian, holds the Plan's assets and transfers and receives Plan funds as needed to settle the Plan's investment transactions in accordance with DCXchange<sup>®</sup> procedures.<sup>10</sup>

Riggs may provide unitization services to Plans where Riggs is a trustee or custodian (whether or not Riggs is recordkeeper). In some cases, Riggs may be engaged by the Plan solely to provide unitization services and Riggs would have custody of the Plan's assets only to the extent required for the administration of the Unitized Fund.

4. Because participant-directed Plans generally offer mutual funds as investment options, procedures for investments, exchanges and redemptions under these Plans (including procedures established for DCXchange<sup>®</sup>) accommodate mutual fund trading practices. Under procedures established for DCXchange<sup>®</sup>, participant investment transactions would generally be processed as follows:

(a) After the close of business on each trade date, mutual fund transfer agents calculate the daily net asset value (NAV) at which shares may be purchased or redeemed for each mutual fund; recordkeepers receive the daily NAV for each mutual fund through the DCXchange<sup>®</sup> system;

(b) The recordkeeper processes participant instructions for exchanges between investment options and Plan

<sup>9</sup> Banks and trust companies "outsource" custody and settlement responsibilities to Riggs because Riggs has developed computer systems and internal expertise that allow Riggs to provide custody and transaction settlement services efficiently in connection with DCXchange<sup>®</sup> trading platform.

<sup>10</sup> Riggs also serves as a "master custodian" for Plan assets as funds are transferred between Plans and mutual funds to settle investment transactions through DCXchange<sup>®</sup>. In this regard, trustees of Plans that participate in DCXchange<sup>®</sup> engage Riggs to act as master custodian under a standardized master custody agreement to hold Plan funds in certain "master" accounts maintained in connection with DCXchange<sup>®</sup>. A master contributions account temporarily holds new contributions pending investment (DCXchange<sup>®</sup> does not process orders for purchases of mutual funds shares unless the purchase amount is on deposit in the contributions account). A master disbursement account holds redemption proceeds from mutual funds temporarily until the proceeds are reinvested or forwarded to a Plan trustee for distribution to participants in accordance with the Plan terms. Riggs's services as master custodian are separate and apart from its provision of unitization and other services to Plans.

withdrawals that are submitted to the recordkeeper before a cut-off time (e.g., 3 p.m.) on any business day (the trade date or T), and purchase orders resulting from new Plan contributions received on the trade date, using the daily NAV provided for each mutual fund at the close of business on that trade date;

(c) The recordkeeper aggregates participant transaction information to create a single Plan purchase or redemption order for each mutual fund offered as a Plan investment option. The recordkeeper submits these orders to the mutual funds through DCXchange<sup>®</sup> during the night, or possibly, very early on the next business day (T+1);

(d) On T+1, the purchase and redemption transactions are settled through DCXchange<sup>®</sup> by the transfer of money from the master contributions account for purchases to the mutual funds and the collection of the redemption proceeds from the mutual funds which are held in the master disbursement account. Redemption proceeds are reinvested on T+1 if the redemption transaction is processed as part of an exchange between Plan investment options, or transferred to the Plan trustee if withdrawn from the Plan;

(e) In the case of an exchange between investment options offered under a Plan, the recordkeeper may process the exchange as a simultaneous redemption and purchase transaction on T, and both transactions are settled on T+1.

These procedures are successful because mutual funds meet two important requirements: The transfer agent establishes a daily NAV for processing purchases and redemptions; and mutual funds maintain liquidity that permits payment of redemption proceeds on T+1. Interests in collective trust funds also may be traded on a daily basis under these procedures if administered to allow daily contributions and withdrawals.

Some investment options that Plan sponsors may wish to offer participants do not meet requirements for daily trading. For example:

(a) Purchase and sale transactions involving employer stock owned by a Plan typically settle on a "T+3" basis, which means that proceeds upon the sale of employer stock may not be received for three business days after the day of a sale transaction.

(b) "Stable value funds" typically hold insurance company guaranteed investment contracts (GICs) or other investments that provide a benefit-responsive guarantee (e.g., so-called "alternative" stable value contracts, such as "synthetic GICs"), which may require up to ten (10) days notice for withdrawals.

(c) Withdrawals from a Plan account managed by an investment manager within the meaning of section 3(38) of the Act (managed account) might require sales of securities owned in the managed account. Like employer stock, sales of securities from a managed account generally would settle on a "T+3" basis.

Unitization services provided by Riggs allow participants to engage in daily transactions involving these types of Plan investment options by providing a daily price and liquidity that permits withdrawals on any business day.

5. Unitized Fund administration is a ministerial service that Riggs performs under specific instructions from a Plan fiduciary independent of Riggs (Independent Plan Fiduciary). The Independent Plan Fiduciary may be the Plan administrator described in section 3(16)(A) of the Act, another Plan fiduciary responsible for determining the Plan's investment options, or an investment manager described in section 3(38) of the Act appointed for a Plan. All of the Independent Plan Fiduciary's instructions are provided in, or in accordance with, a written unitization agreement (the Agreement) made between Riggs and the Independent Plan Fiduciary. Among other things, the Agreement provides standing instructions addressing the initiation, amount, repayment and formula or method for determining the interest rate payable with respect to each Advance. The terms of the Agreement are approved in writing by the Independent Plan Fiduciary.

Riggs has developed criteria to determine when unitization is appropriate, which include factors such as Plan asset size, number of Plan participants, the size of the Unitized Fund, and the type and nature of the Unitized Fund assets (e.g., whether exchange-traded and readily available, or less liquid). In the case of employer stock, the stock must be a "qualifying employer security" as described in section 407(d)(5) of the Act and the Plan's ownership of the employer stock must be permitted under section 407 of the Act. Additionally, such employer stock must be stock for which market quotations are readily available from independent sources.

Under the Agreement, the Independent Plan Fiduciary directs Riggs to establish a Unitized Fund consisting of the assets that are the primary investment under the Plan investment option to be unitized and cash, or cash equivalent investments, that provide liquidity for the Unitized Fund (the cash portion) in order to facilitate daily trading. For example, a

unitized employer stock fund would consist of shares of employer stock and a cash portion; a unitized stable value fund would consist of GICs and/or alternative stable value contracts and a cash portion, and a unitized managed account would consist of investments selected and managed by the Plan's investment manager and a cash portion. In addition, if a Plan wishes to offer a mutual fund that does not participate in DCXchange®, the Independent Plan Fiduciary may direct Riggs to establish a Unitized Fund consisting of shares of the mutual fund and a cash portion.

In most cases, the Independent Plan Fiduciary directs Riggs to invest the cash portion in shares of the Riggs Prime Money Market Fund (the RIMCO Money Market Fund), a unit investment trust managed by RIMCO. In this regard, Riggs is able to submit redemption orders for shares of the RIMCO Money Market Fund on any business day and receive cash on the Plan's behalf on the same business day, which allows Riggs to transfer funds to settle redemptions from the Unitized Fund on T+1 as required under the DCXchange® procedures. The Independent Plan Fiduciary may direct Riggs to invest the cash portion of a Unitized Fund in investments other than the RIMCO Money Market Fund, provided that the investment offers similar liquidity.

Riggs's fees for unitization services are also described in the Agreement. Generally, the fees may include an initial set-up charge and an annual administration charge which may be a fixed amount, a fee based on the value of assets in the unitized account, or a combination of both.

In no event will Riggs have any discretionary authority or control or provide any investment advice (as described by section 3(21) of the Act and regulations thereunder) with respect to the selection of the assets of a Unitized Fund. In this regard, the Independent Plan Fiduciary or an investment manager appointed in accordance with Plan terms and independent of Riggs would be solely responsible for determining the investments of the Unitized Fund, and as further described below, providing Riggs with specific instructions regarding the operation of the Unitized Fund. In addition, Riggs does not provide any asset allocation or other services that may affect or influence participant transactions involving a Unitized Fund.

6. To establish a Unitized Fund, the Independent Plan Fiduciary directs Riggs in the Agreement to calculate the market value of assets owned by the Plan in connection with the investment

option to be unitized (e.g., the employer stock or other investments of the option and the cash portion) on the first day that the option is unitized (the unitization date) and then establish "units" of the Unitized Fund by dividing the market value by a proposed initial unit value. Typically, an initial number of units is determined by dividing the current market value of the combined assets by \$10. On the unitization date, the recordkeeper allocates the units to participant accounts based on each participant's pro rata interest in the Unitized Fund.

Each business day after the unitization date, the Agreement requires Riggs to establish a daily unit price based on the current market value of the Unitized Fund. Procedures for determining current market value are specified in the Agreement and would require an objective method so that Riggs does not have any discretion in determining the market value of the Unitized Fund or unit price. For example, in the case of employer stock, the Agreement may require Riggs to value the stock at the closing price on the New York Stock Exchange. Securities issued by mutual funds would be valued at the daily net asset value published by the mutual fund. In the case of GICs or alternative stable value contracts, the Agreement would generally direct Riggs to use book value as reported by the contract issuer. In the case of a managed account, the investment manager may value the managed account, or Riggs may determine the value if Riggs has custody of the managed account assets.

Riggs provides the daily unit price for each Unitized Fund to DCXchange® after the close of each business day. DCXchange® makes the unit price available to the Plan's recordkeeper for purposes of processing new participant investments in the Unitized Fund, withdrawals from the Unitized Fund, and participant-directed exchanges involving the Unitized Fund.

7. Each business day, the Plan's recordkeeper aggregates all participant investment transactions involving the Unitized Fund to create a Plan purchase and redemption order for units of the Unitized Fund. The recordkeeper submits the purchase and redemption orders to DCXchange® on the same basis that the recordkeeper submits orders for the mutual fund investment options offered under the Plan. DCXchange® then transmits the orders to Riggs.<sup>11</sup>

<sup>11</sup> Generally, the Plan's recordkeeper is party to the Agreement and agrees to process participant investment transactions involving the Unitized Fund in accordance with requirements that

Upon receipt of a purchase order through DCXchange®, Riggs increases the total number of units of the Unitized Fund by the number of units purchased and accepts funds transferred to Riggs to pay for the units purchased. Upon receipt of a unit redemption order, Riggs reduces the number of units accordingly and forwards funds to settle the unit redemptions.

8. The Agreement includes specific instructions for the management of liquidity of a Unitized Fund. Specifically, the Independent Plan Fiduciary must specify a "target liquidity," which specifies the intended size of the cash portion in comparison with the total assets of a Unitized Fund. The target liquidity would be established at a level that reasonably provides enough cash to accommodate the expected volume of redemption transactions generated by participants in the ordinary course. A typical target liquidity may range from 1% to 10%, depending on factors such as the size of the Unitized Fund, the average trading volume of assets held in the Unitized Fund, the number of participants with an interest in the Unitized Fund, and the relative size of each participant's interest in the Unitized Fund.

The Agreement also specifies a "liquidity variance" that defines the range within which the actual value of the cash portion as compared to total value of the Unitized Fund (actual liquidity) may vary from the target liquidity. If the actual liquidity exceeds the target liquidity by more than the liquidity variance, excess amounts must be immediately invested. If the actual liquidity is less than the target liquidity by more than the target variance, then some Unitized Fund investments must be liquidated to increase the cash portion.

The Agreement always provides Riggs with specific instructions for making new investments on behalf of the Unitized Fund or liquidating investments of a Unitized Fund. In the case of employer stock, Riggs is generally directed to place a purchase or sell order to restore the Unitized Fund to target liquidity on the business day that the excess liquidity or liquidity shortfall is identified. For unitized stable value funds, the Independent Plan Fiduciary must provide Riggs with specific instructions as to which

accommodate Riggs's provision of unitization services, as described by the Agreement. In the case of a managed account, the investment manager may also be party to the Agreement and would agree to assist Riggs in providing unitization services by, e.g., providing daily valuation information and selling assets of the managed account when required for liquidity purposes.

contracts Riggs should make deposits to or request withdrawals from. In the case of a managed fund, the Agreement generally requires Riggs to notify the Plan's investment manager of excess liquidity or a liquidity shortfall and the manager is responsible for buying or selling account assets to restore the actual liquidity of the managed account to the permitted range.

9. Whenever the actual liquidity of a Unitized Fund falls below the target liquidity by more than the liquidity variance, assets of the Unitized Fund must be liquidated to restore the target liquidity. If employer stock or other securities, which settle on a "T+3" basis, are sold, the sale proceeds usually would be received after three business days. Some transactions may take longer to settle, for example, withdrawals from GICs or alternative stable value contracts may require up to ten days. Nevertheless, as long as the cash portion of the Unitized Fund is sufficient to cover unit redemption requests submitted to Riggs on each business day, unit redemptions can be processed and settled on a daily basis in accordance with DCXchange® procedures.

From time to time, the actual liquidity of a Unitized Fund may not provide sufficient liquidity for the unit redemption requests on a business day. If requests for redemptions exceed the actual liquidity of the Unitized Fund, the Agreement generally requires Riggs to reject all requests for unit redemptions submitted to the Unitized Fund for that business day and immediately proceed to sell assets to obtain the liquidity necessary to satisfy the rejected requests. Once actual liquidity is increased to the amount required to satisfy the rejected unit redemption requests, Riggs notifies the recordkeeper to resubmit the redemption orders through DCXchange®. The redemptions are processed at the unit price established the business day on which the redemptions are resubmitted.<sup>12</sup>

Riggs's experience is that it is expensive and burdensome to Plans and participants to reject unit redemptions due to insufficient liquidity for several reasons. First, the reversal of a transaction is an exception from typical administrative procedures and, therefore, must be processed and reconciled manually rather than on automated recordkeeping systems; this increases recordkeeping expenses incurred by Plans and participants and

<sup>12</sup> Generally, the Agreement would instruct Riggs to continue to accept unit purchase orders even if unit redemption orders have been rejected.

increases the opportunity for recordkeeping and reconciliation errors. Second, until the reversed transaction is posted to participant accounts, participant account records (which are available to participants on a daily basis) will be inaccurate.

Most important, the unit redemption requests are likely to be requested in connection with a participant's request for an exchange from a Unitized Fund to another Plan investment option. If the Unitized Fund redemption requests cannot be settled, the corresponding purchases of shares or units of the other Plan investment options also must be reversed. As noted, Riggs does not receive unit redemption orders from DCXchange® until T+1, by which time, a corresponding purchase order would also have been received by the mutual fund transfer agent. In many cases, it is not possible to stop a purchase of mutual fund shares. Instead, the shares must be resold at the then current market price. If there has been a one-day change in share price, the Plan may be liable for the difference.

One way to reduce the risk that any unit redemptions may be rejected is to increase the Unitized Fund's target liquidity. In this regard, the Agreement generally requires Riggs to notify the Independent Plan Fiduciary each time that unit redemptions are rejected so that the Independent Plan Fiduciary can evaluate whether target liquidity is appropriate and increase target liquidity as needed. However, increasing target liquidity affects the risk and return characteristics of the Unitized Fund, which is an undesirable result in the view of many Plan fiduciaries. In many cases, increases in the portion of a fund invested in cash and cash equivalents reduces the fund's investment return over the long-term as compared to the return that could be obtained by a fund with a smaller cash portion.

10. To avoid the administrative difficulties and expense that may result from rejecting unit redemptions and reversing corresponding purchases from a mutual fund or Unitized Fund, Riggs proposes to offer Plans Advances from Riggs if the cash portion of a Unitized Fund is insufficient to cover unit redemption requests on a particular business day. The proposed exemption requires the Plan to repay the principal amount of an Advance and accrued interest within ten business days after the initiation of the Advance.

As a service provider to Plans, Riggs is a party in interest to such Plans. Therefore, Riggs represents that Advances by Riggs to Plans in connection with its unitization services, and the receipt by Riggs of interest

thereon, may raise issues under section 406(a) of the Act. To resolve this issue, Riggs is requesting an exemption from the prohibitions of section 406(a) of the Act that would permit Riggs to make Advances to Plans to facilitate the administration of a Unitized Fund, and to earn interest on the Advances.

11. The Advances would be available under procedures reviewed and approved by the Independent Plan Fiduciary and incorporated into the Agreement. The Agreement will describe the terms and procedures for the Advances, including standing instructions addressing the initiation, amount, repayment and formula or method for determining the interest rate payable with respect to each Advance. For example, the Agreement might specify a formula for determining the interest on Advances based on a published indexed interest rate established by an independent third party (e.g., the London Interbank Offered Rate or the U.S. Federal Reserve's Cost of Funds Index) and provide for daily accrual of interest until the Advance is repaid. Riggs will not have or exercise any discretion with respect to how the rate is determined under the formula or method. Interest on Advances will be an operating expense of a Unitized Fund and will be paid from the assets of the Unitized Fund.

12. The Agreement governing the Advances will limit the total amount that Riggs may advance to a Plan to 25% of the total market value of the Unitized Fund on the business day that any Advance is made. Such limits will be imposed because Advances are intended to facilitate the administration of a Unitized Fund in the ordinary course of business. If the liquidity needed to settle redemption requests on a particular business day exceeds a limit set on Advances, Plan fiduciaries would wish to review whether the Plan should continue "daily trading" in participant interests in the Unitized Fund. The fair market value of the assets of the Unitized Fund is determined by an objective method specified in the Agreement.

13. Advances will not be secured or collateralized. Riggs will generally be directed under the Agreement to automatically sell or redeem assets of a Unitized Fund on any business day that the actual liquidity of a Unitized Fund falls below the target liquidity by more than the liquidity variance. Further, Riggs generally will be directed by the Agreement to automatically collect the amount of an Advance and accrued interest from proceeds received upon the sale or redemption of those assets.

14. The Agreements are not expected to include provisions governing actions to be taken if an Advance is not repaid. Riggs does not anticipate that a situation would arise in which Riggs would not be repaid from the proceeds of the sale or redemption of assets for the unitized account in accordance with the Agreement.

15. Riggs will provide notice to the Independent Plan Fiduciary about each Advance at the time the Advance is made and after the Advance is repaid. Specifically, on the date that an Advance is initiated, Riggs will notify the Independent Plan Fiduciary of the principal amount of the Advance and the interest rate to be applied. Within ten days after an Advance is fully repaid, Riggs will provide the Independent Plan Fiduciary with a confirmation including the date of repayment, the amount of the Advance, the actual interest rate applied, and the total amount of interest paid by the Plan.

16. The Agreement may be terminated by the Independent Plan Fiduciary at any time, subject to the Plan's repayment of any outstanding Advances made as required by the terms of the Agreement. The Advances will be made on terms at least as favorable to the Plan as those the Plan could obtain in an arm's-length transaction with an unrelated party.

17. Neither Riggs nor an affiliate may have or exercise any discretionary authority or control with respect to the initiation of an Advance, the amount of an Advance, the interest rate payable on an Advance, or the repayment of an Advance. These circumstances are determined by the Independent Plan Fiduciary and are set forth in the Agreement. In addition, Riggs or an affiliate may not be (i) a trustee of the Plan (other than a nondiscretionary trustee who does not render investment advice with respect to the assets of the Unitized Fund), (ii) a Plan administrator, (iii) a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, any assets of the Unitized Fund, or (iv) an employer any of whose employees are covered by the Plan.

18. In summary, the applicant represents that the subject transactions satisfy the criteria contained in section 408(a) of the Act for the following reasons:

(a) The requested exemption will be administratively feasible because the Advances will be monitored by the Independent Plan Fiduciary of each Plan. Thus, the level of oversight

required by the Department will be minimal.

(b) The requested exemption will be in the interests of Plan participants and beneficiaries because it will allow Plans to avoid rejections of the Unitized Fund redemption transactions because of insufficient liquidity. This will protect Plan participants and beneficiaries from the expense, inconvenience, possible recordkeeping errors, and potential Plan exposure for trading losses on corresponding purchase transactions for other Plan investments, which could result if Unitized Fund liquidity is insufficient to settle the redemption on a requested business day.

(c) The requested exemption will protect participants' and beneficiaries' rights because (i) the terms and conditions of Advances will be clearly disclosed in a written Agreement between Riggs and an Independent Plan Fiduciary, which will specifically describe the procedures under which Advances will be made and repaid, the amount of each Advance, and the formula or method for determining interest; (ii) the terms on which Advances would be made must be at least as favorable to the Plan as a similar third-party arm's-length transaction; (iii) the Agreement permitting the Advances can be terminated by the Independent Plan Fiduciary at any time, without penalty; (iv) Riggs will provide to the Independent Plan Fiduciary on the business day that an Advance is made, a notice describing the amount of the Advance and the interest rate payable, and within 10 business days of the repayment of each Advance, notice confirming the amount of the Advance, the date of repayment and the actual amount of interest paid by the Plan. These notices provide an Independent Plan Fiduciary the ability to monitor each Advance and ensure the Advances are appropriate and in the best interest of the Plan's participants and beneficiaries; and (v) Riggs will not have or exercise any discretionary authority or control over the assets of the Plan invested in a Unitized Fund and will act solely at the direction of an Independent Plan Fiduciary. In addition, Riggs may not have a relationship to a Plan receiving Advances that might provide Riggs any discretionary authority or control with respect to the investment of the assets of the Unitized Fund or Advances to be made to the Plan.

**FOR FURTHER INFORMATION CONTACT:**

Karen Lloyd of the Department, telephone (202) 219-8194. (This is not a toll-free number).

**The Savings Plan for Employees of Florida Progress Corporation (the Plan) Located in St. Petersburg, FL**

[Application No. D-10953]

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 30, 2000, to (1) the receipt, by the Plan, of contingent value obligations (the CVOs), as a result of the Plan's ownership of certain common stock (the Florida Progress Stock) in Florida Progress Corporation (Florida Progress), the Plan sponsor; (2) the continued holding of the CVOs by the Plan; and the (3) potential resale of the CVOs by the Plan to Progress Energy, Inc. (Progress Energy), a party in interest with respect to the Plan.

This proposed exemption is subject to the following conditions:

(a) The Plan received one CVO for each share of Florida Progress Stock on the effective date of the share exchange between Florida Progress and CP&L Energy, Inc. (CP&L Energy), the predecessor entity to Progress Energy.

(b) All Florida Progress shareholders, including Plan participants, received the CVOs in the same manner, so that the Plan participants and beneficiaries were not in a less advantageous position than other Florida Progress shareholders.

(c) The Plan's receipt of the CVOs, including other share exchange consideration consisting of cash and/or shares of CP&L Energy stock (the CP&L Energy Stock), resulted from shareholder approval and did not relate to any unilateral exercise of discretion by a Plan fiduciary.

(d) Salomon Smith Barney, Inc. (Salomon Smith Barney) advised Florida Progress that the consideration to be received by Florida Progress shareholders in exchange for their shares of Florida Progress Stock was "fair," from a financial point of view.

(e) The Plan did not pay any fees or commissions in connection with the acquisition of the CVOs, nor will it pay any fees or commissions in connection

with the holding or potential sale of the CVOs to Progress Energy.

(f) An independent fiduciary, United States Trust Company, N.A. (U.S. Trust)—

(1) Has overseen, and continues to oversee, the Plan's holding or disposition of any CVOs for which the Plan does not receive any investment direction and determines whether it is appropriate for the Plan to sell the CVOs; and

(2) Retains the services of an independent appraiser to calculate the price at which the CVOs are sold to Progress Energy in order to ensure that adequate consideration is received.

(g) Plan participants have the same rights and flexibility as unrelated parties and they may sell their CVOs at any time.

*Effective Date:* If granted, this proposed exemption will be effective as of November 30, 2000.

**Summary of Facts and Representations**

1. Florida Progress is a Florida corporation with its principal offices located in St. Petersburg, Florida. Florida Progress is a diversified electric utility holding company. Florida Power Corporation (Florida Power), a subsidiary of Florida Progress, is a regulated public utility that is engaged in the generation, purchase, transmission, distribution and sale of electricity. Florida Power provides electric services to approximately of 1.3 million customers in central and north Florida. In 1999, Florida Power accounted for 68 percent of the consolidated revenues of Florida Progress, 77 percent of that company's assets and 84 percent of its net income. As of March 31, 2000, Florida Progress had total consolidated assets of approximately \$6.5 billion and total consolidated common stock equity of approximately \$2.0 billion. In addition, as of September 30, 2000, Florida Progress had 98,616,919 shares of Florida Progress Stock issued and outstanding.

Besides Florida Power, Florida Progress has diversified, non-utility operations which are owned, directly or indirectly, through Progress Capital Holdings, Inc., a Florida corporation and another wholly owned subsidiary of Florida Progress. The diversified, non-utility operations segment includes Electric Fuels Corporation, an energy and transportation company, which owns and operates four synthetic fuel plants (the EARTHCO Plants).

2. The Plan, which is sponsored by Florida Progress, is a defined contribution plan. As of September 30, 2000, the Plan had 6,471 participants

and assets having an aggregate fair market value of the \$624.6 million. Of the Plan's total assets, \$152.8 million (24.5 percent) consisted of 2,887,714 shares of Florida Progress Stock which represented 2.9 percent of the shares of such stock that were issued and outstanding.

The trustee (the Trustee) of the Plan is The Vanguard Group, Inc., a mutual fund company, which provides trustee services to the Plan through its affiliate, the Vanguard Fiduciary Trust Company. A Plan investment committee, comprised of principals of Florida Progress, has the authority to manage and control the assets, operation and administration of the Plan.

The Plan provides participants with a variety of investment options, one of which is a fund invested solely in Florida Progress Stock (the Florida Progress Stock Fund). Each participant may direct the Trustee to invest or reinvest his or her account in each available fund on a daily basis.

3. Progress Energy, which was formerly known as "CP&L Energy, Inc." (or CP&L Energy as otherwise defined herein), is a North Carolina corporation and the holding company for Carolina Power & Light Company (CP&L). Progress Energy is engaged in the utility business and it operates primarily through various direct and indirect subsidiaries. At the time of the share exchange transaction described in this proposed exemption, Progress Energy, then known as CP&L Energy, operated through three subsidiaries, CP&L, North Carolina Natural Gas Corporation (NCNGA), and Interpath Communications, Inc. (ICI). Also, prior to the closing date of the transaction, none of these entities were related to Florida Progress or its affiliates.

CP&L, which currently has a 90 percent interest in two of the EARTHCO Plants, is a North Carolina public service corporation that provides electricity and energy-related services to more than 1.2 million customers in North Carolina and South Carolina. NCNGC, a wholly owned subsidiary of CP&L, provides natural gas, propane and related service to approximately 178,000 customers in south-central and eastern North Carolina. ICI, also a wholly owned subsidiary of CP&L, is primarily engaged in providing internet-based services.

As of March 31, 2000, CP&L Energy had total consolidated assets of approximately \$9.4 billion and total consolidated shareholders' equity of approximately \$3.4 billion.

4. On March 3, 2000, Florida Progress entered into an Amended and Restated Agreement and Plan of Exchange (the

Exchange Agreement) with CP&L Energy and CP&L. The Exchange Agreement provided for the acquisition, by CP&L Energy, of all of the outstanding shares of Florida Progress Stock pursuant to a statutory share exchange. The share exchange was structured so that Florida Progress and its affiliates would all become subsidiaries of Progress Energy. The terms of the Exchange Agreement were negotiated on an arm's length basis by the parties and approved by the shareholders of both Florida Progress and CP&L Energy.

5. In accordance with the terms of the Exchange Agreement, each Florida Progress shareholder could elect to receive (for each share of Florida Progress Stock he or she owned) (a) \$54.00 per share in cash; or (b) a specified number of shares of CP&L Energy Stock equal to an exchange ratio (the Exchange Ratio)<sup>13</sup> designed to provide Florida Progress shareholders with CP&L Energy Stock having a fair market value of \$54.00, subject to certain adjustments; or (c) a combination of cash and CP&L Energy Stock.

In addition to the cash and/or stock consideration, each Florida Progress shareholder would be entitled to receive one CVO for each share of Florida Progress Stock surrendered. The CVOs are general, unsecured, contingent payment obligations of CP&L Energy and its successor, Progress Energy, that are subordinate in right of payment to all senior indebtedness of these entities. The CVOs were issued in accordance with the terms of the Contingent Value Obligation Agreement (the CVO Agreement) which was entered into between CP&L Energy and The Chase Manhattan Bank, N.A. (Chase), as CVO trustee on November 30, 2000. Each CVO represents the right of its holder to receive contingent payments based on the net after-tax cash flow to CP&L Energy and its affiliates (and later, to Progress Energy and its affiliates) that is generated by the EARTHCO Plants. As noted in the exemption application,

<sup>13</sup> According to the Joint Proxy Statement/ Prospectus issued by CP&L Energy and Florida Progress, the Exchange Ratio was determined by dividing \$54.00 by the average of the closing sale price per share of CP&L Energy Stock as reported on the New York Stock Exchange Composite Tape on each 20 consecutive trading days ending with the fifth trading day before the closing of the share exchange. The Exchange Ratio was also subject to adjustment if the average closing price of CP&L Energy Stock exceeded \$45.39 or fell below \$37.13. However, the 20 day average closing price of CP&L Energy Stock was \$40.08. This amount was well within the high and low figures. Thus, the Exchange Ratio was determined by dividing \$54 by \$40.08, i.e., 1.3473. On November 30, 2000, the closing price for CP&L Energy Stock on the New York Stock Exchange was \$43 per share.

both Florida Progress and CP&L Energy believed that the EARTHCO Plants were qualifying synthetic fuel plants which would entitle their owners to federal income tax credits based on the barrel of oil equivalent of the synthetic fuel produced and sold by the plants.

6. Although it was not possible to calculate precisely the value of the CVOs at the time of the share exchange (a per unit value of \$0.545 was ultimately determined<sup>14</sup>) or to predict their potential marketability, in the aggregate, the holders of the CVOs would be entitled to receive payments equal to 50 percent of any net after-tax cash flow generated by the EARTHCO Plants in excess of \$80 million per year for each of the years 2001 through 2007. However, the total amount of the net after-tax cash flow for any year would depend upon the final determination of the income tax savings realized and income taxes incurred after completion of income tax audits of CP&L Energy and its affiliates (and later, Progress Energy and its affiliates), as owners of the EARTHCO Plants.

As of March 15 of each year from 2002 through 2008, Progress Energy will estimate the total net after-tax cash flow attributable to the EARTHCO Plants for the prior year and will deposit with Chase an amount equal to 50 percent of the excess of that amount over \$80 million. After Progress Energy files its tax returns for the prior year, both it and Chase will adjust the amount on deposit with Chase. Holders of CVOs will be entitled to receive accumulated earnings on the amounts held on deposit with Chase and quarterly reports describing the results of operations for the EARTHCO Plants for the prior quarter and updating material developments.

In the event Progress Energy fails to pay amounts when due on the CVOs, all unpaid amounts will bear interest at a rate equal to the three month London Interbank Offered Rate (as published in *The Wall Street Journal*) plus 300 basis points. Except for payments made as a result of the sale of all or a portion of the EARTHCO Plants, payments on the CVOs will not be made until Progress Energy's tax audit matters are resolved. Progress Energy anticipates payments on the CVOs will not begin before 2007.

The CVOs are generally freely tradable by their holders. Although there is no commitment to have the CVOs listed on a national stock exchange or to cause them to be included in any interdealer quotation

<sup>14</sup> The CVO value of \$0.545 on November 30, 2000 represented the average of the reported high and low trading prices on the OTC Bulletin Board on that date.

system, until issued on the effective date of the share exchange (i.e., November 30, 2000, as discussed in Representation 8), the CVOs were traded on a "when, as and if issued" basis on the OTC Bulletin Board.<sup>15</sup> The CVOs are not subject to redemption, in whole or in part. Progress Energy may, however, acquire the CVOs on the open market or in privately-negotiated purchases.

7. An independent investment banking firm, i.e., Salomon Smith Barney, advised Florida Progress that the consideration, consisting of cash and/or CP&L Energy Stock, and CVOs, which was to be received by Florida Progress shareholders in exchange for their shares of Florida Progress Stock was "fair," from a financial point of view.<sup>16</sup> In making its determinations, Salomon Smith Barney, among other things, (a) reviewed the Exchange Agreement and the CVO Agreement; (b) held discussions with senior officers, directors, representatives and advisers of Florida Progress, and CP&L concerning the respective businesses, operations and prospects of Florida Progress and CP&L; (c) examined financial forecasts and other information and data for both companies; (d) reviewed the financial terms of the share exchange as set forth in the Exchange Agreement and the CVO Agreement; (e) reviewed current and historical market prices and trading volumes of both Florida Progress Stock and CP&L Energy Stock; (f) reviewed the historical and projected earnings and other operating data of both entities; (g) reviewed the capitalization and financial condition of Florida Progress and CP&L; and (g) conducted other analyses and examinations and considered other financial, economic

<sup>15</sup> According to Florida Progress, the phrase "when, as and if issued" and its abbreviated form "when issued," refers to a conditional transaction wherein a security is authorized for issuance but is not actually issued. Because the CVOs were issued in connection with the closing, Florida Progress represents that the term no longer applies.

Florida Progress states that the OTC Bulletin Board is a regulated quotation service that displays real-time quotes, last-sale prices and volume information in over-the-counter equity securities. An OTC equity security generally includes any equity that is not listed or traded on the NASDAQ or a national securities exchange. The OTC Bulletin Board, which was approved by the Securities and Exchange Commission on a permanent basis in April 1997, provides access to more than 6,500 securities, includes more than 400 participating market makers, electronically transmits real-time quote, price and volume information on domestic securities, foreign securities and American Depository Receipts, and displays indications of interest.

<sup>16</sup> Similarly, Merrill Lynch, Pierce, Fenner & Smith Incorporated advised CP&L Energy and CP&L that the consideration to be paid by CP&L Energy pursuant to the exchange was "fair," from a financial point of view to these entities.

and market criteria as it deemed appropriate in arriving at its opinion.

In rendering its opinion, Salomon Smith Barney assumed and relied, without independent verification, upon the accuracy and completeness of all information provided. Salomon Smith Barney also assumed, with the consent of Florida Progress, that the exchange with CP&L Energy and CP&L would be effected in accordance with its terms and that in the course of obtaining regulatory approvals from various federal and state governmental agencies for the share exchange, no limitations, restrictions or conditions would be imposed that would have an adverse material effect on the contracting parties or to the combined company. Further, Salomon Smith Barney assumed that the terms of the CVOs would not differ materially from the terms set forth in a draft CVO Agreement. Finally, Salomon Smith Barney did not make (and it was not provided with) an independent evaluation of the financial status of Florida Progress or CP&L or did it physically inspect the properties or assets owned by these entities.

Salomon Smith Barney's opinion and analyses were one of the many factors considered by Florida Progress' Board of Directors in its evaluation of the merits of the share exchange. The Board of Directors ultimately voted that the stock exchange was fair and in the best interests of the shareholders, and recommended that the shareholders approve the exchange transaction.

8. Thus, as a result of approval by the shareholders of the share exchange, on November 30, 2000, each holder of Florida Progress Stock received cash and/or CP&L Energy Stock consideration, plus one CVO for each share of Florida Progress Stock tendered. A total of 87,191,315 shares of Florida Progress Stock was actually tendered by Florida Progress shareholders. Those shareholders who elected "all cash" consideration received cash while those shareholders who elected stock consideration, received an approximately 94.7 percent distribution of CP&L Energy Stock and the remainder in cash. Those shareholders who did not submit an election received "all cash" consideration.<sup>17</sup> However, as noted above, all shareholders received CVOs in addition to cash and/or CP&L Energy Stock.

<sup>17</sup> For those shareholders not tendering their Florida Progress Stock at the time of the share exchange, the amount of cash and CVOs attributable to such shareholders was placed in an escrow account. This amount is to be paid out upon the actual tender of shares of Florida Progress Stock.

Plan participants were given the same consideration options as the other shareholders of Florida Progress. At the time of the share exchange, the Plan received \$84,970,701.43 in cash, 1,247,340 shares of CP&L Energy Stock (valued at approximately \$67.3 million, and 2,499,339 CVOs (valued at approximately \$1.3 million). Of the total consideration received, it is estimated that approximately 40 percent of the Plan participants elected to receive CP&L Energy Stock and approximately 60 percent of the participants elected (either by an actual election or by a failure to return the election form in a timely manner) to receive cash. It is further represented that the Plan's receipt of the share exchange consideration resulted from shareholder approval of the Exchange Agreement and it did not result from a unilateral exercise of discretion by any Plan fiduciary.

9. However, prior to the share exchange, each individual participant who had invested in Florida Progress Stock through the Plan received a notice, dated September 28, 2000. The special notice explained that on the effective date of the share exchange, any Florida Progress Stock held on behalf of the participant in the Plan would be exchanged, in accordance with the election of the participant<sup>18</sup> for the right to receive one CVO and either (a) cash, (b) shares of CP&L Energy Stock, or (c) a combination of cash and CP&L Energy Stock. The notice to participants further explained that for each share of Florida Progress Stock held on the effective date of the exchange, the participant would receive one CVO.

After receipt of the September 28, 2000 notice and prior to the effective date of the exchange, Plan participants had the opportunity, to transfer funds held on their behalf in the Florida Progress Stock Fund to other investment funds under the Plan if the participant did not wish to receive the CVOs and the CP&L Energy Stock. Because no other investment funds hold shares of Florida Progress Stock, no CVOs could be received by such funds.

10. Accordingly, an administrative exemption is requested on behalf of the

<sup>18</sup> In accordance with the terms of the Exchange Agreement, all Florida Progress shareholder elections regarding whether the shareholder wished to receive cash, CP&L Energy Stock or a combination thereof in exchange for Florida Progress Stock was subject to allocation and proration to achieve an overall mix of 65 percent cash and 35 percent CP&L Energy Stock. Such proration would not have any impact on the receipt of CVOs by Florida Progress shareholders on the date of the exchange.

Plan<sup>19</sup> and the Investment Committee for the Plan (together, the Applicants) with respect to (a) the receipt by the Plan of the CVOs as a result of its ownership of Florida Progress Stock; (b) the continued holding of the CVOs by the Plan; and

(c) the potential resale of the CVOs to Progress Energy. The Applicants are not requesting exemptive relief for the receipt of the CP&L Energy Stock by the Plan because, at the time of the share exchange, CP&L Energy and its affiliates were not parties in interest with respect to the Plan.<sup>20</sup> Therefore, exemptive relief is requested effective November 30, 2000.

The Applicants also represent that it is unclear whether the statutory exemption contained in section 408(e) of the Act, which permits plans to acquire and sell qualifying employer securities,<sup>21</sup> would apply to the Plan's receipt of the CVOs.<sup>22</sup> Although a CVO would likely qualify as a "security," as such term is defined in section 2(1) of the Securities Exchange Act of 1933 (the 1933 Act) and section 3(20) of the Act, the Applicants represent that it is not clear whether such securities would fall

<sup>19</sup> For purposes of this exemption, the term "Plan" is meant to include The Savings Plan for Employees of Florida Progress Corporation and any successors to the current Plan that may be established by Progress Energy or an entity within Progress Energy's controlled group, into which the Plan is merged or which receives a transfer of accounts (including CVOs) from the Plan. Progress Energy and Florida Progress are contemplating the transfer of some accounts from the plan to another qualified plan maintained by Progress Energy. To simplify administrative and employee communication issues, both Progress Energy and Florida Progress would like the ability to transfer CVOs to the new plan.

<sup>20</sup> The Applicants note, however, that after the share exchange, CP&L Energy and its successor, Progress Energy, would be considered parties in interest with respect to the Plan and that the CP&L Energy Stock received by the Plan, which is currently referred to as "Progress Energy, Inc. common stock," would constitute a "qualifying employer security" within the meaning of section 407(d)(5) of the Act, as stock.

<sup>21</sup> In relevant part, section 408(e) of the Act provides that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5) if such acquisition is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1)), (2) if no commission is charged with respect thereto, and (3) if—(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or (B) in the case of an acquisition by a plan which is not an eligible individual account plan, the acquisition is not prohibited under section 407(a) of the Act.

<sup>22</sup> Section 3(20) of the Act states that the term "security" has the same meaning as such term has under section 2(1) of the (the 1933 Act) [15 U.S.C. 77b(1)]. The term "security" is defined in the Securities Act as "any note, stock, treasury stock, bond, debenture, evidence of indebtedness, \* \* \* or, in general, any interest or instrument commonly known as a 'security'."

within the definition of "qualifying employer securities," as defined in section 407(d)(5) of the Act.<sup>23</sup>

According to the Applicants, the CVOs do not constitute "shares of stock, or a bond, debenture, note, certificate or other evidence of indebtedness" but represent a right to receive certain contingent payments based upon the net after-tax cash flow to CP&L Energy (and later to Progress Energy) generated by the EARTHCO Plants. Therefore, the Applicants do not believe the CVOs can be characterized as a "qualifying employer security." Thus, the Applicants believe that the acquisition and holding of the CVOs by the Plan would violate sections 406 and 407 of the Act.

11. Following the exchange and receipt of the CVOs by the Plan, participants have been given the opportunity to direct the Trustee to sell the CVOs held on their behalf, at any time. In this regard, an independent fiduciary, U.S. Trust, has been appointed by the Trustees to oversee the Plan's holding or sale of any CVOs for which the Plan does not receive any investment direction from the participants. The CVOs are being held by the Trustee in a separate unitized fund (the CVO Fund) for which U.S. Trust will determine liquidity needs based on information provided by Florida Progress and to effect such liquidity when it reasonably deems it prudent.

The CVO Fund will be valued and traded on a periodic basis by U.S. Trust. If a CVO is to be sold at a time when there is no liquid market, as determined by U.S. Trust, Progress Energy has agreed to purchase CVOs to be sold by the Plan. Under such circumstances, U.S. Trust will retain an independent appraiser to determine the fair market value of the CVOs in order to ensure

<sup>23</sup> As noted in part previously, a "qualifying employer security" means an employer security which is either "stock," a "marketable obligation," or an "interest in a publicly-traded partnership," under section 407(d)(5) of the Act. Section 407(e) of the Act defines the term "marketable obligation" to mean a bond, debenture, note, certificate, or other evidence of indebtedness, if such obligation is acquired: (A) On the market, either (i) at the prevailing price of a national securities exchange, or (ii) if the obligation is not traded on a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer; (B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or (C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer.

that the Plan receives adequate consideration for any CVOs sold. It is possible that, in the future, Progress Energy may purchase directly CVOs being sold by the Plan, whether at the direction of a Plan participant or U.S. Trust. If a participant receives a cash distribution in the future related to the holding of the CVO, the cash received will be invested in a separate money market fund. The Plan will not be required to pay any fees or commissions in connection with any sales of the CVOs to Progress Energy.

12. Because the Plan received the CVOs automatically as a result of the share exchange between Florida Progress and CP&L Energy, it is represented that the Plan could have avoided acquiring or holding the CVOs if it sold all of its shares of Florida Progress Stock prior to the share exchange, in the absence of participant direction. Alternatively, the Plan could have sold its right to receive the CVOs prior to the effective date of the share exchange. However, Salomon Smith Barney advised Florida Progress, in an opinion letter dated July 5, 2000 to the company's Board of Directors, that due to the low trading volume in the "when, as and if issued" market, a mass sale of the CVOs by the Plan would likely depress the value of the CVOs, thereby adversely affecting the interests of the Plan participants.

13. As stated above, U.S. Trust is serving on behalf of the Plan as the independent fiduciary with respect to the holding or sale of any CVOs for which the Plan does not receive participant direction. U.S. Trust is the principal subsidiary of U.S. Trust Corporation, which was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation. As of December 31, 1999, U.S. Trust had approximately \$5 billion in assets and over \$75 billion in assets under management. Of those assets under management, a significant portion consisted of the assets of ERISA-covered Plans. U.S. Trust has served as an independent fiduciary for a number of Plans that have acquired or held employer securities and it has managed over \$20 billion in employer securities held by such Plans. In managing such investments, U.S. Trust has exercised discretionary authority over many transactions involving the acquisition, retention and disposition of employer securities. More specifically, U.S. Trust has served as an independent fiduciary, performing similar duties to those contemplated herein on at least ten previous occasions.

U.S. Trust represents that it is independent of Florida Progress and its affiliates. In this regard, U.S. Trust asserts that it has no business, ownership or control relationship, nor is it otherwise affiliated with Florida Progress. Further, U.S. Trust represents that it derives less than one percent of its annual income from Florida Progress.

U.S. Trust states that it has agreed to act, and is currently acting as independent fiduciary for the Plan with respect to the CVOs. U.S. Trust represents that it is monitoring the value of the CVOs and will dispose of them (unless they are disposed of sooner pursuant to directions of the participants) in the event a determination is made that it is in the interest of Plan participants to do so in accordance with the prudence standards of section 404 of the Act.

In the event U.S. Trust determines to sell the remaining CVOs in the Plan on behalf of the participants, or if at any time it determines there is a lack of liquidity in the market that would adversely affect the interests of Plan participants, U.S. Trust has arranged for Progress Energy to purchase the CVOs from the Plan. In connection with this type of sales transaction, U.S. Trust explains that it will engage the services of an independent appraiser to determine the fair market value or the range of fair market values for the CVOs. As the independent fiduciary, U.S. Trust states that it will make the final decision on an sale of the CVOs to Progress Energy, based upon the independent appraisal.

14. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Exchange Agreement provided for the acquisition by CP&L Energy of the outstanding shares of Florida Progress in accordance with the share exchange. Consequently, the CVOs were issued pursuant to the terms of the Exchange Agreement and the CVO Agreement.

(b) The Exchange Agreement was negotiated on an arm's length basis by and among Florida Progress, CP&L Energy and CP&L, and approved by the shareholders of these entities.

(c) Salomon Smith Barney, an independent investment adviser, opined to Florida Progress that the consideration to be received by Florida Progress shareholders in exchange for their shares of Florida Progress Stock was "fair," from a financial point of view.

(d) Under the terms of the Plan, participants had the authority to transfer

their investments out of the Florida Progress Stock Fund prior to their receipt of the CVOs.

(e) For purposes of the share exchange, and with respect to any future dispositions of the CVOs, the Plan was treated and will be treated in the same manner as any other shareholder of Florida Progress Stock.

(f) Progress Energy will purchase the CVOs being sold by the Plan either at the direction of a Plan participant or by U.S. Trust, the independent fiduciary, if no participant direction is given.

(g) If U.S. Trust determines that a sale of the CVOs is appropriate, it will retain an independent appraiser to calculate the price at which the CVOs should be sold to Progress Energy.

(h) Plan participants will continue to have authority to sell any CVOs that are held in their participant accounts in the CVO Fund.

#### Notice to Interested Persons

Florida Progress will provide notice of the proposed exemption to all participants and beneficiaries in the Plan by either personal delivery or first class mail within 20 days of the date of publication of the notice of proposed exemption in the **Federal Register**. Florida Progress will provide notice to active participants in the Plan, who hold CVOs in their Plan accounts, by posting copies of the proposed exemption on bulletin boards normally used for employee notices of this nature. For terminated or retired employees, holding CVOs in their Plan accounts, Florida Progress will give notice to such interested persons by first class mail. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption are due within 50 days of the date of publication of the notice of pendency in the **Federal Register**.

*For Further Information Contact:* Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### Columbia Savings Plan (the Plan) Located in Wilmington, DE

[Application No. D-10977]

#### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of

section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) and section 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective November 1, 2000, to (1) the receipt, by the Plan, of Stock Appreciation Income Linked Securities (SAILS), in exchange for common stock in Columbia Energy Group (Columbia Energy), the Plan sponsor; (2) the extension of credit by the Plan to NiSource, Inc. (NiSource), a party in interest, in connection with the receipt of the zero coupon bond (the Debenture) portion of the SAILS; (3) the continued holding of the SAILS by the Plan; and (4) the potential sale of the SAILS by the Plan to Nisource.

This proposed exemption is subject to the following conditions:

(a) The Plan automatically received the SAILS in exchange for its shares of Columbia Energy common stock, in accordance with the terms of an agreement and plan of merger (the Merger Agreement), and it paid no fees or commissions in connection with its receipt of the SAILS and other merger consideration.

(b) All Columbia Energy shareholders, including Plan participants, received SAILS in the same manner, so that the Plan participants and beneficiaries were not in a less advantageous position than other Columbia Energy shareholders.

(c) The Plan's receipt of the SAILS resulted from shareholder approval and did not relate to any unilateral exercise of discretion by a Plan fiduciary.

(d) Morgan Stanley (Morgan Stanley) and Salomon Smith Barney, Inc. (Salomon Smith Barney) advised Columbia Energy that the consideration consisting of NiSource common stock, SAILS and cash for Columbia Energy common stock was "fair," from a financial point of view.

(e) Duff & Phelps, Inc. (Duff & Phelps) provided Fidelity Investments, Inc., the Plan trustee (the Trustee), and the Plan's Savings Plan Committee with independent financial advice concerning the valuation of the SAILS.

(f) The Plan did not pay any fees or commissions in connection with the acquisition and holding of the SAILS, nor will it pay any fees or commissions if any SAILS are sold to NiSource.

(g) An independent fiduciary, United States Trust Company, N.A. (U.S. Trust)—

(1) Has overseen, and continues to oversee, the Plan's holding and disposition of the SAILS;

(2) Determines whether it is appropriate for the Plan to dispose of the SAILS (either on the open market or through a direct sale to NiSource) and instructs the Trustee regarding such disposition;

(3) Determines, in the event of a sale of any SAILS to NiSource, the fair market value of such SAILS either (i) based on their closing price on the New York Stock Exchange (the NYSE) on the date of the transaction, or (ii) retains an independent appraiser if the SAILS are not carried on the NYSE or, in the event it concludes that the closing price on the NYSE is not representative of the fair market value of the SAILS as of the transaction date; and

(4) Anticipates disposing of all SAILS held by the Plan by the end of calendar year 2001.

(h) The Plan does not pay any fees or commissions in the event any SAILS are sold to NiSource.

*Effective Date:* If granted, this proposed exemption will be effective as of November 1, 2000.

#### Summary of Facts and Representations

1. Columbia Energy is a public utility holding company whose operating subsidiaries are engaged in natural gas transmission, distribution, exploration and production of natural gas and oil, other energy services, and the telecommunications business. Columbia Energy owns approximately 16,250 miles of interstate pipelines extending from offshore in the Gulf of Mexico to Lake Erie, New York and the Eastern seaboard. Columbia Energy's distribution subsidiaries provide natural gas to commercial and residential customers in Ohio, Pennsylvania, Virginia, Kentucky and Maryland.

Columbia Energy also explores for, develops, gathers and produces natural gas and oil in Appalachia and Canada. Further, Columbia Energy sells propane products at wholesale and retail prices to customers in 31 states and the District of Columbia. The company owns and operates petroleum assets in five states and owns an unregulated electric generation plant whose primary focus is the development, ownership and operation of clean, natural gas-fueled power projects.

Columbia Energy's principal executive offices are currently located in Wilmington, Delaware. As of October 31, 2000, Columbia Energy had 79,512,137 shares of common stock that were issued and outstanding. Such stock was publicly-held and listed on the NYSE.

2. NiSource is an energy and public utility holding company maintaining its principal executive offices in Merrillville, Indiana. NiSource's operating subsidiaries engage in most phases of the natural gas business, the electric utility business and other energy-related and utility-related services, primarily in northern Indiana and New England. NiSource also owns businesses that install, repair and maintain underground pipelines and invests in real estate and venture capital projects. Further, NiSource develops unregulated power projects and markets products and services, such as propane, energy efficiency design and energy advisory services, in various states.

3. The Plan is a defined contribution plan with 9,051 participants as of October 31, 2000. Prior to November 1, 2000 (the Transaction Date), the Plan held shares of common stock of Columbia Energy. As of October 31, 2000, the aggregate fair market value of the total assets of the Plan was \$686,077,606, of which \$262,236,210 was invested in a unitized company stock fund holding 3,626,555 shares of Columbia Energy common stock, or approximately 5 percent of the then outstanding shares of Columbia Energy.

Fidelity Investments serves as the independent Trustee of the Plan. In addition, a five member Savings Plan Committee, presently consisting of officers and employees of NiSource, serves as the Plan administrator and has investment discretion over the Plan's assets.

4. On February 27, 2000, Columbia Energy entered into an agreement and plan of merger (which was subsequently amended and restated as of March 31, 2000 and is referred to herein as the "Merger Agreement") with NiSource and certain of its subsidiaries. The Merger Agreement provided for the acquisition by NiSource of Columbia Energy.<sup>24</sup> Under the terms of the Merger Agreement, Columbia Energy shareholders had the right to elect to receive for their Columbia Energy shares either—

(a) *Cash and SAILS*<sup>25</sup> Consideration consisting of \$70 per share for each share of Columbia Energy common stock held by the shareholder and SAILS, having a face value of \$2.60 per unit; or

(b) *Stock Consideration* consisting of a specified number of NiSource common shares equal to \$74 divided by the average closing price of NiSource common shares for the 30 trading days ending two trading days before the completion of the merger, but never more than 4.44848 shares. If Columbia Energy shareholders made stock elections for more than an aggregate of 30 percent of the outstanding Columbia Energy shares, only a portion of the Columbia Energy common stock covered by the stock elections could be converted into the stock consideration. Thus, to the extent Columbia Energy shareholder elections exceeded the 30 percent maximum, the elections would be subject to proration and the Columbia Energy shareholders would be entitled to receive cash and SAILS, in addition to shares of NiSource common stock.

Regardless of the form of consideration elected by Columbia Energy shareholders, a penalty would apply to NiSource if the merger was not completed by February 27, 2001. Under such circumstances, the merger consideration would also include additional cash equal to interest at 7 percent per annum on the specified amount of \$72.29<sup>26</sup> for the period beginning on February 27, 2001 and ending on the day before the completion of the merger, minus all cash dividends paid on Columbia Energy common stock having a record date after February 27, 2001.

5. Each SAILS is a unit consisting of two components—(a) a zero coupon debt security (i.e., the Debenture), and (b) a forward equity (or share purchase) contract. The entire principal amount of the Debenture portion of the SAILS will mature and become due and payable, together with accrued and unpaid interest, on November 1, 2006, the sixth anniversary of the Transaction Date. The share purchase contract represents the SAILS holder's obligation to purchase, for \$2.60 in cash, a number of newly-issued shares of NiSource common stock (for each SAILS unit held) on November 1, 2004, the fourth anniversary of the Transaction Date

(unless the purchase contract expires prior to that date). The Debenture is pledged to secure that obligation. Such purchases will occur at the following settlement rates:

- If the Applicable Market Value<sup>27</sup> is equal to or greater than \$23.10, then each purchase contract will be settled for 0.1126 shares of NiSource common stock.
- If the Applicable Market Value is less than \$23.10 but greater than \$16.50, then each purchase contract will be settled for a number of NiSource common stock determined by dividing the stated amount of \$2.60 by the Applicable Market Value (carried to four decimal places).
- If the Applicable Market Value is less than \$16.50, then each purchase contract will be settled for 0.1576 shares of NiSource common stock.

Until a holder of SAILS acquires shares of NiSource common stock upon settlement of the SAILS units, the holder will have no rights with respect to the NiSource shares. SAILS holders are also not permitted to settle the share purchase contract prior to November 1, 2004, except where there is a change in control of NiSource. As noted above, the number of shares to be received at settlement is dependent upon the Applicable Market Value and is subject to antidilution adjustments.

Unless a SAILS holder chooses to make a cash payment of \$2.60 to settle the purchase contract portion of the SAILS, the Debenture that is pledged as collateral will be remarketed, i.e., sold to the public on the third business day before November 1, 2004, and the proceeds will be used to pay the amount the holder otherwise would owe under the purchase contract. If the holder elects to pay cash to settle the purchase contract, the Debenture will not be remarketed and the holder will continue to own it after November 1, 2004, free of any pledge related to the SAILS.

If the effort to remarket the SAILS is successful, the proceeds received from the sale will be delivered to NiSource as payment under the purchase contract. If the remarketing agent cannot remarket the Debentures, NiSource will exercise its rights as a secured party and take possession of the Debentures. Under either circumstance, the holder's obligation to purchase will be fully satisfied since the holder will not be required to expend additional money in order to receive shares of NiSource common stock.

<sup>24</sup> Specifically, the merger involved the creation of a new holding company (New NiSource) and also included two separate, but concurrent mergers. One wholly owned subsidiary of New NiSource merged into NiSource and another wholly owned subsidiary merged into Columbia Energy. NiSource and Columbia Energy were the surviving corporations in both mergers and became wholly owned by New NiSource. New NiSource then changed its name to "NiSource, Inc." and it serves as the holding company for Columbia Energy and its subsidiaries as well as the subsidiaries of NiSource.

<sup>25</sup> SAILS and "Stock Appreciation Income Linked Securities" are service marks of Credit Suisse First Boston Corporation.

<sup>26</sup> It is represented that \$72.29 was a negotiated amount based upon the advice of investment bankers. Because the merger was consummated on November 1, 2000, the penalty was never imposed.

<sup>27</sup> The "Applicable Market Value" refers to the average of the closing prices of NiSource common stock on each of the 30 consecutive trading days ending on the third trading day preceding November 1, 2004, the purchase contract settlement date.

The SAILS were initially traded on the over-the-counter market. However, on November 2, 2000, they commenced being traded on the NYSE under the ticker symbol "NSE," on a "when-issued" basis.

6. The terms of the Merger Agreement were negotiated on an arm's length basis between Columbia Energy and NiSource. Two independent investment banking firms, Morgan Stanley and Salomon Smith Barney, rendered opinions to Columbia Energy to the effect that the consideration, consisting of NiSource shares, SAILS and cash, for the Columbia Energy shares was "fair," from a financial point of view.<sup>28</sup> In making separate determinations, Salomon Smith Barney and Morgan Stanley, among other things, (a) reviewed publicly-available financial statements and other information about Columbia Energy and NiSource; (b) met with Columbia Energy and NiSource executive staff and others to discuss matters relating to the past and current operations of Columbia Energy and NiSource, the financial conditions of these entities, and the prospects of these companies; (c) reviewed information concerning the trading activity for NiSource common stock; (d) reviewed the Merger Agreement and related documents; and (e) performed other analyses and considered such other factors as they deemed appropriate.

In rendering their opinions, both Salomon Smith Barney and Morgan Stanley assumed and relied, without independent verification, upon the accuracy of the information provided. In this regard, the advisers did not make independent valuations or appraisals of the assets or liabilities of Columbia Energy, or for that matter, of NiSource.

Both Morgan Stanley and Salomon Smith Barney noted that their opinions did not address the prices at which NiSource common stock or the SAILS would trade following the merger. Moreover, neither firm expressed an opinion or recommendation as to how shareholders of Columbia Energy should vote at the shareholder's meeting held in connection with the merger or the transactions contemplated thereby. Based on the foregoing, Salomon Smith Barney and Morgan Stanley concluded that the merger consideration was "fair," from a financial point of view, to the holders of Columbia Energy common stock.

In addition to the opinions offered to Columbia Energy by Morgan Stanley

and Salomon Smith Barney, Duff & Phelps was retained jointly by the Trustee and the Savings Plan Committee to provide independent financial advice concerning the valuation of the SAILS. In part, Duff & Phelps opined that both "\* \* \* the cash election and the stock election [would] provide no less than adequate consideration as defined under section 3(18) of ERISA."

7. The Merger Agreement was approved by the shareholders of both companies in early June 2000. On October 30, 2000, the Columbia Energy shareholder election period expired and the right to make an election was passed through to Plan participants, who were entitled to provide instruction to the Trustee concerning which form of merger consideration each participant wished to receive. On November 1, 2000, the Transaction Date, the contemplated merger was consummated following regulatory approval.

Because of the issue concerning whether each SAILS unit constituted a qualifying employer security which the Plan could hold, the Plan's independent Trustee determined that, in accordance with applicable law, it was required to override all Plan participant elections to receive cash and SAILS and to elect, in the alternative, to receive NiSource common stock in exchange for all Columbia Energy common stock held by the Plan.<sup>29</sup> The Trustee reportedly made this decision in an effort to avoid receiving SAILS on behalf of the Plan.

8. Columbia Energy shareholders holding approximately 61.3 million shares of Columbia Energy common stock, which represented approximately 77.3 percent of the outstanding Columbia Energy shares, elected to receive NiSource stock. Because this percentage (i.e., 77.3 percent) exceeded the 30 percent limitation contained in the Merger Agreement, the stock elections were prorated and only 38.944476 percent of the Columbia Energy common stock for which valid stock elections were made could ultimately be exchanged for NiSource common stock, at an exchange ratio of 3.04414 NiSource shares for each Columbia Energy share exchanged. The balance of the Columbia Energy common stock covered by the stock elections, as well as all Columbia Energy common stock for which no election was made, were exchanged, on a per share basis, for \$70 in cash and \$2.60, representing the face amount of each SAILS unit.

<sup>29</sup> The Department expresses no opinion in this proposed exemption on whether the Trustee's decision to receive NiSource common stock on behalf of the Plan was consistent with the provisions of Part 4 of Title I of the Act.

Notwithstanding the Plan's election to receive shares of NiSource common stock, because the total amount of shareholder elections to receive NiSource common stock exceeded 30 percent of the outstanding shares of Columbia Energy common stock, on November 9, 2000, the Plan received, as a result of the proration, 2,214,213 SAILS units (valued at \$5,756,953.80 or \$2.60 per unit face value)<sup>30</sup>, \$154,994,851 in cash, and 4,299,366 shares of NiSource common stock (valued at \$24 per share or \$102,183,784). The Plan was treated in the same manner as any other shareholder of Columbia Energy common stock who had made a valid stock election. Moreover, the Plan did not pay any fees or commissions in connection with its receipt of the merger consideration.

Currently, the SAILS are being held on behalf of the Plan in a separate fund which is not subject to participant-directed investment.

9. Thus, based upon the foregoing description of the Plan's involvement in the merger, the Trustee and the Savings Plan Committee (together, the Applicants) request an administrative exemption from the Department with respect to (a) the receipt, by the Plan, of the SAILS as a result of the Plan's ownership of Columbia Energy common stock; (b) the extension of credit by the Plan to NiSource in connection with the Plan's receipt of the Debenture portion of the SAILS; (c) the continued holding of the SAILS by the Plan; and (d) the Plan's potential resale of the SAILS to NiSource. The Applicants are not requesting exemptive relief with respect to the Plan's acquisition and holding of NiSource common stock. The Applicants note that NiSource and its affiliates became parties in interest with respect to the Plan on the Transaction Date. Therefore, they state that the NiSource common stock would constitute a "qualifying employer security" within the meaning of section 407(d)(5) of the Act, as "stock," a "marketable obligation," or an "interest in a publicly-traded partnership." The Applicants further explain that the acquisition and holding of the NiSource common stock by the Plan would be statutorily exempt under section 408(e) of the Act.<sup>31</sup>

<sup>30</sup> The SAILS represented approximately .8 of one percent or .008 of the Plan's total assets.

<sup>31</sup> However, the Department expresses no opinion herein on whether such stock is a qualifying employer security or the acquisition and holding of NiSource common stock by the Plan satisfies the terms and conditions of section 408(e) of the Act.

<sup>28</sup> Similarly, Credit Suisse First Boston Corporation advised NiSource that the merger consideration was fair to NiSource, from a financial point of view.

However, the Applicants represent that it is unclear whether the statutory exemption contained in section 408(e) of the Act would apply to the Plan's receipt and holding of the SAILS. Although each SAILS would likely qualify as a "security," as such term is defined in section 2(1) of the Securities Exchange Act of 1933 (the 1933 Act) and section 3(20) of the Act, the Applicants explain that it is unclear whether the SAILS would fall within the definition of "qualifying employer securities," as defined in section 407(d)(5) of the Act.<sup>32</sup>

10. According to the Applicants, although the Debenture portion of the SAILS appears to meet the definition of a "marketable obligation" contained in section 407(d)(5) of the Act, that portion of the SAILS consisting of a forward equity or share purchase contract does not constitute either "stock" or a "marketable obligation" under section 407(d)(5) of the Act. Therefore, the Applicants state that the SAILS do not appear to meet the definition of a qualifying employer security and they conclude that the statutory exemption contained under section 408(e) of the Act would not be applicable to the Plan's receipt, holding and sale of both the equity and debt portions of the SAILS, including any extension of credit relating to the Debenture portion of the SAILS.

In relevant part, section 408(e) of the Act provides that sections 406 and 407 of the Act shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407(d)(5)(1) if such acquisition is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 407(e)(1)), (2) if no commission is charged with respect thereto, and (3) if—(A) the plan is an eligible individual account plan (as defined in section 407(d)(3), or (B) in the case of an acquisition by a plan which is not an eligible individual account plan, the acquisition is not prohibited under section 407(a) of the Act.

<sup>32</sup> As noted previously, a "qualifying employer security" means an employer security which is either "stock," a "marketable obligation," or an "interest in a publicly-traded partnership," under section 407(d)(5) of the Act. Section 407(e) of the Act defines the term "marketable obligation" to mean a bond, debenture, note, certificate, or other evidence of indebtedness, if such obligation is acquired: (A) On the market, either (i) at the prevailing price of a national securities exchange, or (ii) if the obligation is not traded on a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer; (B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or (C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer.

If granted, the proposed exemption will be effective as of November 1, 2000.

11. As noted above, U.S. Trust has been retained to serve on behalf of the Plan as the independent fiduciary with respect to (a) reviewing and monitoring the subject transactions; (b) determining, on behalf of the Plan, the appropriate retention and disposition strategy for the SAILS, by taking into consideration the liquidity requirements of the Plan and any restrictions imposed by the Department pursuant to the request for the prohibited transaction exemption; and (c) based on the outcome of the exemption request, instructing the Trustee as to the disposition of the SAILS. U.S. Trust is the principal subsidiary of U.S. Trust Corporation, which was founded in 1853 and is subject to regulation as a trust company by the State of New York. U.S. Trust is a member of the Federal Reserve System, the Federal Deposit Insurance Corporation, and an entity having approximately \$5 billion in assets as of December 31, 1999. In addition, U.S. Trust Corporation is a wholly owned subsidiary of the Charles Schwab Corporation and currently has over \$73 billion in assets under management, a significant percentage of which consists of ERISA retirement plan assets. U.S. Trust has served as an independent fiduciary for numerous employee benefit plans that acquire or hold employer securities and has managed, at various times, over \$18 billion in employer securities held by various plans. In managing these investments, U.S. Trust has exercised discretionary authority over transactions involving the acquisition, retention and disposition of employer securities.

U.S. Trust represents that it is independent of Columbia Energy and its affiliates. In this regard, U.S. Trust asserts that it has no business, ownership or control relationship, nor is it otherwise affiliated with Columbia Energy. U.S. Trust represents that its only relationship with Columbia Energy relates to its engagement as the independent fiduciary for the Plan. U.S. Trust further asserts that it derives less than one percent of its annual income from Columbia Energy.

Subject to the terms of an engagement letter dated November 7, 2000 by and between it and Columbia Energy, U.S. Trust states that it has agreed to act, and is currently acting as independent fiduciary for the Plan with respect to the holding and the disposition of the SAILS. In its capacity as independent fiduciary, U.S. Trust represents that it has monitored the daily trading value of the SAILS on the NYSE, has been directing the Trustee to sell SAILS on a

daily basis since the time of its engagement, and has instructed the Trustee to dispose of all remaining SAILS held by the Plan by the end of calendar year 2001. Generally, such sales will take place on the open market. However, SAILS will be sold to NiSource only if U.S. Trust determines that there is no viable market and that it would be in the best interest of the Plan for a sale to be effected to NiSource.

For purposes of valuation, the fair market value of the SAILS is based upon their market price as listed on the NYSE at the time of the transaction. Should U.S. Trust determine that a disposition of the remaining SAILS to NiSource would be in the best interest of the Plan, it will determine the fair market value of the SAILS based upon their closing price on the NYSE as of the transaction date. However, if U.S. Trust concludes that the closing price is not representative of the fair market value of the SAILS, the sales price will be determined by a qualified, independent appraiser.<sup>33</sup> (U.S. Trust will also secure a valuation from an independent appraiser if the SAILS are delisted on the NYSE.) A sale to NiSource will be for cash and will not involve the payment of any fees or commissions by the Plan. Any cash received upon disposition of all of the SAILS held by the Plan will be allocated to Plan participant accounts and the special fund currently holding the SAILS on the Plan's behalf will be dissolved.

12. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan automatically received SAILS in exchange for its shares of Columbia Energy common stock in accordance with the terms of the Merger Agreement and it paid no commissions or fees in connection with its receipt of the SAILS and other merger consideration.

(b) The Merger Agreement was negotiated on an arm's length basis by Columbia Energy and NiSource, and subsequently approved by the shareholders of these entities.

(c) Morgan Stanley and Salomon Smith Barney, an independent

<sup>33</sup> It is represented that U.S. Trust will not be exclusively guided by the price of the SAILS as quoted on the NYSE. The exception to U.S. Trust's reliance on the NYSE for determining the price of the SAILS will be if the securities become so thinly-traded as to no longer constitute a "generally-recognized market" within the meaning of section 3(18) of the Act, thereby requiring an independent valuation. As trading has developed with respect to the SAILS, U.S. Trust believes this circumstance will be extremely remote.

investment advisers, opined to Columbia Energy that the consideration consisting of NiSource common stock, SAILS and cash for Columbia Energy common stock was "fair," from a financial point of view.

(d) Duff & Phelps provided independent financial advice to the Trustee and the Savings Plan Committee concerning the valuation of the SAILS.

(e) For purposes of the merger, and with respect to any future dispositions of the SAILS, the Plan was treated and will be treated in the same manner as any other shareholder of Columbia Energy common stock that made a valid election.

(f) As independent fiduciary, U.S. Trust (i) has overseen and will continue to oversee, the Plan's holding and disposition of the SAILS; (ii) will determine whether it is appropriate for the Plan to dispose of the SAILS (either on the open market or through a direct sale of any remaining SAILS to NiSource) and will instruct the Trustee regarding such disposition; (iii) will determine, in the event of a sale of any SAILS to NiSource, the fair market value of such SAILS either based on their closing market price on the NYSE on the date of the transaction, or, it will retain an independent appraiser if the SAILS are delisted on the NYSE or if it concludes that the closing price on the NYSE as of the transaction date is not representative of the fair market value of the SAILS; and (iv) will require the disposal of all SAILS held by the Plan by the end of calendar year 2001.

(g) The Plan will not pay any fees or commissions in the event any SAILS are sold to NiSource.

#### Notice to Interested Persons

Columbia Energy will provide notice of the proposed exemption to all participants and beneficiaries in the Plan by first class mail within 20 days of the date of publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Comments regarding the proposed exemption are due within 50 days of the date of publication of the notice of pendency in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### Miller International, Inc. Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Application No. D-10980]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain three-acre parcel of vacant land (the Property) by the Plan to Miller International, Inc. (Miller), the sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Plan receives the current fair market value for Property, as established by an independent qualified appraiser at the time of the sale; and

(c) the Plan pays no commissions or other expenses associated with the sale.

#### Summary of Facts and Representations

1. The Plan is a qualified profit-sharing plan. As of February, 2001, the Plan had 39 participants and beneficiaries. As of December 31, 2000, the Plan had \$2,781,338 in total assets. Miller International, Inc. (Miller) is the sponsor of the Plan. The Plan's trustees are Seymour Simmons, Jr., Marvin Levy and Ronald G. Schmitz. Miller is a subchapter "C" State of Colorado corporation which is in the business of manufacturing and distributing clothing.

2. In August, 1971, the Plan purchased the Property from Coogan and Walters, a Colorado Partnership, which was an unrelated third party. The cost of the Property was \$15,800 in cash, which represented approximately 1.37% of the Plan's assets at that time. The Property is adjacent to another property owned by Miller.<sup>34</sup> It is represented that the Trustees made the decision to purchase the Property as an investment for the Plan. As of December 31, 2000, the Property represented

approximately 8.6% of the total value of the Plan's assets.

3. The applicant represents that since it was originally acquired by the Plan, the Property has not been used or leased by anyone, including the parties in interest described herein. Since it was originally acquired by the Plan in 1971, the Property has not been an income-producing asset. The applicant represents that the only expense incurred by the Plan with respect to the Property was in 1994, when \$3,950 was paid to install a storm sewer drain. The property tax on the Property has been paid by Miller on an annual basis.

4. The Property, located at the northwest corner of Umatilla Street and West 85th Avenue, Federal Heights, Colorado, was appraised on May 15, 2001 (the Appraisal). The Appraisal was prepared by A. Mark Dyson, MAI, CCIM (Mr. Dyson) and by Steven A. Tromly, MAI (Mr. Tromly, collectively; the Appraisers), who are independent state certified appraisers. The Appraisers are with DYCO Real Estate Inc., located at 15710 West Colfax Avenue, Suite 204, in Golden, Colorado. The Appraisers relied solely on the sales comparison approach in valuing the Property. The Appraisers determined that the fair market value of the Property was \$290,000, as of May 10, 2001. In addition, since the Property is adjacent to other property owned by Miller, the Appraisers considered whether the adjacency factor would merit a premium above fair market value in any sale of the Property to Miller. However, the Appraisers determined that no adjustments to the value of the Property are necessary for the adjacent property ownership by Miller.

5. The applicant now proposes that Miller purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan because, among other things, the Plan would pay no commissions or other expenses associated with the sale. In addition, Miller will pay the Plan the current fair market value of the Property, as established by an independent qualified real estate appraiser at the time of the sale. In this regard, the Appraisers will update the Appraisal at the time of the transaction to ensure that the Plan receives the then current fair market value for the Property. Finally, the applicant states that the proposed sale of the Property to Miller will increase the liquidity of the Plan's current investment portfolio by allowing the Plan to sell an illiquid, non-income producing asset. The sale will enable the Trustees to further diversify the

<sup>34</sup> The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of Part 4 of Title I of the Act.

assets of the Plan by reinvesting the sale proceeds in other assets.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction;

(b) The Plan will receive the current fair market value for the Property, as established by an independent, qualified real estate appraiser at the time of the sale;

(c) The Plan will pay no commissions or other expenses associated with the sale; and

(d) The sale will enable the Plan to sell an illiquid, non-income producing asset and further diversify the Plan's current portfolio by reinvesting the sale proceeds in other assets.

*Further Information Contact:*

Ekaterina A. Uzlyan of the Department at (202) 219-8883. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction

is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 23rd day of July 2001.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
Department of Labor.*

[FR Doc. 01-18682 Filed 7-27-01; 8:45 am]

**BILLING CODE 4510-29-P**

### MEDICARE PAYMENT ADVISORY COMMISSION

#### Commission Meeting

**AGENCY:** Medicare Payment Advisory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given of the Medicare Payment Advisory Commission (MedPAC) public meeting on Thursday, September 13, 2001, and Friday, September 14, 2001, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting will begin at 10 a.m. on September 1, and at 9 a.m. on September 14.

Congress directed MedPAC in the Balanced Budget Refinement Act of 1999 (BBRA) to evaluate the level of burden placed on providers through federal regulations and make recommendations to reduce the regulatory complexity of the Medicare program. On Thursday, September 13, MedPAC will discuss the regulatory complexity of the Medicare program. During this meeting, invited witnesses will address how changes in law and regulation may improve the program, including improvement of the rules regarding quality of care requirements, billing, compliance, fraud and abuse, and beneficiary protections. Witnesses will also be asked to provide recommendations on how the Congress and the Secretary of Health and Human Services can reduce regulatory burden and complexity for Medicare beneficiaries, providers, and health plans. Further information on the full agenda for the two day meeting and list of participating witnesses will be posted

on the MedPAC website at [www.medpac.gov](http://www.medpac.gov) prior to the meeting. We will publish another federal register notice in August.

To inform the Commission, MedPAC invites the public to provide written comments on regulatory burden related to Medicare. Respondents are asked to address the following questions:

1. Do current regulations help Medicare fulfill its responsibility to be a prudent purchaser of health care services and to promote access to quality care for its beneficiaries? What approaches do other payers use that could be useful for Medicare?

2. How do Medicare's regulatory requirements (and the resources you need to comply with them) compare with those of other payers?

3. How has the regulatory complexity of the Medicare program changed in recent years? How have these changes affected the delivery of care, including clinical innovation?

4. Have increased fraud and abuse investigative actions affected your service to Medicare beneficiaries? How can Medicare deter improper billing in a non-punitive environment?

5. What is the frequency and nature of your interactions with administrative personnel from the Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration (HCFA), its fiscal intermediaries and carriers as well as other Medicare contractors? How do these interactions compare with other insurers?

6. What aspects of Medicare do you find most/least burdensome?

7. What specific steps would you recommend to decrease regulatory complexity and burden in Medicare? How could those steps be implemented?

People or organizations wishing to submit a written statement for the printed record of the hearing should submit no more than five (5) one-sided, single-spaced pages of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format with their name, address, and hearing date noted on the label, by close of business, Friday, August 17, 2001, to Murray N. Ross, Ph.D., Executive Director, Medicare Payment Advisory Commission, 1730 K Street, NW., Suite 800, Washington, DC 20006. No attachments will be accepted.

**Murray N. Ross,**  
*Executive Director.*

[FR Doc. 01-18933 Filed 7-27-01; 8:45 am]

**BILLING CODE 6820-BW-M**

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.
2. *The title of the information collection:* 10 CFR 50.55a, "Codes and Standards; Amended Requirements".
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* The American Society of Mechanical Engineers (ASME) has set a frequency for conducting these activities with its attendant recordkeeping based on operating history and the need for component functionality. The frequency is dependent on the safety function of the component. The information is generally not submitted to the NRC, but is retained by the licensees to be made available to the NRC in the event of an NRC inspection. Reporting requirements consist of one-time relief requests.
5. *Who will be required or asked to report:* Nuclear power plant licensees.
6. *An estimate of the number of responses:* A decrease of 488 responses for relief requests.
7. *The estimated number of annual respondents:* 103.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* A decrease of 1194 hours (a decrease in recordkeeping burden of 412 hours [4 hours/plant] and a decrease in reporting burden of 782 hours [8 hours/plant]).
9. *An indication of whether Section 3507(d), Public Law 104-13 applies:* Applicable.
10. *Abstract:* The proposed rule implements the later edition and addenda of Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code (BPV Code), and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). NRC regulations require that nuclear power plant owners (1) construct Class 1, Class 2, and Class 3 components in accordance with the rules provided in

Section III, Division 1, "Requirements for Construction of Nuclear Power Plant Components," of the ASME BPV Code; (2) inspect Class 1, Class 2, Class 3, Class MC (metal containment) and Class CC (concrete containment) components in accordance with the rules provided in Section XI, Division 1, "Requirements for Inservice Inspection of Nuclear Power Plant Components," of the ASME BPV Code; and (3) test Class 1, Class 2, and Class 3 pumps and valves in accordance with the rules provided in ASME OM Code.

Every 120 months licensees are required to update their inservice inspection and inservice testing programs to meet the version of Section XI of the ASME BPV Code and ASME OM Code incorporated by reference into the regulations that are in effect 12 months prior to the start of a new 120-month interval.

Submit, by August 29, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the submittal may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. The proposed rule indicated in "The title of the information collection" is or has been published in the **Federal Register** within several days of the publication date of this **Federal Register** Notice. The OMB clearance package and rule are available at the NRC worldwide web site: <http://www.nrc.gov/NRC/PUBLIC/OMB/index.html> for 60 days after the signature date of this notice and are also available at the rule forum site, <http://ruleforum.llnl.gov>.

Comments and questions should be directed to the OMB reviewer Bryon Allen, Office of Information and Regulatory Affairs (3150-0011), NEOB-10202, Office of Management and Budget, Washington DC 20503, by August 29, 2001.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 23rd day of July 2001.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-18856 Filed 7-27-01; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on August 21-23, 2001, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance to discuss General Electric (GE) Nuclear Energy proprietary information per 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

*Tuesday, August 21, 2001—8:30 a.m.*

*until the conclusion of business*

*Wednesday, August 22, 2001—8:30 a.m.*

*until the conclusion of business*

*Thursday, August 23, 2001—8:30 a.m.*

*until the conclusion of business*

The Subcommittee will review the: (1) License amendment request of Alliant Energy for a core power uprate for the Duane Arnold Energy Center, (2) GE Nuclear Energy TRACG realistic thermal-hydraulic code version and its application to evaluation of anticipated operational occurrences, and (3) Electric Power Research Institute (EPRI) report TR-113594, "Resolution of Generic Letter 96-06 Waterhammer Issues." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary

views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, GE Nuclear Energy, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301-415-8065) between 7:30 a.m. and 4:30 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: July 24, 2001.

**Sher Bahadur,**

*Associate Director for Technical Support.*

[FR Doc. 01-18855 Filed 7-27-01; 8:45 am]

BILLING CODE 7590-01-P

**NUCLEAR REGULATORY COMMISSION**

**Sunshine Act Notice**

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of July 30, August 6, 13, 20, 27, September 3, 2001.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Matters To Be Considered**

*Week of July 30, 2001*

Tuesday, July 31, 2001

1:25 p.m.: Affirmation Session (Public Meeting) (If needed)

*Week of August 6, 2001—Tentative*

There are no meetings scheduled for the Week of August 6, 2001.

*Week of August 13, 2001—Tentative*

Tuesday, August 14, 2001

9:30 a.m.: Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301-415-2775)

Wednesday, August 15, 2001

9:30 a.m.: Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301-415-7380)

1:25 p.m.: Affirmation Session (Public Meeting) (If needed)

1:30 p.m.: Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301-415-1277)

*Week of August 20, 2001—Tentative*

There are no meetings scheduled for the Week of August 20, 2001.

*Week of August 27, 2001—Tentative*

There are no meetings scheduled for the Week of August 27, 2001.

*Week of September 3, 2001—Tentative*

There are no meetings scheduled for the Week of September 3, 2001.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Louis Gamberoni (301) 415-1651.

**Additional Information**

By a vote of 4-0 on July 17 and 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Power Authority of the State of New York Entergy Companies; Applications to Transfer Licenses for Indian Point 3 and Fitzpatrick Nuclear Plants; Procedural Order Announcing Release of Redacted Version of CLI-01-14 and Addressing Parties' Treatment of Confidential Information in CLI-01-14" be held on July 19, and on less than one week's notice to the public.

By a vote of 4-0 on July 18 and 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Florida Power & Light Company (Commission Review of LBP-01-06)" be held on July 19, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, D.C. 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: July 26, 2001.

**David Louis Gamberoni,**

*Technical Coordinator, Office of the Secretary.*

[FR Doc. 01-19022 Filed 7-26-01; 2:12 pm]

BILLING CODE 7590-01-M

**OFFICE OF MANAGEMENT AND BUDGET**

**Cumulative Report on Rescissions and Deferrals**

July 1, 2001.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of July 1, 2001, of two deferrals contained in one special message for FY 2001. The message was transmitted to Congress on January 18, 2001.

**Deferrals (Attachments A and B)**

As of July 1, 2001, \$1.4 billion in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 2001.

**Information From Special Message**

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:

66 FR 8985, Monday, February 5, 2001

**Mitchell E. Daniels, Jr.,**

*Director.*

Attachments

**ATTACHMENT A—STATUS OF FY 2001 DEFERRALS**

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President .....	1,946.7
Routine Executive releases through July 1, 2001 .....	- 552.0
Overtaken by the Congress ....	.....
Currently before the Congress .....	1,394.7

BILLING CODE 3110-01-P

ATTACHMENT B  
Status of FY 2001 Deferrals - As of July 1, 2001  
(In thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted		Date of Special Message	Releases (-)		Congressional Action	Cumulative Adjustments	Amount Deferred as of 7/1/01
		Original Request	Subsequent Change (+)		Cumulative OMB/Agency	Congressionally Required			
<b>DEPARTMENT OF STATE</b>									
Other									
United States Emergency Refugee and Migration Assistance Fund.....	D01-1	145,310		1/18/01	40,033				105,277
<b>INTERNATIONAL ASSISTANCE PROGRAMS</b>									
International Security Assistance Economic Support Fund.....	D01-2	1,801,382		1/18/01	512,002				1,289,380
<b>TOTAL, DEFERRALS.....</b>		<b>1,946,692</b>			<b>552,035</b>				<b>1,394,657</b>

Note: Detail may not add to totals due to rounding.

**RAILROAD RETIREMENT BOARD****Privacy Act of 1974; Proposed Changes to Systems of Records**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice of proposed new system of records.

**SUMMARY:** The purpose of this document is to give notice of a proposed new Privacy Act system of records, RRB-51, Railroad Retirement Board's Customer PIN/Password (PPW) Master File System.

**DATES:** The proposed new system of records shall become effective as proposed without further notice on September 10, 2001. Unless comments are received before this date which would result in a contrary determination.

**ADDRESSES:** Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**FOR FURTHER INFORMATION CONTACT:** LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092, (312) 751-4548.

**SUPPLEMENTARY INFORMATION:** The proposed Customer PPW Master File System will maintain information collected for use in connection with RRB's implementation of a personal identification number (PIN)/Password system that allows RRB program applicants, claimants, annuitants and other customers to transact business with the RRB in an electronic business environment.

**Background and Purpose of the Proposed System**

The Railroad Retirement Board has a number of electronic initiatives underway that support the government mandate directing federal agencies to use information technology to offer more efficient and accessible service to the public. To support some of its electronic initiatives, the RRB, using SSA's system as a model, is creating the PPW infrastructure that will allow customers to conduct transactions with RRB on a routine basis through the Internet. The PPW infrastructure will enable RRB to offer customers a specific suite of services that require a PIN/Password system. Using a PPW process, our customers will be able to apply for RRB program benefits or view and possibly change certain personal record information, such as mailing address, through secure online transactions.

Customers must elect (opt-in) to use the PPW process to conduct electronic

transactions with RRB. Those who opt-in may include certain classes of applicants for RRB benefits, current beneficiaries in pay or non-pay status and certain other customers who choose these electronic service delivery options to conduct business with RRB. Customers who initially choose to use the PPW process may later elect out (opt-out) of the system by requesting RRB to block access to their records. RRB would disable the PPW capabilities to the records of customers making this request, thus blocking any access to the record.

**Establishment of the PPW Infrastructure**

The RRB first identified and developed the underlying principles to support a PPW business process. These principles intentionally focused on the framework to implement a successful PPW process in the various electronic applications RRB develops for customer service initiatives. For example, the PPW infrastructure is designed to:

Support all direct customer service delivery by RRB;

Maximize the level of automation involved in assigning, maintaining, and using the PPW services; and

Minimize the manual intervention of RRB employees in the PPW process. RRB also established authentication requirements for its electronic application and transaction processes that the PPW infrastructure is designed to support. These authentication requirements allow RRB to verify the identify of users on the Internet. The process for RRB customers to obtain passwords and the corresponding authentication required to use these passwords for a determined set of electronic services share a number of principles:

(1) Customers must opt-in to the PPW process by indicating to RRB their interest in establishing a password;

(2) A customer must have a Password Request Code (PRC) to begin the process of establishing a password. A PRC has one purpose—to identify a customer who may wish to establish a password.

(3) PRCs will be electronically generated and assigned to customers by RRB and will be accessible only to a limited number of RRB system employees who maintain the PPW system.

(4) PRCs will be sent to customers through the US mail.

**RRB-5****SYSTEM NAME:**

RRB-51, Railroad Retirement Board's Customer PIN/Password (PPW) Master File System.

**SYSTEM LOCATION**

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All RRB customers (applicants, claimants, annuitants and other customers) who elect to conduct transactions with RRB in an electronic business environment that requires the PPW infrastructure, as well as those customers who elect to block PPW access to RRB electronic transactions by requesting RRB to disable their PPW capabilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The information includes identifying information such as the customer's name, Social Security number (which functions as the individual's personal identification number (PIN)) and mailing address. The system also maintains the customer's Password Request Code (PRC), the password itself, and the authorization level and associated data (e.g. effective date of authorization).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 2(b)(6) of the Railroad Retirement Act, 45 U.S.C. 231f(b)(6); and the Government Paperwork Elimination Act.

On July 20, 2001, the Railroad Retirement Board filed a new system report for this system with the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A-130, Appendix I.

By authority of the Board.

**Beatrice Ezerski,**  
*Secretary of the Board.*

**PURPOSE(S):**

The purpose of this system is to enable RRB customers who wish to conduct business with the RRB to do so in a secure environment.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

a. Records may be released to agency employees on a need to know basis.

b. Relevant records relating to an individual may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of that individual.

c. Relevant information may be disclosed to the Office of the President

for responding to an individual pursuant to an inquiry from that individual or from a third party in his/her behalf.

d. Relevant records may be disclosed to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

e. Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

f. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

g. In the event that material in this system indicates a violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, the relevant records may be disclosed to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, provided that disclosure would be to an agency engaged in functions related to the administration of the Railroad Retirement Act or the Railroad Unemployment Insurance Act or provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Electronic and paper form.

**RETRIEVABILITY:**

Name and Social Security number (which acts as the individual's PIN).

**SAFEGUARDS:**

When not in use by an authorized person, paper records are stored in lockable cabinets in a building with security cameras and 24-hour security guards. Access to electronic records requires the use of restricted passwords.

**RETENTION AND DISPOSAL:**

These records will be maintained permanently until their official retention period is established.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092.

**NOTIFICATION PROCEDURE:**

Requests for information regarding an individual's record should be in writing addressed to the Systems Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

**RECORD ACCESS PROCEDURES:**

See Notification section above.

**CONTESTING RECORD PROCEDURES:**

See Notification section above.

**RECORD SOURCE CATEGORIES:**

Data for the system are obtained primarily from the individuals to whom the record pertains.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 01-18907 Filed 7-27-01; 8:45 am]

**BILLING CODE 7905-01-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Investment Company Act Release No. 25078; 812-12254]

**Barclays Global Fund Advisor, et al.; Notice of Application**

July 24, 2001.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit an open-end management investment company, whose portfolios will consist of the component securities of certain

foreign equity securities indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the portfolios at negotiated prices on a national securities exchange, as defined in section 2(a)(26) of the Act (a "Listing Exchange"); permit certain affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and permit the portfolios to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption under certain circumstances.

**Applicants:** Barclays Global Fund Advisors ("Adviser"), iShares Trust (the "Trust") and SEI Investments Distribution Company ("Distributor").

**Filing Dates:** The application was filed on September 15, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**Hearing or Notification of Hearing:** An order granting the requested relief 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 August 14, 2001 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 5th Street, NW., Washington, DC 20549-0609. iShares Trust, c/o Susan Mosher, Esq., Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; Barclays Global Fund Advisors, c/o Joanne T. Medero, Esq., Barclays Global Investors, 45 Fremont Street, San Francisco, CA 94105; and SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456, Attn: William Zittelli, Esq.

**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Branch Chief, at (202) 942-0579 (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. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Trust is organized as a series fund with multiple series.<sup>1</sup> The Trust intends to offer sixteen new series of shares (each a "New Fund"). The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser for each New Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter and distributor of each New Fund's shares.

2. Each New Fund will invest in a portfolio of securities ("Portfolio Securities") generally consisting of the component securities of a specified equity securities index (each, an "Subject Index").<sup>2</sup> In the future, applicants may offer additional series of the Trust ("Future Funds") based on other foreign equity securities indices. Any Future Fund will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser and (b) comply with the terms and conditions of the order (references to "New Funds" include "Future Funds"). No entity that creates, compiles, sponsors or maintains a Subject Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person of the Trust, the Adviser, any subadviser to a New Fund or the Distributor.

3. The investment objective of each New Fund will be to provide investment results that correspond

<sup>1</sup> The Trust currently has seven series operating under the terms of a prior order. See Barclays Global Fund Advisors, Investment Company Act Release Nos. 24393 (April 17, 2000) (notice) and 24452 (May 12, 2000) (order).

<sup>2</sup> At least 90% of each New Fund's assets will be invested in the component securities of its Subject Index. A New Fund may also invest up to 10% of its assets in certain futures, option and swap contracts, cash and cash equivalents, as well as certain securities not included in the Subject Index under limited circumstances.

The Subject Indices for the New Funds are the Standard & Poor's ("S&P") Global Consumer Discretionary Index; the S&P Global Consumer Staples Index; the S&P Global Energy Index; the S&P Global Financials Index; the S&P Global Health Care Index; the S&P Global Industries Index; the S&P Global Information Technology Index; the S&P Global Materials Index; the S&P Global Telecommunication Services Index; the S&P Global Utilities Index; the S&P TOPIX 150 Index; the S&P Asia Pacific 100 Index; the S&P Latin America 40 Index; the S&P Global 1200 Index; the S&P Global 700 Index; and the MSCI EAFE Index.

generally to the price and yield performance of its relevant Subject Index. It is currently expected that intra-day values of each Subject Index will be disseminated every 15 seconds throughout the trading day. A New Fund will utilize as an investment approach either a replication strategy or a representative sampling strategy. A New Fund utilizing a replication strategy generally will hold most of the component securities of the Subject Index, in the same approximate proportions as the Subject Index, but may not hold all of the underlying securities that comprise a Subject Index in certain instances. This may be the case when, for example, a potential component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in a Subject Index. A New Fund using a representative sampling strategy seeks to hold a representative sample of the component securities of the Subject Index and will invest in some but not all of the component securities of its Subject Index.<sup>3</sup> Applicants anticipate that a New Fund that utilizes the representative sampling technique will not track its Subject Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Subject Index with the same weighing as the Subject Index. Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Subject Index of no more than 5 percent.

4. Shares of a New Fund ("Shares") will be sold in aggregations of 50,000 or more Shares ("Creation Units") as specified in the relevant prospectus. The price of a Creation Unit will range from \$3,000,000 to \$25,000,000. Creation Units may be purchased only by or through a participant that has entered into a participant agreement with the Distributor ("Authorized Participant"). Authorized Participants must be either (a) broker-dealers or other participants in the continuous net settlement system of the National Securities Clearing Corporation, or (b) a Depository Trust Company ("DTC") participant. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A new Fund also may sell Creation Units on a "cash only" basis on limit

<sup>3</sup> The stocks selected for inclusion in a New Fund by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fund characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Subject Index taken in its entirety.

circumstances. An investor wishing to make an in-kind purchase of a Creation Unit from a New Fund will have to transfer to the Fund a "Portfolio Deposit" consisting of (a) a portfolio of securities that has been selected by the Adviser to correspond generally to the price and yield performance of the relevant Subject Index ("Deposit Securities"), and (b) a cash payment or credit to equalize any difference between (i) the total aggregate market value per Creation Unit of the Deposit Securities and (ii) the net asset value ("NAV") per Creation Unit of the New Fund (the "Balancing Amount").<sup>4</sup> An investor purchasing a Creation Unit from a New Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the New Fund incurring costs in connection with the purchase of Creation Units.<sup>5</sup> Each New Fund will disclose the maximum Transaction Fees charged by the New Fund in its prospectus and the method of calculating the Transaction Fees in its statement of additional information ("SAI").

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Trust. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Trust to implement the delivery of Creation Units, and maintain records of the orders and confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from a New Fund may hold the Shares

<sup>4</sup> On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the listing Exchange, the list of the names and the required number of shares of each Deposit Security for each New Fund that offers in-kind purchases of Creation Units. The Portfolio Deposit will be applicable to purchases of Creation Units until a change in the Portfolio Deposit composition is next announced. In addition, each New Fund reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to the Trust, or which may be ineligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participants is acting. In addition, the Listing Exchange will disseminate at regular intervals (currently expected to be every 15 seconds) throughout the trading day, via the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the Balancing Amount effective through and including the prior business day, plus the current value of the Deposit Securities.

<sup>5</sup> In situations where a New Fund permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the New Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

or sell some or all of them in the secondary market. Shares will be listed on the Listing Exchange and traded in the secondary market in the same manner as other equity securities. It is expected that one or more Listing Exchange specialists will be assigned to make a market in Shares. The price of Shares traded on the Listing Exchange will be based on a current bid/offer market, and each Share is expected to have a market value of between \$50 and \$150. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The Listing Exchange specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Shares for use in its market-making activities on the Listing Exchange. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.<sup>6</sup> Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Units to take advantage of discrepancies between the Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity will provide a market "discipline" that will result in a close correspondence between the price at which the Shares trade and their NAV. In other words, applicants do not expect the Shares to trade at a significant premium or discount to their NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each New Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (a) a portfolio of Portfolio Securities in effect on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities. An investor may receive the cash equivalent of a Redemption

Security in certain circumstances, such as where a redeeming entity is restrained by regulation or policy from transacting in the Redemption Security. A New Fund may redeem Creation Units in cash in limited circumstances, such as when it is not possible to effect deliveries of Redemption Securities in the applicable jurisdiction.<sup>7</sup> A redeeming investor will pay a Transaction Fee to offset the Fund's transaction costs, whether the redemption proceeds are in-kind or cash. An additional variable charge, expressed as a percentage of the redemption proceeds, will be made for cash redemptions.

9. Because each New Fund will redeem Creation Units in-kind, a New Fund will not have to maintain cash reserves for redemptions. This will allow the assets of each New Fund to be committed as fully as possible to tracking its Subject Index. Accordingly, applicants state that each New Fund will be able to track its Subject Index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

10. Applicants state that no New Fund will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Rather, the designation of the New Fund in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund," or "trust" without reference to an "open-end fund" or "mutual fund," except to contrast the New Funds with a conventional open-end investment company. Any marketing materials that describe the purchase or sale of Creation units, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may tender Shares for redemption to the New Funds in Creation Unit aggregations only. The same type of disclosure will be provided in each New Fund's prospectus, SAI, and all reports to shareholders.<sup>8</sup> The

<sup>7</sup> Applicants note that certain holders of Shares of a particular New Fund may be subject to unfavorable tax treatment if they are entitled to receive in-kind redemption proceeds. The Trust may adopt a policy with respect to such New Fund that such holders of Shares may redeem Creation Unit Aggregations solely for cash.

<sup>8</sup> Applicants state that persons purchasing Creation Units will be cautioned in the prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent

Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

#### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act. Applicants request relief for the New Funds as well as any Future Funds. Any Future Funds relying on any order granted pursuant to this application will comply with the terms and conditions in the application.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

#### Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Trust to register each New Fund as a series of an open-end management investment company and issue Shares that are redeemable in Creation Units. Applicants state that investors may purchase shares in Creation units from

Shares, and sells Shares directly to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The prospectus or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus or SAI also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(c)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

<sup>6</sup> Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

each New Fund and redeem Creation Units through each New Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately their NAV.

#### **Section 22(d) of the Act and Rule 22c-1 Under the Act**

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent just discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involve New Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore,

applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

#### **Section 22(e) of the Act**

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Redemption Securities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for certain New Funds in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that the New Funds may pay redemption proceeds up to eleven calendar days after the tender of Shares for redemption. Except as otherwise subsequently disclosed in the prospectus or SAI for the relevant New Fund, applicants expect, however, that these New Funds will be able to deliver redemption proceeds within seven days at all other times.<sup>9</sup> With respect to Future Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described herein.

8. The principal reasons for the requested exemption is that settlement of redemptions for the New Funds is contingent not only on the settlement cycle of the United States market but also on the currently practicable delivery cycles in the local markets for the underlying foreign securities of each New Fund. Applicants believe that the New Funds will be able to comply with the delivery requirements of section 22(e) except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

9. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed, and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead

to the problems section 22(e) was designed to prevent. Delays in the payment of Shares redemption proceeds will occur principally due to local holidays. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each New Fund. Applicants state that the local holidays relevant to each New Fund as in effect in a given year will be listed in the series' prospectus or SAI or both, and these disclosure documents will identify instances in such year when, due to such holidays, more than seven days will be needed to deliver redemption proceeds.

#### **Section 17(a) of the Act**

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units may be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of a New Fund from purchasing or redeeming Creation Units in-kind. Because the definition of "affiliated person" of another person in section 2(a)(3)(A) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the New Fund so long as fewer than twenty Creation Units are in existence. In addition, any person owning more than 25% of the Shares of a New Fund may be deemed an affiliated person under section 2(a)(3)(C) of the Act. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit these affiliated persons of the New Fund to purchase and redeem Creation Units.

11. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Units. The deposit procedure for in-kind purchases and redemptions will be the

<sup>9</sup> Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c6-1 under the Exchange Act. Rule 15c6-1 requires that most securities transactions be settled within three business days of the trade date. Release No. IC-23860, 1999 WL 3621843 (S.E.C.).

same for all purchases and redemptions, and Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of a New Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the New Fund.

#### Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission or (b) the Future Fund will be listed on a national securities exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

2. Each New Fund's prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the New Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as each New Fund operates in reliance on the requested order, the Shares of such New Fund will be listed on a national securities exchange.

4. Neither the Trust nor any New Fund will be advertised or marketed as an open-end fund or mutual fund. Each new New Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the New Fund and tender those shares for redemption to the New Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the New Fund and tender those Shares for redemption to the New Fund in Creation Units only.

5. The web site for the Trust, which will be publicly accessible at no charge, will contain the following information

on a per Share basis, for each New Fund: (a) The prior business day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

6. The prospectus and annual report for each Fund Fund will also include: (a) The information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or for the life of the New Fund), (i) the cumulative total return and the average annual total return based on NAV and market price, and (ii) the cumulative total return of the element Subject Index.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-18941 Filed 7-27-01; 8:45 am]

**BILLING CODE 8010-01-M**

#### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25077; 812-12548]

#### Professionally Managed Portfolios, et al.; Notice of Application

July 24, 2001.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of an application for an exemption under section 6(c) of the Investment.

Company Act of 1940 (the "Act") from section 15(a) of the Act.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the implementation, without prior shareholder approval, of a new investment advisory agreement ("New Advisory Agreement") for a period beginning on June 17, 2001, and ending on the earlier of (a) the date the New Advisory Agreement is approved or disapproved by the shareholders, or October 17, 2001 (the "Interim Period").

**APPLICANTS:** Professionally Managed Portfolios (the "Trust"), and Turner Investment Partners, Inc. ("Turner").

**FILING DATES:** The application was filed on June 13, 2001 and amended on July 2, 2001 and July 23, 2001.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 2001, and should be accompanied by proof of service on 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 SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549-0609. The Trust, 915 Broadway, New York, NY 10010. Turner, 1235 Westlakes Drive, Suite 350, Berwyn, PA 19312.

**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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

#### Applicants' Representations

1. The Trust is a Massachusetts business trust registered as an open-end management investment company under the Act. Titan Financial Services Fund (the "Fund") is a series of the Trust. Titan Investment Advisers, L.L.C. (the "Adviser") is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). Prior to January 17, 2001, the Adviser managed the assets of the Fund pursuant to an investment advisory agreement (the "Former Advisory Agreement"). Mr. Gilbert R. Giordano, President and majority stockholder of the Adviser, had primary responsibility for the management of the Fund.

2. On January 17, 2001, Mr. Giordano died unexpectedly, resulting in an assignment of the Former Advisory Agreement. On January 25, 2001, the Trust's board of trustees ("Board") approved a new investment advisory agreement with the Adviser (the "Interim Advisory Agreement") and

appointed a subadviser, Harris Bretall Sullivan & Smith L.L.C. (the "Subadviser") in reliance on rule 15a-4(b)(1) under the Act for an interim period that ended on June 16, 2001. Under its agreement with the Trust (the "Subadvisory Agreement"), the Subadviser managed the investments of the Fund subject to the Adviser's supervision and was paid by the Adviser out of the fee the Adviser received from the Fund. The Fund informed its shareholders of these events in a supplement to the Fund's prospectus dated January 31, 2001. The supplement to the prospectus stated that a special meeting of shareholders would be scheduled to vote on the Interim Advisory Agreement and the Subadvisory Agreement.

3. During the weeks following the appointment of the Subadviser, the Adviser and the Board considered what alternative arrangements regarding the management of the Fund might provide the greatest benefits to the Fund's shareholders. The Adviser and the Board considered a number of options, including continuing the interim arrangement with the Adviser and Subadviser on a permanent basis, retaining a new subadviser for the Fund, and replacing both the Adviser and Subadviser with a new investment adviser.

4. During March 2001, the Adviser initiated talks with Turner, an investment adviser registered under the Advisers Act, about taking over the management of the Fund as subadviser in place of the Subadviser. Over the course of the following weeks, these discussions led the Adviser and Turner to consider other arrangements. In mid-May, the Adviser and Turner agreed in principle to present certain proposals to the Board. These proposals were that Turner be appointed as investment adviser to the Fund in place of both the Adviser and Subadviser, and that the Fund be combined with an open-end management investment company registered under the Act for which Turner serves as investment adviser, the Turner Future Financial Services Fund (the "Turner Fund"), in a tax-free reorganization (the "Transaction"). In addition, Turner agreed to acquire the Adviser by buying 100% of its outstanding membership interests, with the payment to the Adviser's owners contingent on shareholder approval of the New Advisory Agreement and the Transaction. The Adviser and Turner entered into an agreement on the acquisition of the Adviser on June 7, 2001.

5. The Interim Advisory Agreement and the Subadvisory Agreement expired

on June 16, 2001. The Board, including all of the trustees who are not "interested persons" of the Trust within the meaning of section 2(a)(19) of the Act (the "independent trustees"), appointed Turner to act as investment adviser to the Fund at a telephonic meeting on June 13, 2001, effective June 17, 2001. On June 20, 2001, the Board met in person and approved the New Advisory Agreement and submission of the New Advisory Agreement to the shareholders of the Fund for their approval. Turner will not be compensated for the services it provided to the Fund prior to the Board's approval of the new Advisory Agreement at the in person meeting. Settlement of the acquisition of the Adviser by Turner occurred on June 29, 2001. On July 17, 2001, the Board met and approved the Transaction and submission of the Transaction to the shareholders of the Fund for their approval.

6. Applicants submit that it was not possible to obtain shareholder approval of the New Advisory Agreement and the Transaction by June 16, 2001. Applicants are requesting an order exempting them from section 15(a) of the Act during the Interim Period, which began on June 17, 2001 and will end on the earlier of (a) the date the New Advisory Agreement is approved or disapproved by the shareholders of the Fund, or (b) October 17, 2001. Applicants state that the meeting of shareholders will be held during the Interim Period. Turner has agreed to pay for the costs of preparing and filing the application, the costs relating to any special meetings of the Board, and the costs relating to the solicitation of shareholder approval of the New Advisory Agreement and the Transaction.

7. Applicants represent that the New Advisory Agreement meets all of the requirements of rule 15a-4(b)(2)(i)-(vi), except that in person Board approval occurred on June 20, 2001, rather than prior to the termination of the Former Advisory Agreement. Applicants represent that the New Advisory Agreement contains the same terms and conditions as the Former Advisory Agreement, with the exception of its effective and termination dates and the contract termination and escrow provisions required by rule 15a-4(b)(2)(iv) and (vi). The compensation to be received by Turner under the New Advisory Agreement will be the same as the compensation the Adviser would have received under the Former Advisory Agreement. Applicants further represent that the Board, including a majority of the independent trustees,

determined that the scope and quality of the services to be provided by Turner under the New Advisory Agreement will be at least equivalent to the scope and quality of the services provided by the Adviser under the Former Advisory Agreement.

8. Applicants state that the New Advisory Agreement is terminable by the Board or a majority of the Fund's outstanding voting securities, without penalty, on not more than 10 calendar days' written notice to Turner, in compliance with rule 15a-4(b)(2)(iv). Applicants further state that during the Interim Period, Turner's fees will be paid into an interest-bearing escrow account with the Fund's custodian. Payment of the amounts held in the escrow account will be made in accordance with rule 15a-4(b)(2)(vi).

#### Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under section 2(a)(9) to reflect control. As majority owner of the Adviser, Mr. Giordano presumably controlled the Adviser. Applicants state that the death of Mr. Giordano resulted in an assignment of the Former Advisory Agreement and its automatic termination.

2. Rule 15a-4(b)(1) under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, an adviser may serve for up to 150 days under a written contract that has not been approved by the investment company's shareholders, provided that (a) the new contract is approved by the company's board of directors (including a majority of the directors who are not interested persons of the company) within 10 business days after the

termination, at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the terminated contract (which must have been approved by the company's shareholders); and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants relied on rule 15a-4(b)(1) with respect to adoption of the Interim Advisory Agreement and the Subadvisory Agreement.

3. Rule 15a-4(b)(2) under the Act provides, in pertinent part, that in the case of an assignment of an investment advisory contract with an investment company by an investment adviser or a controlling person of the investment adviser in connection with which the investment adviser or a controlling person directly or indirectly receives money or other benefit, an adviser may serve for up to 150 days under a written contract that has not been approved by the investment company's shareholders, provided that:

(a) The compensation to be paid under the new contract does not exceed the compensation that would have been paid under the terminated contract (which must have been approved by the company's shareholders) (paragraph (b)(2)(i));

(b) The board of directors of the investment company, including a majority of the directors who are not interested persons of the company, has voted in person to approve the new contract before the previous contract is terminated (paragraph (b)(2)(ii));

(c) The board of directors of the company, including a majority of the directors who are not interested persons of the company, determines that the scope and quality of services to be provided to the company under the new contract will be at least equivalent to the scope and quality of services provided under the previous contract (paragraph (b)(2)(iii));

(d) The new contract provides that the company's board of directors or a majority of the company's outstanding voting securities may terminate the contract at any time, without the payment of any penalty, on not more than 10 calendar days' written notice to the investment adviser (paragraph (b)(2)(iv));

(e) The new contract contains the same terms and conditions as the

terminated contract, with the exception of its effective and termination dates, provisions governed by paragraphs (b)(2)(i), (b)(2)(iv), and (b)(2)(vi), and any other differences in terms and conditions that the board of directors, including a majority of the directors who are not interested persons of the company, finds to be immaterial (paragraph (b)(2)(v)); and

(f) The new contract contains the following provisions:

(i) The fee earned under the contract will be held in an interest-bearing escrow account with the company's custodian or a bank; and

(ii) If a majority of the company's outstanding voting securities do not approve the new contract, the investment adviser will be paid, out of the escrow account, the lesser of: (A) any costs incurred in performing the interim contract (plus interest earned on that amount while in escrow); or (B) the total amount in the escrow account (plus interest earned) (paragraph (b)(2)(vi)).

4. Applicants cannot rely on rule 15a-4 in connection with the New Advisory Agreement because an "interim contract" within the meaning of the rule must have a duration of no more than 150 days following the date on which the previous contract that was approved by shareholders was terminated. Under the proposed condition, however, applicants will comply with all of the provisions of paragraphs (b)(2)(i) and (b)(2)(iii)-(vi) of rule 15a-4 described above.

5. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

6. Applicants state that the requested relief satisfies this standard. Applicants state that the need for the relief developed as a result of the sudden death of Mr. Giordano and from the Adviser and the Board giving careful consideration to what alternative arrangements might be most beneficial to the Fund and its shareholders. Applicants submit that under the proposed condition, the interests of the shareholders will be safeguarded during the Interim Period. In addition, allowing the implementation of the new Advisory Agreement will ensure that there is no disruption to the investment program and the delivery of services to the Fund.

### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

1. Applicants will comply with rule 15a-4(b)(2)(i), (iii), (iv), (v) and (vi) during the period covered by the requested order, with "previous contract" construed to mean the Former Advisory Agreement and "interim contract" construed to mean the New Advisory Agreement.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-18942 Filed 7-27-01; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-25076; 812-12004]

#### Markman MultiFund Trust, et al; Notice of Application

July 24, 2001.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 12(d)(1)(f) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies outside the same group of investment companies.

*Applicants:* Markman MultiFund Trust (the "Trust") and Markman Capital Management, Inc. (the "Adviser").

*Filing Dates:* The application was filed on February 25, 2000 and amended on July 20, 2001.

*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 August 16, 2001, and should be accompanied by proof of service on 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 Fifth Street, NW., Washington, DC 20549-0609. Applicants, 6600 France Avenue South, Suite 565, Minneapolis, Minnesota 55435.

**FOR FURTHER INFORMATION CONTACT:** Sara Crovitz, Senior Counsel, or Michael W. Mundt, 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 Fifth Street, NW., Washington, DC 20549-0102, (202) 942-8090.

### Applicant's Representations

1. The Trust is an open-end management investment company registered under the Act that is comprised of separate series, each of which pursues a distinct set of investment objectives and policies. The Adviser is registered as an investment adviser under the Investment advisers Act of 1940 and serves as investment adviser to the Trust.

2. Applicants request relief to permit series of the trust (the "Funds of Funds") to acquire more significant amounts of shares of registered open-end management investment companies that are not part of the same group of investment companies as the Funds of Funds (the "Underlying Funds") and the Underlying Funds to sell such shares to the Funds of Funds.<sup>1</sup> The requested order would apply to purchases made by the Funds of Funds only where the Funds of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act.

3. Applicants state that each Fund of Funds will enable investors to create either a comprehensive asset allocation program or achieve diversification in a specific segment of the market with just one investment. Applicants assert that a Fund of Funds will provide a simple, convenient, low cost investment program for investors who are able to identify their long-term investment goals but who may not be comfortable deciding how to invest their assets to achieve those goals.

<sup>1</sup> All Funds of Funds that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

### Applicant's Legal Analysis:

A. Section 12(d)(1).

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Fund of Funds to acquire shares of the Underlying Funds and the Underlying Funds to sell their shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will adequately address the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. To limit the influence that a Funds of Funds may have over an Underlying Funds, applicants propose a condition prohibiting the Funds of Funds, the Adviser and certain affiliates (individually or in the aggregate) from controlling an Underlying Fund within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence over the Underlying Funds, applicants propose conditions 2 through 7, stated below, to preclude a Fund of Funds and its affiliated entities from taking advantage of an Underlying Fund with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that an Underlying Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Underlying Fund will execute an agreement prior to the investment stating that the board of directors or trustees of the Underlying Fund and the adviser to the Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. Applicants note that an Underlying Fund may choose to reject an investment from the Fund of Funds.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that the board of trustees of the Funds of Funds, including a majority of the trustees who are not "interested persons" as such term is defined in section 2(a)(19) of the Act ("Disinterested Trustees"), will find that the investment advisory fees charged under any investment advisory agreements are based on services provided that will be in addition to, rather than duplicative of, services provided under the investment advisory agreement of any Underlying Fund in which a Fund of Funds may invest. In addition, the Adviser will waive fees otherwise payable to the Adviser by a Fund of Funds in an amount at least equal to any compensation received by the Adviser or an affiliated person of the Adviser from the Underlying Fund in connection with the investment by the Fund of Funds in the Underlying Fund. Applicants also state that the aggregate sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers ("NASD Conduct Rules").

7. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing an Underlying Fund to purchase shares of an affiliated money market fund for short-term cash management purposes. In addition, applicants represent that a Fund of Funds' prospectus does and will contain concise, "plain English" disclosure designed to inform investors of the unique characteristics of the Fund of Funds structure, including, but not limited to, its expense structure and the

additional expenses of investing in the Underlying Funds.

*B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person and any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and an Underlying Fund might become affiliated persons of the Fund of Funds acquires more than 5% of the Underlying Fund's outstanding voting securities. In light of this possible affiliation, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from the Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provisions of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under section 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on the net assets values of the Underlying Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds as set forth in each Fund of Funds' registration statement, the policies of each Underlying Fund, and with the general purposes of the Act.

**Applicants' Conditions**

1. (a) The Adviser, (b) any person controlling, controlled by, or under common control with the Adviser, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser (together, the "Group") will not control (individually or in the aggregate) an Underlying Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Underlying Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of an Underlying Fund, the Group will vote its shares of the Underlying Fund in the same proportion as the vote of all other holders of the Underlying Fund's shares.

2. A Funds of Funds and the Adviser, the Funds of Funds' promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a "Funds of Funds Affiliate") will not cause any existing or potential investment by the Fund of Funds in shares of an Underlying Fund to influence the terms of any services or transactions between the Funds of Funds or a Funds of Funds Affiliate and the Underlying Fund or its investment adviser, promoter, principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each an "Underlying Fund Affiliate").

3. The board of trustees of the Funds of Funds, including a majority of the Disinterested Trustees, will adopt procedures reasonably designed to assure that the Adviser is conducting the investment program of the Funds of Funds without taking into account any consideration received by the Funds of Funds or a Funds of Funds Affiliate from an Underlying Fund or an Underlying Fund Affiliate in connection with any services or transactions.

4. The board of directors or trustees of each Underlying Fund, including a majority of the disinterested directors or trustees, will determine that any consideration paid by the Underlying Fund to the Funds of Funds or a Funds of Funds Affiliate in connection with any services or transactions: (A) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Underlying Fund; (b) is within the range of consideration that

the Underlying Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. No Funds of Funds or Funds of Funds Affiliate will cause an Underlying Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Funds of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person (each an "Underwriting Affiliate"). An offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an "Affiliated Underwriting."

6. The board of directors or trustees of an Underlying Fund, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Underlying Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The board of directors or trustees of the Underlying Fund will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by a Funds of Funds in shares of the Underlying Fund. The board of directors or trustees of the Underlying Fund should consider among other things, (a) whether the purchases were consistent with the investment objectives and policies of the Underlying Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Underlying Affiliate have changed significantly from prior years. The board of directors or trustees of the Underlying Fund shall take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

7. The Underlying Fund shall maintain and preserve permanently in an easily accessible place a written copy

of the procedures described in the preceding condition, and any modifications, and shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information of materials upon which the board's determinations were made.

8. Prior to an investment in shares of an Underlying Fund in excess of the limit in section 12(d)(1)(F), the Fund of Funds and the Underlying Fund will execute an agreement stating, without limitation, that the board of directors or trustees of the Underlying Fund and the adviser to the Underlying Fund understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Underlying Fund in excess of the limit in section 12(d)(1)(F), a Fund of Funds will notify the Underlying Fund of the investment. At such time, the Fund of Funds also will transmit to the Underlying Fund a list of the names of each Fund or Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Underlying Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Underlying Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any undated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two in an easily accessible place.

9. Prior to approving any investment advisory agreement under section 15 of the Act, the board of trustees of the Funds of Funds, including a majority of the Disinterested Trustees, will find that the investment advisory fees charged under such agreement are based on services provided that will be in addition to, rather than duplicative of, the services provided under the investment advisory agreement of any Underlying Fund in which the Fund of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. Any sales charges and/or service fees (as defined in rule 2830 of the NASD Conduct Rules) charged and respect to shares of a Fund of Funds will not exceed the limits applicable to

funds of funds set forth in Rule 2830 of the NASD Conduct Rules.

11. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exceptive order that allows the Underlying Fund to purchase shares of an affiliated money market fund short-term cash management purposes.

12. The Adviser will waive fees otherwise payable to the Adviser by Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to a plan adopted by an Underlying Fund under rule 12b-1 under the Act) received by an Adviser or an affiliated person of the Adviser from an Underlying Fund in connection with the investment by the Fund of Funds in the Underlying Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-18943 Filed 7-27-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SMALL BUSINESS ADMINISTRATION

### Data Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

**DATES:** Submit comments on or before September 28, 2001.

**ADDRESSES:** Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Ana Maria Vera, Entrepreneurial Development Specialist, Business Development Division, Small Business Administration, PR & U.S. VI District Office, 252 Ponce de Leon Avenue, Citibank Towers, Suite 201, Hato Rey, PR 00918.

**FOR FURTHER INFORMATION CONTACT:** Ana Maria Vera, Entrepreneurial Development Specialist, (787) 766-5572 or Curtis B. Rich, Management Analyst, (202) 205-7030.

**SUPPLEMENTARY INFORMATION:**

*Title:* Customer Service Evaluation.

*Form No:* DO-0001.

*Description of Respondents:* Entrepreneur's that require services through the SBA Puerto Rico & U.S. Virgin District Office.

*Annual Responses:* 2,700.

*Annual Burden:* 450.

**Curtis B. Rich,**

*Acting Chief, Administrative Information Branch.*

[FR Doc. 01-18844 Filed 7-27-01; 8:45 am]

**BILLING CODE 8025-01-P**

## DEPARTMENT OF STATE

[Public Notice 3729]

### Culturally Significant Objects Imported for Exhibition Determinations: "Aelbert Cuyp"

**AGENCY:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Aelbert Cuyp," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 7, 2001 to on or about January 13, 2002 and at possible additional venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6981). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 23, 2001.

**Brian J. Sexton,**

*Deputy Assistant Secretary for Professional Exchanges, United States Department of State.*

[FR Doc. 01-18914 Filed 7-27-01; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF STATE

[Public Notice 3730]

### Culturally Significant Objects Imported for Exhibition Determinations: "Courtly Radiance: Metalwork From Islamic India"

**AGENCY:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Courtly Radiance: Metalwork from Islamic India," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lender. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about September 25, 2001 to on or about March 25, 2002 and at possible additional venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6981). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 23, 2001.

**Brian J. Sexton,**

*Deputy Assistant Secretary for Professional Exchanges, United States Department of State.*

[FR Doc. 01-18915 Filed 7-27-01; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF STATE

[Public Notice 3731]

### Culturally Significant Objects Imported for Exhibition, Determinations: "Signac, 1863-1935: Master Neo-Impressionist"

**AGENCY:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Signac, 1863-1935: Master Neo-Impressionist," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about October 1, 2001 to on or about December 30, 2001, and possible additional venues yet to be determined is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619-6981). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: July 23, 2001.

**Brian J. Sexton,**

*Deputy Assistant Secretary for Professional Exchanges, United States Department of State.*

[FR Doc. 01-18916 Filed 7-27-01; 8:45 am]

BILLING CODE 4710-08-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Aviation Rulemaking Advisory Committee; Rotorcraft Issues—New Task

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

**ACTION:** Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

**SUMMARY:** The FAA assigned the Aviation Rulemaking Advisory Committee a new task to review the definition of "Critical Part" and determine whether the current regulation provides a clear definition of critical parts and whether the regulations establish an adequate critical parts list. This notice is to inform the public of this ARAC activity.

**FOR FURTHER INFORMATION CONTACT:** Larry M. Kelly, Federal Aviation Administration, Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, Texas, 76137, [larry.kelly@faa.gov](mailto:larry.kelly@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

##### The Task

- Review the definition of "Critical Part" and the critical parts requirements of §§ 27.602 and 29.602 together with JAR 27.602, 29.602, and associated amendments 27-38 and 29-45.
- Determine whether the current regulations and proposed regulations provide a clear definition of critical parts and whether the regulations establish an adequate critical parts list. Specifically, include clarification in the advisory material of the word "and" in the rules.
- Consider the safety benefits of establishing a different definition of Critical Parts for Category A rotorcraft. If a different definition for critical parts for Category A rotorcraft is to be considered for recommended rulemaking, an assessment of some existing Critical Parts Lists must consider the scope of change to those lists to determine the safety/economic impact of any expansion of the Critical Parts requirements.
- Provide a preliminary technical recommendation within 6 months after the first working group meeting.
- If a review of the safety/economic issues justifies the need for a rule change, prepare a draft Notice of Proposed Rulemaking (NPRM) and provide associated advisory material.

The NPRM should include the preamble and the rule language along with any supporting legal analysis.

**Schedule:** ARAC must complete this task no later than 18 months after the FAA publishes the task in the **Federal Register**.

#### ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the Critical Parts Harmonization Working Group, Rotorcraft Issues. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA. Recommendations that are received from ARAC will be submitted to the agency's Rulemaking Management Council to address the availability of resources and prioritization.

#### Working Group Activity

The Critical Parts Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on rotorcraft issues held following publication of this notice.
2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.
3. Draft the appropriate documents and required analyses and/or any other related materials or documents.
4. Provide a status report at each meeting of the ARAC held to consider rotorcraft issues.

#### Participation in the Working Group

The Critical Parts Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group member need to be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than August 13, 2001. The requests will be reviewed by the assistant chair, the assistant executive

director, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the Critical Parts Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on July 24, 2001.

**Anthony F. Fazio,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 01-18923 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2001-58]

#### Petitions for Exemption; Summary of Dispositions of Petitions Issued

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

**ACTION:** Notice of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions

for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

#### FOR FURTHER INFORMATION CONTACT:

Forest Rawls (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, or Vanessa Wilkins (202) 267-8029, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 25, 2001.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Dispositions of Petitions

*Docket No.:* 29434.

*Petitioner:* The Boeing Company.

*Section of 14 CFR Affected:* 14 CFR 21.325(b)(3).

*Description of Relief Sought/*

*Disposition:* To allow Boeing to issue export airworthiness approvals for Class II and Class III products that are located at and manufactured by Boeing Arnprior as an approved supplier to Boeing under Boeing's PC No. 700. *Grant, 06/26/2001, Exemption No. 7552*

*Docket No.:* FAA-2001-9922.

*Petitioner:* Daedalus, Inc. dba Business Aviation Services.

*Section of 14 CFR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/*

*Disposition:* To permit BAS to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft. *Grant, 07/09/2001, Exemption No. 7569*

*Docket No.:* FAA-2001-10017.

*Petitioner:* Fairfield County Pilot Association.

*Section of 14 CFR Affected:* 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

*Description of Relief Sought/*

*Disposition:* To permit FCPA to conduct local sightseeing flights at the Fairfield County Airport, Lancaster, Ohio, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 07/12/2001, Exemption No. 7570*

*Docket No.:* FAA-2001-8786

(previously Docket No. 29492).

*Petitioner:* Lynden Air Cargo.  
*Section of 14 CFR Affected:* 14 CFR 121.344

*Description of Relief Sought/Disposition:* To permit LAC to operate its 4 Lockheed Martin 382G Hercules (L382G) airplanes (Registration Nos. N401LC, N402LC, N403LC, and N404LC; Serial Nos. 4606, 4698, 4590, and 4763, respectively) under part 121 without those aircraft being equipped with an approved flight data recorder.  
*Grant, 07/13/2001, Exemption no. 6921A*

[FR Doc. 01-18927 Filed 7-27-01; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application 01-06-U-00-SEA To Use the Revenue From a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Submitted by the Port of Seattle, Seattle-Tacoma International Airport, Seattle, WA

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use PFC revenue at Seattle-Tacoma International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before August 29, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Gina Marie Lindsey, Director of Aviation Division, at the following address: Seattle-Tacoma International Airport, Port of Seattle, P.O. Box 68727, Seattle, WA 98168.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Seattle-Tacoma International Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227-2654, Seattle Airports District Office, SEA-ADO; Federal Aviation Administration;

1601 Lind Avenue SW, Suite 250, Renton, Washington 98055-4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application 01-06-U-00-SEA to use PFC revenue at Seattle-Tacoma International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 20, 2001, the FAA determined that the application to use the revenue from a PFC submitted by Port of Seattle, Seattle-Tacoma International Airport, Seattle, Washington, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 20, 2001.

The following is a brief overview of the application.

*Level of the previously approved PFC:* \$3.00.

*Actual approved charge-effective date for impose authority:* January 1, 2004.

*Proposed charge-expiration date:* January 1, 2023.

*Total requested for use approval:* \$50,000,000.

*Brief description of proposed project:* Noise Remedy Program.

*Class or classes of air carriers, which the public agency has requested not to be required to collect PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Seattle-Tacoma International Airport.

Issued in Renton, Washington on July 20, 2001.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 01-18926 Filed 7-27-01; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket Number FRA-2001-9806

##### *Applicants:*

CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction 4901 Belfort Road, Suite 130 (S/C J-370), Jacksonville, Florida 32256

Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer C&S Engineering, 99 Spring Street, S.W., Atlanta, Georgia 30303

CSX Transportation, Incorporated (CSX) and Norfolk Southern Corporation (NS) jointly seek approval of the proposed discontinuance of the automatic block signal system rules on the CSX single main track between milepost BJ152.3 and milepost BJ155.6 on the Great Lakes Division, CL&W Subdivision near Elyria, Ohio, where the CSX single main track crosses at grade the double main track of the NS's Chicago Line. The proposed changes include conversion of the operative approach signals to inoperative type signals equipped with "APP Markers," retention of the interlocking at the rail crossing at grade and reduction of the maximum authorized timetable speed from 25 mph to 20 mph.

The reason given for the proposed changes is that present day operation does not warrant retention of the signal system as only one train a day operates between Lester and Lorain.

Any interested party desiring to protest the granting of an application shall set forth, specifically, the grounds upon which the protest is made and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401,

Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 25, 2001.

**Grady C. Cothen, Jr.**

*Deputy Associate Administrator for Safety Standards and, Program Development.*

[FR Doc. 01-18929 Filed 7-27-01; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket Number FRA-2001-9838

*Applicant:* CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J-370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system on the single main track near Agnes, Virginia, milepost CAB 64.45, on Rivanna Subdivision, Allegheny Service Lane, consisting of the discontinuance and removal of absolute controlled signals 102L and 102R.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 25, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-18930 Filed 7-27-01; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

#### Docket No. FRA-2001-9839

*Applicant:* CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J-370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system on Main Track No. 1, between W.E. Strathmore, milepost CAB 69.73 and E.E. Strathmore, milepost CAB BJ155.6, Virginia, on Rivanna Subdivision, Allegheny Service Lane. The proposed changes consist of the following:

1. Conversion of the power-operated switch at W. E. Strathmore to hand operation, equipped with an electric lock, and removal of associated absolute controlled signals 84, 84LA, and 84LC;
2. Conversion of the power-operated switch at E. E. Strathmore to hand operation, equipped with an electric lock, and removal of associated absolute controlled signal 92RC; and
3. Relocation of absolute controlled signal 92RA approximately 1,100 feet eastward, and absolute controlled signal 90R approximately 250 feet eastward at E. E. Strathmore.

The reason given for the proposed changes is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001.

Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing.

However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 25, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-18931 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

##### Docket No. FRA-2001-9840

*Applicant:* CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J-370), Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSX) seeks approval of the proposed discontinuance of the automatic block signal system rules on the CSX single main track, between milepost BJ144.5 and milepost BJ147.8, on the Great Lakes Division, CL&W Subdivision, near Grafton, Ohio, where the single main track of CSX's CL&W Subdivision crosses at grade the single main track of CSX's Indianapolis Line. The proposed changes include conversion of the operative approach signals to inoperative type signals equipped with "APP Markers", associated with the retention of the interlocking at the rail crossing at grade, and reduction of the maximum authorized timetable speed to 20 mph.

The reason given for the proposed changes is that present day operation does not warrant retention of the signal system, as only one train a day operates between Lester and Lorain.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the

interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 25, 2001.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-18932 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-06-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

##### Docket Number FRA-2001-9805

*Applicant:* Union Pacific Railroad Company, Mr. Phil M. Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179-1000

The Union Pacific Railroad Company (UP) seeks approval of the proposed discontinuance and removal of the automatic block signal system between milepost 0.08 and milepost 1.04 on the Cargill Industrial Lead trackage, which connects to the UP Main Line at milepost 341.3 on the Blair Subdivision, near Blair, Nebraska.

The reason given for the proposed changes is that traffic on the industrial lead has decreased and the automatic block signal system is no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI-401, Washington, DC 20590-0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at DOT Central Docket Management Facility, Room PI-401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590-0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at <http://dms.dot.gov>.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 25, 2001.

**Grady C. Cothen, Jr.**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 01-18928 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration**

[Cooperative Agreement DTRS656-00-H-0004]

**Quarterly Performance Review Meeting on The Cooperative Agreement "Better Understanding of Mechanical Damage in Pipelines"**

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

**SUMMARY:** RSPA has entered into a cooperative agreement with the Gas Technology Institute (GTI) to co-fund a two year research program to identify and characterize mechanical damage, a leading cause of reportable accidents in both gas and hazardous liquid pipelines, using the technology of magnetic flux leakage (MFL) oriented in the circumferential direction on an in-line inspection tool. RSPA, along with GTI, invite the pipeline industry, in-line inspection ("smart pig") vendors, and the general public to a quarterly performance review meeting to report on progress with this research titled "Better Understanding of Mechanical Damage in Pipelines." The meeting is open to anyone, and no registration is required. This work is being managed by GTI and performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute (SwRI). The meeting will cover a review of the overall project plan, the status of the contract tasks, progress made during the past quarter, and projected activity for the next quarter.

**DATES:** The quarterly performance review meeting will be held on Thursday, September 27, 2001, beginning at 9 a.m. and ending around noon.

**ADDRESSES:** The quarterly review meeting will be held at the Sheraton Buckhead Hotel, 3405 Lenox Road, NE., Atlanta, GA.

**FOR FURTHER INFORMATION CONTACT:** Lloyd W. Ulrich, Agreement Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366-4556, FAX: (202) 366-4566, e-mail: lloyd.ulrich@rspa.dot.gov. You may also contact Harvey Haines, Principal Investigator, GTI, telephone: (847) 768-0891, FAX: (847) 768-0501, e-mail: harvey.haines@gastechnology.org.

**SUPPLEMENTARY INFORMATION:****I. Background**

RSPA has entered into a Cooperative Agreement (Cooperative Agreement

DTRS656-00-H-0004) with the Gas Technology Institute (GTI) to co-fund a two-year research program to identify and characterize mechanical damage, a leading cause of reportable accidents in both gas and hazardous liquid pipelines, using the technology of magnetic flux leakage (MFL) oriented in the circumferential direction on an in-line inspection tool.

We plan to conduct public performance review meetings approximately semi-annually for the duration of this research. This meeting is the third semi-annual one to provide an update on the research to the public, pipeline operators, vendors and interested governmental parties, such as RSPA technical and regional staff and the National Transportation Safety Board. This meeting is being conducted during Code Week of the American Society of Mechanical Engineers' (ASME) B31 Pressure Piping Committee in order to allow attendance by members of the hazardous liquids pipeline industry code subcommittee (ASME B31.4/11) and the gas pipeline industry code subcommittee (ASME B31.8) who are attending Code Week. Semi-annual meetings in the future will be held in conjunction with industry meetings, such as ones with the Association of Oil Pipelines, Interstate Natural Gas Association of America, and the American Gas Association, in order to reach a broad audience. We want the pipeline industry and especially that segment of the pipeline industry involved with in-line inspection to be aware of the status of this research. The meetings allow disclosure of the results to interested parties and provide an opportunity for interested parties to ask questions concerning the research. Attendance at this meeting is open to all and does not require advance registration or advance notice to RSPA. Each of the semi-annual meetings will be announced in the **Federal Register** at least two weeks prior to the meeting.

The quarterly performance review meetings held between the semi-annual meetings described above will be held in conjunction with GTI/PRCI Technical Committee meetings.

**II. The Research**

This research continues work that DOT supported at Battelle to improve in-line inspection of mechanical damage and more closely coordinates work that GTI is supporting at Southwest Research Institute to develop critical assessment criteria based on these NDE measurements. This program extends the work conducted under the RSPA-funded contract "Detection of Mechanical Damage in Pipelines"

(Contract DTRS-56-96-C-0010)<sup>1</sup> by looking at the circumferential magnetic flux leakage field instead of the traditional axial field and extends the critical assessment criteria research to work with full scale samples that are being used for MFL measurements. The goal of the research is to evaluate and develop techniques for assessing pipeline metal loss, mechanical damage, and cracks using circumferential MFL. These techniques are expected to complement the techniques used for axial MFL systems.

The research will extend the failure assessment methodology for mechanically damaged pipes to include the influence of local cold working due to the gouging/denting process on the pipe's remaining life. The program will combine full scale tests and MFL monitoring of pipes, laboratory tests and elastic-plastic finite element analyses to develop a validated methodology for determining the remaining life of a damaged pipe. The SwRI research will complement the work at Battelle in developing criteria for characterizing mechanical damage found through in-line inspection.

**III. Agenda for the Meeting**

The following is the agenda for the meeting:

"Overview Project History and Impact of the DOT/GTI Projects for Using In-Line Inspection for Mechanical Damage"

Harvey Haines—GTI (15 min)

"Defect Manufacture and Installation"

Tom Bubenik—Battelle (30 min)

"Damage Severity Criteria Program Overview and Elastic Plastic Finite Element Analysis"

Graham Chell—SwRI (30 min)

Break

"Circumferential Magnetizer Design and Data"

Bruce Nestleroth—Battelle (30 min)

"Non-Linear Harmonics Measurement"

Al Crouch—SwRI (30 min)

"Wrap up and comments"

Lloyd Ulrich—DOT (10-15 min)

Issued in Washington, DC on July 24, 2001.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*  
[FR Doc. 01-18848 Filed 7-27-01; 8:45 am]

**BILLING CODE 4910-60-P**

<sup>1</sup> The final report on this research dated June 2000 is available on the OPS web site, <http://ops.dot.gov>.

**DEPARTMENT OF THE TREASURY****Submission for OMB Review;  
Comment Request**

July 23, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before August 29, 2001 to be assured of consideration.

**U.S. CUSTOMS SERVICE (CUS)**

*OMB Number:* 1515-0005.

*Form Number:* Customs Forms 7512A and 7512B.

*Type of Review:* Extension.

*Title:* Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

*Description:* This collection which is submitted on Customs Form 7512A and B, serves as a transportation entry and manifest of goods subject to Customs inspection and permit.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 10,000.

*Estimated Burden Hours Per*

*Respondent:* 6 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 56,000 hours.

*OMB Number:* 1515-0009.

*Form Number:* Customs Form 3495.

*Type of Review:* Extension.

*Title:* Application for Exportation of Articles under Special Bond.

*Description:* This collection is used by importers for articles which may be entered temporarily into the United States and are free of duty under bond and which are exported within one year from the date of importation.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 15,000.

*Estimated Burden Hours Per*

*Respondent:* 8 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 2,000 hours.

*OMB Number:* 1515-0161.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Importation of Ethyl Alcohol for Non-Beverage Purposes.

*Description:* This collection is a declaration claiming duty-free entry is filed by the broker or their agent and then is transferred with other documentation to the Bureau of Alcohol, Tobacco and Firearms.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 300.

*Estimated Burden Hours Per*

*Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 25 hours.

*Clearance Officer:* Tracey Denning (202) 927-1429 U.S. Customs Service, Information Services Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

*OMB Reviewer:* Alexander T. Hunt (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 01-18917 Filed 7-27-01; 8:45 am]

**BILLING CODE 4820-02-P**

**DEPARTMENT OF THE TREASURY****[General Counsel Designation No. 268]****Appointment of Members to the  
General Counsel Panel of the Legal  
Division Performance Review Board**

Under the authority granted to me as General Counsel of the Department of

the Treasury by 31 U.S.C. 301 and Treasury Department Order Nos. 101-5 and 107-04, and pursuant to the Civil Service Reform Act, I appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board:

- George B. Wolfe, Deputy General Counsel, who shall serve as Chair;
- Thomas M. McGivern, Counselor to the General Counsel;
- Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);
- Roberta K. McInerney, Assistant General Counsel (Banking & Finance);
- Stephen J. McHale, Assistant General Counsel (Enforcement);
- Russell L. Munk, Assistant General Counsel (International Affairs);
- Rochelle F. Granat, Deputy Assistant General Counsel (General Law and Ethics);
- Eleni M. Constantine, Deputy Assistant General Counsel (Banking and Finance);
- Francine J. Kerner, Deputy Assistant General Counsel (Enforcement);
- Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);
- John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco & Firearms;
- Alfonso Robles, Chief Counsel, United States Customs Service;
- John J. Kelleher, Chief Counsel, United States Secret Service;
- Walter Eccard, Chief Counsel, Bureau of Public Debt;
- Debra N. Diener, Chief Counsel, Financial Management Service;
- Carrol H. Kinsey, Jr., Chief Counsel, Bureau of Engraving and Printing; and
- Daniel P. Shaver, Chief Counsel, U.S. Mint.

Dated: July 19, 2001.

**David D. Aufhauser,**

*General Counsel.*

[FR Doc. 01-18908 Filed 7-27-01; 8:45 am]

**BILLING CODE 4810-25-M**



# Federal Register

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**Monday,  
July 30, 2001**

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**Part II**

## **Environmental Protection Agency**

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**Underground Injection Control; Request  
for Information of Ground Water  
Contamination Incidents Believed To Be  
Due to Hydraulic Fracturing of Coalbed  
Methane Wells; Notice**

**ENVIRONMENTAL PROTECTION AGENCY**

[WH-FRL-7019-3]

**Underground Injection Control; Request for Information of Ground Water Contamination Incidents Believed To Be Due to Hydraulic Fracturing of Coalbed Methane Wells****AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is conducting a study to assess the potential for Hydraulic Fracturing of coalbed methane (CBM) wells to endanger underground sources of drinking water (USDW). State oil and gas agencies in States with CBM production reported through a 1998 Ground Water Protection Council (GWPC) survey that Hydraulic Fracturing has not contributed to water quality degradation. In an effort to be thoroughly informed, EPA believes it should also provide an opportunity for other agencies, non-governmental organizations and citizens who may have evidence of ground water contamination caused by Hydraulic Fracturing of CBM wells to provide such information. Through this notice, EPA is inviting governmental and regulatory agencies, such as local drinking water and public health agencies, as well as the public at large to report to EPA known incidents of ground water contamination believed to be associated with Hydraulic Fracturing of CBM wells. The review of such information is part of a larger EPA effort to assess the potential for Hydraulic Fracturing of CBM wells to endanger USDWs.

For the purposes of this study, aquifer dewatering and water discharge issues frequently associated with CBM development are independent of the Hydraulic Fracturing process, and EPA will not be addressing those issues in this effort.

**DATES:** Please submit information by August 29, 2001.

**ADDRESSES:** Send written comments to the Comment Clerk, docket number W-01-09, Water Docket (MC 4101), Rm EB 57, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW Washington, DC 20460. The record for this study is established under docket number W-01-09. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, Rm EB 57, USEPA, 401 M Street, SW, Washington DC. For access to docket

materials, please call 202-260-3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW., East Tower Basement, Rm EB 57, Washington DC, 20460.

**FOR FURTHER INFORMATION CONTACT:** Ms. Leslie Cronkhite; United States Environmental Protection Agency, MC 4606, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (202) 260-0713; e-mail: [cronkhite.leslie@epa.gov](mailto:cronkhite.leslie@epa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Hydraulic Fracturing is a common technique used to improve the flow of oil and gas to production wells. In high-permeability formations, oil and gas flows into the wellbore in response to pumping. In low-permeability formations, however, oil and gas flow rates may be low. Hydraulic Fracturing can create a permeable pathway deep into the formation, which allows hydrocarbons to move toward the well at a faster rate. Hydraulic Fracturing is widely used in the oil and gas industry, and is an essential tool for exploiting alternative hydrocarbon resources, such as coalbed methane, that would be unavailable through conventional drilling practices.

In order to hydraulically fracture the rock formation, water mixtures are injected into the well at high pressure for a few hours, creating a linear fracture in the formation rocks. "Proppants" such as sand or plastic beads are emplaced into the fracture to hold it open and to create a permeable pathway into the well. After the fracturing process concludes, the well is pumped for production. In most cases the resulting fracture is a flat, planar feature oriented vertically along the wellbore, extending from 70 to 500 feet from the well bore.

Prior to 1997, EPA had not considered regulating Hydraulic Fracturing because the Agency believed that this well production stimulation process did not fall under the Underground Injection Control (UIC) program's authority under the Safe Drinking Water Act (SDWA). In 1994, the Legal Environmental Assistance Foundation (LEAF) challenged that interpretation by petitioning EPA to withdraw Alabama's EPA-approved Section 1425 (SDWA) UIC program because LEAF believed the State should regulate Hydraulic Fracturing for CBM development as underground injection. EPA rejected LEAF's petition. LEAF challenged EPA's decision and in 1997, the 11th Circuit

Court of Appeals ruled that Hydraulic Fracturing of coalbeds in Alabama fit within the SDWA definition of underground injection, *LEAF v. EPA*, 118 F.3d 1467, 1478 (11th Cir. 1997). In response to this decision, Alabama modified its UIC program. In December 1999, EPA approved revisions to Alabama's Class II UIC program.

In response to the Court's decision and concerns voiced by individuals who may be affected by CBM development, EPA is conducting a study to assess the potential for Hydraulic Fracturing of CBM wells to endanger USDWs. State oil and gas boards surveyed by the GWPC in 1998 generally reported that Hydraulic Fracturing of CBM wells has not resulted in contamination of ground water. EPA recognizes there may be other agencies, such as local drinking water and public health agencies, or individuals that know of incidents of contamination resulting from Hydraulic Fracturing of CBM wells of which we are not presently aware. In an effort to be thorough, the UIC program is inviting the public at large to provide EPA with information identifying incidents of contamination of ground water from Hydraulic Fracturing of CBM wells. Data submitted in response to this notice will be considered in an effort to determine if additional investigation is needed on a national level to assess the environmental impacts of Hydraulic Fracturing of CBM wells.

*Please note*, if you have previously submitted information regarding Hydraulic Fracturing of CBM wells in response to the 1998 GWPC survey, there is no need to resubmit that information.

*If you are responding to this FR notice by reporting incidents*, please describe in detail incidents in which Hydraulic Fracturing of CBM wells was known or believed to be the cause of ground water contamination and any follow-up actions by agencies or other entities of which you are aware. Pertinent information may include technical data describing the nature of the problems reported, any follow-up actions by local, State, or Federal agencies, and any data or findings regarding sources of contamination. Specific information including water quality sampling data and data on the location of a contamination incident and its timing relative to a known Hydraulic Fracturing event would be useful.

For CBM wells to operate efficiently and economically, it is common during the initial stages of production for large volumes of water to be pumped to the surface to reduce the water pressure. This pressure reduction helps to liberate the methane gas from the open spaces

within the coal. In certain areas, this “dewatering” has led to ground water depletion and produced water discharge issues, which, for the purposes of this notice, are independent of the Hydraulic Fracturing process. In areas where dewatering has become a concern, citizens, State agencies, producers, and the regional EPA offices are working in concert to understand and mitigate

potential problems. If you have concerns regarding environmental impacts from CBM development separate from Hydraulic Fracturing, such as dewatering or surface water discharge, please contact your State oil and gas agency or the EPA regional office in your area. Contact information can be obtained from EPA’s web site <http://www.epa.gov/safewater/uic/>

[states.html](#) or from the Safe Drinking Water Hotline at 1-800-426-4791.

Dated: July 20, 2001.

**Diane C. Regas,**

*Acting Assistant Administrator, Office of Water.*

[FR Doc. 01-18882 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**



# Federal Register

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**Monday,  
July 30, 2001**

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**Part III**

## **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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## **Environmental Protection Agency**

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**Coastal Nonpoint Pollution Control  
Program: Approval Decisions on  
Massachusetts and New Hampshire  
Coastal Nonpoint Pollution Control  
Programs; Notice**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Environmental Protection Agency**

[FRL-7019-1]

**Coastal Nonpoint Pollution Control Program: Approval Decisions on Massachusetts and New Hampshire Coastal Nonpoint Pollution Control Programs**

**AGENCY:** National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.

**ACTION:** Notice of Intent to Approve the Massachusetts and New Hampshire Coastal Nonpoint Programs.

**SUMMARY:** Notice is hereby given of the intent to fully approve the Massachusetts and New Hampshire Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the draft Approval Decisions on conditions for the Massachusetts and New Hampshire coastal nonpoint programs. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S.

Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Massachusetts coastal nonpoint program on September 24, 1997 and the New Hampshire coastal nonpoint program on November 18, 1997. NOAA and EPA have drafted approval decisions describing how Massachusetts and New Hampshire have satisfied the conditions placed on their programs and therefore have fully approved coastal nonpoint programs.

NOAA and EPA are making the draft decisions for the Massachusetts and New Hampshire coastal nonpoint programs available for 30-day public comment periods. If no comments are received, the Massachusetts and New Hampshire programs will be approved. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the programs.

Copies of the draft Approval Decisions can be found on the NOAA website at <http://www.ocrm.nos.noaa.gov/czm/6217/> or may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301-713-3155, extension 201, e-mail [joseph.flanagan@noaa.gov](mailto:joseph.flanagan@noaa.gov).

**DATES:** Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by August 29, 2001.

**ADDRESSES:** Comments should be made to John King, Acting Chief, Coastal

Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, tel. 301-713-3155 extension 195, e-mail [john.king@noaa.gov](mailto:john.king@noaa.gov) or, for Massachusetts, to Bruce Rosinoff, tel. 617-918-1698, e-mail [rosinoff.bruce@epa.gov](mailto:rosinoff.bruce@epa.gov); for New Hampshire, to Warren Howard, tel. 617-918-1587, e-mail [howard.warren@epa.gov](mailto:howard.warren@epa.gov), EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA, 02114-2023.

**FOR FURTHER INFORMATION CONTACT:** For Massachusetts, Joelle Gore, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301-713-3155, extension 177, e-mail [joelle.gore@noaa.gov](mailto:joelle.gore@noaa.gov); for New Hampshire, Elisabeth Morgan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301-713-3155, extension 166, e-mail [elisabeth.morgan@noaa.gov](mailto:elisabeth.morgan@noaa.gov).

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: July 17, 2001.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.*

**Diane C. Regas,**

*Acting Assistant Administrator, Office of Water, Environmental Protection Agency.*

[FR Doc. 01-18881 Filed 7-27-01; 8:45 am]

**BILLING CODE 3510-08-P**



# Federal Register

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**Monday,  
July 30, 2001**

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**Part IV**

## **The President**

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**Proclamation 7457—National Korean War  
Veterans Armistice Day, 2001**



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**Presidential Documents**

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Title 3—

**Proclamation 7457 of July 25, 2001****The President****National Korean War Veterans Armistice Day, 2001****By the President of the United States of America****A Proclamation**

The sounds of war thundered as a furious struggle took place 51 years ago in a country unknown to many Americans. The battleground that was Korea in the years 1950 to 1953 tested the resolve, courage, and commitment of an America barely 5 years beyond the tremendous sacrifices of World War II. Undaunted, America again marshaled her forces to defend a population facing tyranny and aggression.

Freedom for the Republic of Korea was purchased with deep sacrifice and with honor. In 38 months of intense fighting, 33,665 Americans gave their lives in battle. Our Nation's highest military award, the Medal of Honor, was awarded to 131 members of the U.S. Armed Forces, more than 90 of them posthumously. Yet the challenge of Korea was not just a formidable adversary, but also a harsh and forbidding climate. The 1.8 million service men and women who served there suffered bitter winters that would claim casualties approaching those inflicted by guns, shrapnel, and bayonets. When the Military Armistice Agreement, effective 48 years ago, silenced the guns on the Korean peninsula, it marked the end of the world's first determined stand against Communist aggression. It signaled the beginning of the Cold War, and foreshadowed the eventual dismantling of global Communism.

Today, the liberties defended there half a century ago are the inheritance of 47 million citizens of a democratic, prosperous, and progressive Republic of Korea. The young Americans who fought and died there kept faith with a just cause, and in so doing, kept faith with the principles and ideals on which our Nation was founded. They immeasurably blessed the Republic of Korea and brought great honor to our Nation as a defender of freedom. Because of these truths, we recognize the Korean War for what it was and is—not a “forgotten war,” but a remembered victory.

The Congress, by passing Public Law 104–19 (36 U.S.C. 127), has designated July 27, 2001, as “National Korean War Veterans Armistice Day” and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 27, 2001, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2001, in memory of the Americans who died as a result of their service in Korea.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, prominent "G" and "B".

[FR Doc. 01-19112

Filed 7-27-01; 8:47 am]

Billing code 3195-01-P

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**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT JULY 30, 2001****COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Northeastern United States fisheries—

Summer flounder, scup, and black sea bass; published 7-30-01

Ocean and coastal resource management:

Marine sanctuaries—

Florida Keys National Marine Sanctuary, FL; published 6-29-01

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Indiana; published 5-31-01

Louisiana; published 5-31-01

Virginia; published 5-31-01

**FEDERAL COMMUNICATIONS COMMISSION**

Practice and procedure:

Telecommunications Act of 1996; implementation—

Pole attachments; rules and policies; reconsideration petitions; published 6-29-01

Radio stations; table of assignments:

Illinois; published 6-26-01

**NUCLEAR REGULATORY COMMISSION**

Nuclear power plant operating licenses; environmental review; published 7-30-01

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

General Aviation; published 7-25-01

**TREASURY DEPARTMENT****Alcohol, Tobacco and Firearms Bureau**

Alcohol; viticultural area designations:

Santa Rita Hills, CA; published 5-31-01

**VETERANS AFFAIRS DEPARTMENT**

Vocational rehabilitation and education:

Veterans education—

Montgomery GI Bill—Active Duty; eligibility requirements; published 7-30-01

**COMMENTS DUE NEXT WEEK****COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

American Fisheries Act; emergency revisions; comments due by 8-9-01; published 7-10-01

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollution control; new motor vehicles and engines:

Light-duty vehicles and trucks and heavy-duty vehicles and engines; on-board diagnostic systems and emission-related repairs; comments due by 8-7-01; published 6-8-01

Air programs; State authority delegations:

Ohio; comments due by 8-10-01; published 7-11-01

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 8-6-01; published 7-6-01

Illinois; comments due by 8-10-01; published 7-11-01

Texas; comments due by 8-9-01; published 7-10-01

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bacillus thuringiensis Cry1F protein, etc.; comments due by 8-6-01; published 6-6-01

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 8-6-01; published 7-5-01

National priorities list update; comments due by 8-6-01; published 7-5-01

Water pollution control:

National Pollutant Discharge Elimination System—

Cooling water intake structures for new facilities; comments due by 8-6-01; published 7-6-01

**FEDERAL COMMUNICATIONS COMMISSION**

Digital television stations; table of assignments:

Kansas; comments due by 8-9-01; published 6-28-01

South Carolina; comments due by 8-9-01; published 6-28-01

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Medical devices:

Hematology and pathology; reclassification of automated differential cell counters; comments due by 8-7-01; published 5-9-01

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:

Housing Choice Voucher Program; exception payment standard to offset utility costs increase; comments due by 8-6-01; published 6-6-01

**INTERIOR DEPARTMENT Fish and Wildlife Service**

Endangered and threatened species:

Critical habitat designations—

O'ahu 'elepaio; comments due by 8-6-01; published 6-6-01

Duskytail darter, etc. (four fishes reintroduced into Tellico River, Monroe County, TN); comments due by 8-7-01; published 6-8-01

Robbins' cinquefoil; comments due by 8-7-01; published 6-8-01

**JUSTICE DEPARTMENT****Immigration and Naturalization Service**

Nonimmigrant classes:

H-1C nonimmigrant classification; petitioning requirements; comments due by 8-10-01; published 6-11-01

**LABOR DEPARTMENT****Mine Safety and Health Administration**

Metal and nonmetal mine safety and health:

Underground mines—

Diesel particulate matter exposure of miners; hearing; comments due by 8-6-01; published 7-5-01

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

Privacy Act; implementation; comments due by 8-6-01; published 6-5-01

**POSTAL SERVICE**

Domestic Mail Manual:

Mail delivery to commercial mail receiving agency; comments due by 8-10-01; published 7-11-01

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 8-10-01; published 7-11-01

Boeing; comments due by 8-10-01; published 6-11-01

CFE Co.; comments due by 8-6-01; published 6-6-01

Eurocopter France; comments due by 8-10-01; published 6-11-01

Class E airspace; comments due by 8-10-01; published 6-18-01

**TRANSPORTATION DEPARTMENT****National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Advanced air bags performance monitoring and future air bag rulemaking data development; comments due by 8-9-01; published 6-25-01

**TREASURY DEPARTMENT****Thrift Supervision Office**

Gramm-Leach-Bliley Act; implementation:

Community Reinvestment Act (CRA)-related agreements; disclosure and reporting; comments due by 8-10-01; published 6-11-01

**VETERANS AFFAIRS DEPARTMENT**

Acquisition regulations:

Health-care resources; simplified acquisition procedures; comments due by 8-6-01; published 6-7-01

National Practitioner Data Bank; participation policy; comments due by 8-6-01; published 6-5-01

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**LIST OF PUBLIC LAWS**

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal**

**Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

**H.R. 2216/P.L. 107-20**  
Supplemental Appropriations Act, 2001 (July 24, 2001; 115 Stat. 155)  
**Last List July 11, 2001**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
<b>1, 2 (2 Reserved)</b>	(869-044-00001-6)	6.50	<sup>4</sup> Jan. 1, 2001
<b>3 (1997 Compilation and Parts 100 and 101)</b>	(869-044-00002-4)	36.00	<sup>1</sup> Jan. 1, 2001
<b>4</b>	(869-044-00003-2)	9.00	Jan. 1, 2001
<b>5 Parts:</b>			
1-699	(869-044-00004-1)	53.00	Jan. 1, 2001
700-1199	(869-044-00005-9)	44.00	Jan. 1, 2001
1200-End, 6 (6 Reserved)	(869-044-00006-7)	55.00	Jan. 1, 2001
<b>7 Parts:</b>			
1-26	(869-044-00007-5)	40.00	<sup>4</sup> Jan. 1, 2001
27-52	(869-044-00008-3)	45.00	Jan. 1, 2001
53-209	(869-044-00009-1)	34.00	Jan. 1, 2001
210-299	(869-044-00010-5)	56.00	Jan. 1, 2001
300-399	(869-044-00011-3)	38.00	Jan. 1, 2001
400-699	(869-044-00012-1)	53.00	Jan. 1, 2001
700-899	(869-044-00013-0)	50.00	Jan. 1, 2001
900-999	(869-044-00014-8)	54.00	Jan. 1, 2001
1000-1199	(869-044-00015-6)	24.00	Jan. 1, 2001
1200-1599	(869-044-00016-4)	55.00	Jan. 1, 2001
1600-1899	(869-044-00017-2)	57.00	Jan. 1, 2001
1900-1939	(869-044-00018-1)	21.00	<sup>4</sup> Jan. 1, 2001
1940-1949	(869-044-00019-9)	37.00	<sup>4</sup> Jan. 1, 2001
1950-1999	(869-044-00020-2)	45.00	Jan. 1, 2001
2000-End	(869-044-00021-1)	43.00	Jan. 1, 2001
<b>8</b>	(869-044-00022-9)	54.00	Jan. 1, 2001
<b>9 Parts:</b>			
1-199	(869-044-00023-7)	55.00	Jan. 1, 2001
200-End	(869-044-00024-5)	53.00	Jan. 1, 2001
<b>10 Parts:</b>			
1-50	(869-044-00025-3)	55.00	Jan. 1, 2001
51-199	(869-044-00026-1)	52.00	Jan. 1, 2001
200-499	(869-044-00027-0)	53.00	Jan. 1, 2001
500-End	(869-044-00028-8)	55.00	Jan. 1, 2001
<b>11</b>	(869-044-00029-6)	31.00	Jan. 1, 2001
<b>12 Parts:</b>			
1-199	(869-044-00030-0)	27.00	Jan. 1, 2001
200-219	(869-044-00031-8)	32.00	Jan. 1, 2001
220-299	(869-044-00032-6)	54.00	Jan. 1, 2001
300-499	(869-044-00033-4)	41.00	Jan. 1, 2001
500-599	(869-044-00034-2)	38.00	Jan. 1, 2001
600-End	(869-044-00035-1)	57.00	Jan. 1, 2001
<b>13</b>	(869-044-00036-9)	45.00	Jan. 1, 2001

Title	Stock Number	Price	Revision Date
<b>14 Parts:</b>			
1-59	(869-044-00037-7)	57.00	Jan. 1, 2001
60-139	(869-044-00038-5)	55.00	Jan. 1, 2001
140-199	(869-044-00039-3)	26.00	Jan. 1, 2001
200-1199	(869-044-00040-7)	44.00	Jan. 1, 2001
1200-End	(869-044-00041-5)	37.00	Jan. 1, 2001
<b>15 Parts:</b>			
0-299	(869-044-00042-3)	36.00	Jan. 1, 2001
300-799	(869-044-00043-1)	54.00	Jan. 1, 2001
800-End	(869-044-00044-0)	40.00	Jan. 1, 2001
<b>16 Parts:</b>			
0-999	(869-044-00045-8)	45.00	Jan. 1, 2001
1000-End	(869-044-00046-6)	53.00	Jan. 1, 2001
<b>17 Parts:</b>			
1-199	(869-044-00048-2)	45.00	Apr. 1, 2001
200-239	(869-044-00049-1)	51.00	Apr. 1, 2001
240-End	(869-044-00050-4)	55.00	Apr. 1, 2001
<b>18 Parts:</b>			
1-399	(869-044-00051-2)	56.00	Apr. 1, 2001
400-End	(869-044-00052-1)	23.00	Apr. 1, 2001
<b>19 Parts:</b>			
1-140	(869-044-00053-9)	54.00	Apr. 1, 2001
141-199	(869-044-00054-7)	53.00	Apr. 1, 2001
200-End	(869-044-00055-5)	20.00	<sup>5</sup> Apr. 1, 2001
<b>20 Parts:</b>			
1-399	(869-044-00056-3)	45.00	Apr. 1, 2001
400-499	(869-044-00057-1)	57.00	Apr. 1, 2001
500-End	(869-044-00058-0)	57.00	Apr. 1, 2001
<b>21 Parts:</b>			
1-99	(869-044-00059-8)	37.00	Apr. 1, 2001
100-169	(869-044-00060-1)	44.00	Apr. 1, 2001
170-199	(869-044-00061-0)	45.00	Apr. 1, 2001
200-299	(869-044-00062-8)	16.00	Apr. 1, 2001
300-499	(869-044-00063-6)	27.00	Apr. 1, 2001
500-599	(869-044-00064-4)	44.00	Apr. 1, 2001
600-799	(869-044-00065-2)	15.00	Apr. 1, 2001
800-1299	(869-044-00066-1)	52.00	Apr. 1, 2001
1300-End	(869-044-00067-9)	20.00	Apr. 1, 2001
<b>22 Parts:</b>			
1-299	(869-044-00068-7)	56.00	Apr. 1, 2001
300-End	(869-044-00069-5)	42.00	Apr. 1, 2001
<b>23</b>	(869-044-00070-9)	40.00	Apr. 1, 2001
<b>24 Parts:</b>			
*0-199	(869-044-00071-7)	53.00	Apr. 1, 2001
200-499	(869-044-00072-5)	45.00	Apr. 1, 2001
*500-699	(869-044-00073-3)	27.00	Apr. 1, 2001
700-1699	(869-044-00074-1)	55.00	Apr. 1, 2001
*1700-End	(869-044-00075-0)	28.00	Apr. 1, 2001
<b>25</b>	(869-044-00076-8)	57.00	Apr. 1, 2001
<b>26 Parts:</b>			
§§ 1.0-1.60	(869-044-00077-6)	43.00	Apr. 1, 2001
§§ 1.61-1.169	(869-044-00078-4)	57.00	Apr. 1, 2001
§§ 1.170-1.300	(869-044-00079-2)	52.00	Apr. 1, 2001
§§ 1.301-1.400	(869-044-00080-6)	41.00	Apr. 1, 2001
§§ 1.401-1.440	(869-042-00081-1)	47.00	Apr. 1, 2000
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501-1.640	(869-044-00083-1)	44.00	Apr. 1, 2001
§§ 1.641-1.850	(869-044-00084-9)	53.00	Apr. 1, 2001
§§ 1.851-1.907	(869-042-00085-4)	43.00	Apr. 1, 2000
§§ 1.908-1.1000	(869-044-00086-5)	53.00	Apr. 1, 2001
§§ 1.1001-1.1400	(869-044-00087-3)	55.00	Apr. 1, 2001
§§ 1.1401-End	(869-044-00088-1)	58.00	Apr. 1, 2001
2-29	(869-044-00089-0)	54.00	Apr. 1, 2001
30-39	(869-044-00090-3)	37.00	Apr. 1, 2001
40-49	(869-044-00091-1)	25.00	Apr. 1, 2001
50-299	(869-044-00092-0)	23.00	Apr. 1, 2001
300-499	(869-044-00093-8)	54.00	Apr. 1, 2001
500-599	(869-044-00094-6)	12.00	<sup>5</sup> Apr. 1, 2001
*600-End	(869-044-00095-4)	15.00	Apr. 1, 2001
<b>27 Parts:</b>			
*1-199	(869-044-00096-2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
200-End	(869-044-00097-1)	26.00	Apr. 1, 2001	260-265	(869-042-00151-6)	36.00	July 1, 2000
<b>28 Parts:</b>				266-299	(869-042-00152-4)	35.00	July 1, 2000
0-42	(869-042-00098-6)	43.00	July 1, 2000	300-399	(869-042-00153-2)	29.00	July 1, 2000
43-end	(869-042-00099-4)	36.00	July 1, 2000	400-424	(869-042-00154-1)	37.00	July 1, 2000
<b>29 Parts:</b>				425-699	(869-042-00155-9)	48.00	July 1, 2000
0-99	(869-042-00100-1)	33.00	July 1, 2000	700-789	(869-042-00156-7)	46.00	July 1, 2000
100-499	(869-042-00101-0)	14.00	July 1, 2000	790-End	(869-042-00157-5)	23.00	<sup>6</sup> July 1, 2000
500-899	(869-042-00102-8)	47.00	July 1, 2000	<b>41 Chapters:</b>			
900-1899	(869-042-00103-6)	24.00	July 1, 2000	1, 1-1 to 1-10		13.00	<sup>3</sup> July 1, 1984
1900-1910 (§§ 1900 to 1910.999)	(869-042-00104-4)	46.00	<sup>6</sup> July 1, 2000	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	<sup>3</sup> July 1, 1984
1910 (§§ 1910.1000 to end)	(869-042-00105-2)	28.00	<sup>6</sup> July 1, 2000	3-6		14.00	<sup>3</sup> July 1, 1984
1911-1925	(869-042-00106-1)	20.00	July 1, 2000	7		6.00	<sup>3</sup> July 1, 1984
1926	(869-042-00107-9)	30.00	<sup>6</sup> July 1, 2000	8		4.50	<sup>3</sup> July 1, 1984
1927-End	(869-042-00108-7)	49.00	July 1, 2000	9		13.00	<sup>3</sup> July 1, 1984
<b>30 Parts:</b>				10-17		9.50	<sup>3</sup> July 1, 1984
1-199	(869-042-00109-5)	38.00	July 1, 2000	18, Vol. I, Parts 1-5		13.00	<sup>3</sup> July 1, 1984
200-699	(869-042-00110-9)	33.00	July 1, 2000	18, Vol. II, Parts 6-19		13.00	<sup>3</sup> July 1, 1984
700-End	(869-042-00111-7)	39.00	July 1, 2000	18, Vol. III, Parts 20-52		13.00	<sup>3</sup> July 1, 1984
<b>31 Parts:</b>				19-100		13.00	<sup>3</sup> July 1, 1984
0-199	(869-042-00112-5)	23.00	July 1, 2000	1-100	(869-042-00158-3)	15.00	July 1, 2000
200-End	(869-042-00113-3)	53.00	July 1, 2000	101	(869-042-00159-1)	37.00	July 1, 2000
<b>32 Parts:</b>				102-200	(869-042-00160-5)	21.00	July 1, 2000
1-39, Vol. I		15.00	<sup>2</sup> July 1, 1984	201-End	(869-042-00161-3)	16.00	July 1, 2000
1-39, Vol. II		19.00	<sup>2</sup> July 1, 1984	<b>42 Parts:</b>			
1-39, Vol. III		18.00	<sup>2</sup> July 1, 1984	1-399	(869-042-00162-1)	53.00	Oct. 1, 2000
1-190	(869-042-00114-1)	51.00	July 1, 2000	400-429	(869-042-00163-0)	55.00	Oct. 1, 2000
191-399	(869-042-00115-0)	62.00	July 1, 2000	430-End	(869-042-00164-8)	57.00	Oct. 1, 2000
400-629	(869-042-00116-8)	35.00	July 1, 2000	<b>43 Parts:</b>			
630-699	(869-042-00117-6)	25.00	July 1, 2000	1-999	(869-042-00165-6)	45.00	Oct. 1, 2000
700-799	(869-042-00118-4)	31.00	July 1, 2000	1000-end	(869-042-00166-4)	55.00	Oct. 1, 2000
800-End	(869-042-00119-2)	32.00	July 1, 2000	<b>44</b>	(869-042-00167-2)	45.00	Oct. 1, 2000
<b>33 Parts:</b>				<b>45 Parts:</b>			
1-124	(869-042-00120-6)	35.00	July 1, 2000	1-199	(869-042-00168-1)	50.00	Oct. 1, 2000
125-199	(869-042-00121-4)	45.00	July 1, 2000	200-499	(869-042-00169-9)	29.00	Oct. 1, 2000
200-End	(869-042-00122-5)	36.00	July 1, 2000	500-1199	(869-042-00170-2)	45.00	Oct. 1, 2000
<b>34 Parts:</b>				1200-End	(869-042-00171-1)	54.00	Oct. 1, 2000
1-299	(869-042-00123-1)	31.00	July 1, 2000	<b>46 Parts:</b>			
300-399	(869-042-00124-9)	28.00	July 1, 2000	1-40	(869-042-00172-9)	42.00	Oct. 1, 2000
400-End	(869-042-00125-7)	54.00	July 1, 2000	41-69	(869-042-00173-7)	34.00	Oct. 1, 2000
<b>35</b>	(869-042-00126-5)	10.00	July 1, 2000	70-89	(869-042-00174-5)	13.00	Oct. 1, 2000
<b>36 Parts:</b>				90-139	(869-042-00175-3)	41.00	Oct. 1, 2000
1-199	(869-042-00127-3)	24.00	July 1, 2000	140-155	(869-042-00176-1)	23.00	Oct. 1, 2000
200-299	(869-042-00128-1)	24.00	July 1, 2000	156-165	(869-042-00177-0)	31.00	Oct. 1, 2000
300-End	(869-042-00129-0)	43.00	July 1, 2000	166-199	(869-042-00178-8)	42.00	Oct. 1, 2000
<b>37</b>	(869-042-00130-3)	32.00	July 1, 2000	200-499	(869-042-00179-6)	36.00	Oct. 1, 2000
<b>38 Parts:</b>				500-End	(869-042-00180-0)	23.00	Oct. 1, 2000
0-17	(869-042-00131-1)	40.00	July 1, 2000	<b>47 Parts:</b>			
18-End	(869-042-00132-0)	47.00	July 1, 2000	0-19	(869-042-00181-8)	54.00	Oct. 1, 2000
<b>39</b>	(869-042-00133-8)	28.00	July 1, 2000	20-39	(869-042-00182-6)	41.00	Oct. 1, 2000
<b>40 Parts:</b>				40-69	(869-042-00183-4)	41.00	Oct. 1, 2000
1-49	(869-042-00134-6)	37.00	July 1, 2000	70-79	(869-042-00184-2)	54.00	Oct. 1, 2000
50-51	(869-042-00135-4)	28.00	July 1, 2000	80-End	(869-042-00185-1)	54.00	Oct. 1, 2000
52 (52.01-52.1018)	(869-042-00136-2)	36.00	July 1, 2000	<b>48 Chapters:</b>			
52 (52.1019-End)	(869-042-00137-1)	44.00	July 1, 2000	1 (Parts 1-51)	(869-042-00186-9)	57.00	Oct. 1, 2000
53-59	(869-042-00138-9)	21.00	July 1, 2000	1 (Parts 52-99)	(869-042-00187-7)	45.00	Oct. 1, 2000
60	(869-042-00139-7)	66.00	July 1, 2000	2 (Parts 201-299)	(869-042-00188-5)	53.00	Oct. 1, 2000
61-62	(869-042-00140-1)	23.00	July 1, 2000	3-6	(869-042-00189-3)	40.00	Oct. 1, 2000
63 (63.1-63.1119)	(869-042-00141-9)	66.00	July 1, 2000	7-14	(869-042-00190-7)	52.00	Oct. 1, 2000
63 (63.1200-End)	(869-042-00142-7)	49.00	July 1, 2000	15-28	(869-042-00191-5)	53.00	Oct. 1, 2000
64-71	(869-042-00143-5)	12.00	July 1, 2000	29-End	(869-042-00192-3)	38.00	Oct. 1, 2000
72-80	(869-042-00144-3)	47.00	July 1, 2000	<b>49 Parts:</b>			
81-85	(869-042-00145-1)	36.00	July 1, 2000	1-99	(869-042-00193-1)	53.00	Oct. 1, 2000
86	(869-042-00146-0)	66.00	July 1, 2000	100-185	(869-042-00194-0)	57.00	Oct. 1, 2000
87-135	(869-042-00146-8)	66.00	July 1, 2000	186-199	(869-042-00195-8)	17.00	Oct. 1, 2000
136-149	(869-042-00148-6)	42.00	July 1, 2000	200-399	(869-042-00196-6)	57.00	Oct. 1, 2000
150-189	(869-042-00149-4)	38.00	July 1, 2000	400-999	(869-042-00197-4)	58.00	Oct. 1, 2000
190-259	(869-042-00150-8)	25.00	July 1, 2000	1000-1199	(869-042-00198-2)	25.00	Oct. 1, 2000
				1200-End	(869-042-00199-1)	21.00	Oct. 1, 2000
				<b>50 Parts:</b>			
				1-199	(869-042-00200-8)	55.00	Oct. 1, 2000
				200-599	(869-042-00201-6)	35.00	Oct. 1, 2000

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<sup>1</sup> Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup> No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

<sup>5</sup> No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

<sup>6</sup> No amendments to this volume were promulgated during the period July 1, 1999, through July 1, 2000. The CFR volume issued as of July 1, 1999 should be retained..